

Insights into the Selected case law of the European Court of Human Rights on young people



Youth Partnership

Partnership between the European Commission
and the Council of Europe in the field of Youth



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Insights into the Selected case law of the European Court of Human Rights on young people

**Irina Lonean PhD,
Pool of European Youth Researchers**

Editor:

Tanya Basarab

Co-ordination of publication:

Muriel Julien

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This publication is part of the *Insights* series of the EU-Council of Europe Youth Partnership. *Insights* are short thematic publications to support youth sector engagement with specific topics, in this case, understanding the case law of the European Court of Human Rights including young people and how it led to changes in national legislation.

About the author – **Irina Lonean** holds a PhD in Political Science from the Université Libre de Bruxelles and the University of Bucharest. She has a BA in law and combines law and public policy studies to understand how policies become practices and how case law influences policies. Irina gained experience working in Romania and internationally with NGOs and think-tanks with a mission to promote youth inclusion, human rights, democracy and integrity. She conducted policy and programme evaluations for the Romanian government, EU institutions, the Council of Europe, and UNICEF. Irina is a member of the Pool of European Youth Researchers managed by the EU-Council of Europe Youth Partnership.

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Introduction

In November 2022, the European Court of Human Rights (hereinafter “the Court”) released a report entitled “Selected case law of the European Court of Human Rights on young people”. The report shows the significant role played by the Court in preserving the rights of young individuals in the member States of the Council of Europe (CoE).

In response to this report, the Advisory Council on Youth (CCJ) requested an in-depth examination of the selected case law. The aim of the analysis is to gain a more profound insight into the contemporary challenges confronting young people and the strategies being employed to ensure the protection of their rights. The objectives of the analysis, put forward by the CCJ, are twofold:

- ▶ to provide insights into the ways in which young people are impacted by human rights violations across Europe;
- ▶ to identify the gaps in the legal framework and the areas where more could be done to protect the rights of young people.

Furthermore, the analysis can support the CCJ, as well as the Council of Europe Youth Department and the Commissioner for Human Rights, to identify best practices and successful initiatives that can be replicated in other member States in order to better protect the rights of young people. This could enhance co-operation and co-ordination among member States, while also guaranteeing that young individuals throughout Europe receive an equal degree of protection and assistance.

The analysis is being conducted ten years after a similar paper. The report, entitled “Young Persons and the case law of the European Convention on Human Rights and the European Social Charter” (Hayward, 2013), examined the unique challenges faced by young people during the transition from childhood to adulthood and presented case studies across civil and political, as well as social rights to highlight specific issues and solutions relevant to this pivotal stage of their lives. The report underscored the pressing human rights issues that young people face, emphasizing the need for substantial changes in member States’ approaches. It called for a reorientation towards a human rights-based approach to address contemporary challenges faced by youth. The research identified potential ways to promote inclusivity during this distinctive phase of life and underscored the importance of addressing these challenges to ensure the rights, well-being, and participation of young people in European society. One proposed solution was the introduction of a binding instrument in this field. On the other hand, the report suggested that, rather than relying solely on new instruments, greater attention be given to how member States can better protect these rights, maintaining a rights-based approach. Many of the rights discussed were not fully realised in practice, and there was a need to address this issue, particularly in the case of young people. This could involve contextualizing rights, which were articulated in a universal and general manner, to better accommodate the specific needs of young people. The report offered proposals, recommendations, and suggestions to revitalise the debate, emphasizing specific legal challenges and potential reforms to improve the status of young people’s rights.

The current analysis, therefore, puts the case law in a historical perspective. It is important to underline the historical evolution of the interpretation and application of the rights established by the European Convention on Human Rights (hereinafter “the Convention”), as 2023 marks the 75th anniversary of the Universal Declaration of Human Rights, the 70th anniversary of the entry into force of the Convention, and the 30th anniversary of the Vienna Declaration and Programme of Action. Moreover, this evolution opens the discussion on current cases and possible future developments for a better recognition of and better protection against contemporary infringements of young people’s rights, taking into account the soft-law documents (recommendations and resolutions) adopted in the last 10 years.

This paper refers to the rights of young people as human rights respected in a way that ensures they have access to these rights, in accordance with Committee of Ministers Recommendation CM/Rec(2016)7 on young people’s access to rights. The paper is limited to an analysis of the rights protected by the European Convention on Human Rights and its Protocols, which are the legal basis for the rulings of the Court.

The paper is entirely based on desk research of the “Selected case law of the European Court on Human Rights on young people” published by the Court and relevant legal and policy documents, as well as previous research reports on the topic of young people’s access to rights. The paper presents the background to the analysis in the second chapter, including a short presentation of the European Convention on Human Rights, as well as of Committee of Ministers Recommendation CM/Rec(2016)7, which are the documents guiding the analysis. A brief description of the Court and a short summary of the previous analysis of youth rights and the

access of young people to rights are also included in the background information. The third chapter includes an overview of the analysed case law (the relevant statistics referring to the selected case law and the main characteristics of the cases). The fourth chapter includes the main results of the analysis underlining the salient issues raised by the violation of the rights of young people, the gaps in member States' legislation and procedures, and the evolution of the Court's interpretation of the European Convention on Human Rights that ensures better access to rights.



Background

The European Convention on Human Rights and the European Court of Human Rights

The European Convention on Human Rights (the Convention) is a fundamental international treaty that serves as a cornerstone of the protection of human rights in Europe. It originated in the aftermath of World War II, and aimed to put in place an agenda to prevent the recurrence of the atrocities and violations that occurred during that war. It was opened for signature in Rome on 4 November 1950 and entered into force in 1953.

The Convention outlines a comprehensive set of human rights and fundamental freedoms, designed to ensure the dignity and protection of individuals. These rights include the right to life, freedom from torture and inhuman or degrading treatment, the right to liberty and security, the right to a fair trial, and the right to respect for private and family life. It also encompasses freedoms, like the right to freedom of thought, conscience, religion, freedom of expression, and the right to peaceful assembly and association. Furthermore, the Convention prohibits discrimination in the enjoyment of these rights.

The Protocols to the European Convention on Human Rights are supplementary agreements that amend or expand upon the rights and freedoms established in the original Convention. These protocols allow for the incorporation of new rights and the modification of existing ones to better address contemporary human rights issues. Many of the protocols were created in response to evolving societal norms and legal developments, aiming to ensure the Convention remains a relevant and effective instrument for safeguarding human rights. For example, Protocol No. 6 abolishes the death penalty, and Protocol No. 13 prohibits the death penalty in all

circumstances. Other protocols address issues such as the right to property, the right to education, the rights of victims of trafficking, and others.

The European Convention on Human Rights established the Court, which is responsible for adjudicating cases related to (alleged) violations, by member States, of the rights protected by the Convention. The Court's jurisdiction extends to the 46 member States of the Council of Europe which have all signed and ratified the European Convention on Human Rights. The Court gives individuals and entities the ability to seek justice when they believe their rights have been breached by a state party.

The Court's rulings have evolved through landmark decisions that have shaped the jurisprudence of human rights. These rulings have addressed a wide range of issues, including the prohibition of torture, the right to a fair trial, freedom of expression, and the rights of refugees and minorities.

The Court's judgments set legal precedents, impacting the interpretation of human rights and guiding states in aligning their laws and practices with the Convention. Therefore, over the years, the Court has played a crucial role in interpreting and developing human rights standards in Europe, influencing both domestic and international law. Moreover, the Court's influence has grown over time, reflecting a broader awareness of human rights in Europe and the need for effective mechanisms to protect and enforce these rights.

The Recommendation on young's people access to rights

Having as a legal basis the European Convention on Human Rights and the European Social Charter, as well as the United Nations Convention on the Rights of the Child, the Council of Europe Committee of Ministers adopted in September 2016 Recommendation CM/Rec(2016)7 on young's people access to rights. This Recommendation offers guidance to member States regarding youth rights and serves as a framework for enhancing the rights and opportunities available to young individuals. It also underscores the importance of adopting a human rights-based approach to ensuring young people's access to rights. It emphasizes the need for member States to empower young people by helping them understand and assert their rights and by removing legal, political, and social barriers that hinder access. It highlights the role of youth organisations and youth work in promoting active citizenship among young people, urging authorities at various levels to support different forms of youth participation.

Furthermore, the document comprises eight core recommendations and is accompanied by an appendix that outlines its scope, purpose, underlying principles, and a range of measures for member States to consider when assessing the situation in their respective countries and determining new measures to adopt. These measures encompass addressing discriminatory practices, facilitating peaceful assembly and association rights, and promoting and facilitating access through co-ordinated efforts at national, regional, and local levels. The Recommendation's comprehensive nature provides a roadmap for improving young people's access to rights, thereby contributing to a more inclusive and rights-respecting society.

The Recommendation was preceded by other recommendations and resolutions that frame and recall the importance of approaching youth rights in a coherent manner, adapted to young people's situations. These include several documents from other Council bodies:

- ▶ Parliamentary Assembly of the Council of Europe (PACE) Recommendation 2015 (2013) "Young people's access to fundamental rights";
- ▶ PACE Recommendation 1978 (2011) "Towards a European framework convention on youth rights";
- ▶ Congress of Local and Regional Authorities (Congress) Resolution 386 (2015) on "Bringing down barriers to youth participation: adopting a lingua franca for local and regional authorities and young people";
- ▶ Congress Recommendation 128 (2003) on "The revised European Charter on the Participation of Young People in Local and Regional Life";
- ▶ Resolution CM/Res(2008)23 of the Committee of Ministers on the youth policy of the Council of Europe;
- ▶ several other recommendations of the Committee of Ministers to member States.¹

Together, these documents represent a solid framework for the promotion and protection from violation of the rights of young people. The soft-law documents are addressed to member States, but they can also influence the evolution of the interpretation of the Convention by the Court. As mentioned, the Court's rulings have evolved, and soft-law documents reflect the progress of civic, political and social values faster than can be done by adopting Protocols to the Convention. Therefore, changes in the Court's jurisprudence can be explained by the changes in values, especially when they are confirmed by official documents, such as recommendations and resolutions of the institutional bodies of the CoE. The jurisprudence of the Court has, in turn, an influence on member States' policies and thus strengthens the effect of soft-law texts.

Research on young people's rights and their access to those rights

To support the implementation of legal documents, including the soft law reflected in recommendations and resolutions, the Partnership between the European Commission and the Council of Europe in the field of youth (hereinafter "the Youth Partnership") has published several papers on youth rights and young people's access to rights. The research conducted acknowledges that

1. In particular, it is worth mentioning: CM/Rec(2015)3 on the access of young people from disadvantaged neighbourhoods to social rights; CM/Rec(2013)2 on ensuring full inclusion of children and young persons with disabilities into society; CM/Rec(2012)13 on ensuring quality education; CM/Rec(2012)2 on the participation of children and young people under the age of 18; CM/Rec(2010)8 on youth information; CM/Rec(2010)7 on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education; CM/Rec(2009)9 on the education and social inclusion of children and young people with autism spectrum disorders; CM/Rec(2007)17 on gender equality standards and mechanisms and Recommendation Rec(2006)1 on the role of national youth councils in youth policy development.

young people are often vulnerable to rights violations and face difficulties due to limited access to rights, these challenges being especially pronounced for those who face discrimination and social exclusion due to factors such as socioeconomic status, geographical circumstances, disabilities, physical limitations, or cultural differences. The Youth Partnership has explored, therefore, how young people navigate the complexities of accessing political, economic, and social rights. It conducts research to identify the impediments they face in achieving autonomy, personal growth, and active participation in society. These rights encompass five fundamental pillars, often described as 'safety nets', which delineate the potential for inclusion or exclusion: education, the labour market, living conditions, health, and participation. These areas serve as cornerstones of the prerequisites and essential resources necessary to meet young people's everyday needs.

The most important recent documents published by the Youth Partnership on young people's access to rights have been drafted in the framework of the review of Recommendation CM/Rec(2016)7.

A mapping study of young people's right to assemble peacefully (Pantea, 2021) underlines that the right of young people to freely form, join and be active in organisations, associations and trade unions is well covered by legal documents and literature, although the shrinking civic space for youth civil society is a clear risk. The barriers to the right to peaceful assembly most often target informal manifestations by civil society, such as protests and other types of ad-hoc manifestations. It is also important to recognise, according to the mapping study, that online and offline participation serves distinct purposes and considering e-participation as a complete substitute for physical gatherings can undermine democracy. Furthermore, not all youth organisations and young people engaged in civic activities are affected by restrictions, and the impact varies significantly among them. Some possess better tools to navigate challenging environments or to respond to threats; for others, additional protection is needed.

The study argues that those trying to curb rights are employing progressively advanced methods, and that, therefore, a correspondingly strategic, daring, and flexible response to effectively counter their actions is needed. This response can be based on coalitions of diverse stakeholders at local, national, and international levels, shifting the narrative from a needs-based to a rights-based approach, measures of reform in the education and justice systems, additional resources (including financial) provided to youth organisations, youth clubs and other civil society organisations promoting youth rights.

On the topic of participation, additional research edited by the Youth Partnership tackles new forms of youth participation (Yurttagüler and Pultar, 2023; Gorman, 2021), forms of young women's participation (Lavizzari and Yurttagüler, 2023), the concept of meaningful youth participation (Bárta and Lavizzari, 2021; Bárta, Boldt and Lavizzari, 2021), but also the issue of shrinking democratic civic space for youth (Deželan and Yurttagüler, 2021; Deželan, 2022). This body of research is potentially shaping the discussion on youth civic and political rights, underlying the risks of rights infringement and the evolution of how rights are manifested and visible for young people in contemporary society.

A study on young people's access to rights and non-discrimination (Potočnik, 2021) shows that young people encounter discrimination predominantly in the fields of education and employment. Moreover, compared to older EU citizens, young people exhibit a heightened awareness of discrimination and human rights violations. Despite significant efforts made since the 1990s to raise awareness of the importance of protecting human rights and tackling discrimination, the research shows that “the countries of the Council of Europe have not reached the milestone, as youth access to rights and the importance of tackling discrimination are not fully incorporated in all policy documents issued”.²

Other Youth Partnership research reports on the topic of access to rights focus on social rights and social inclusion. Recent publications explore the intersection between digitalisation and social inclusion of young people and underline that digitalisation can enhance the capacity of different stakeholders to address social inequality. However, this does not happen automatically, and more reflection, planning and efforts are required to increase accessibility to technology and to ensure that our digital methods are inclusive for young people from diverse backgrounds (Moxon, Şerban, Potočnik, Connolly, Pasic, and Ştefan, 2021). Furthermore, in the context of multidimensional crises, including the COVID-19 pandemic and the war in Ukraine, research papers have been published on housing (Serme-Morin, 2021), youth services (Potočnik and Ivanian, 2022), and youth financial capabilities enhancing their access to rights (Ranta, 2022).

Additional areas of research are relevant for the topic of young people's rights and their access to them. The Youth Knowledge Book Reflections on youth work with refugees (Pisani, Basarab, Bello, and Laine, 2018) addresses negative phenomena, such as human rights violations, hate speech and discrimination, and the role of youth work in ensuring safe spaces for being young. The research on young people in rural areas (Şerban and Braziené, 2021) underlines the risk of ignoring young people and leaving them behind, and the high risks associated with cutting their access to rights, when and where they are few in number and hard to reach, both physically and digitally. Recent studies on youth and sustainability reflect how young people's rights are affected and developing in the context of climate change and crisis (Gorman, 2021).

This body of research constitutes a strong background for the current analysis of the selected case law of the European Court of Human Rights on young people. It has offered inspiration for the analysis's pathways and recommendations, as well as validation where the selected case law allowed for findings relating to vulnerabilities to violations of young people's rights.

2. ECtHR (2022). *Selected case law of the European Court of Human Rights on young people*, p. 2.



Overview of the case law

Content of the selected case law

The findings of the analysis in this chapter are limited to the selected case law provided by the Court. The Court's case law on young people was selected by the Research Unit, under the supervision of the Directorate of the Jurisconsult of the Court. Additional reflections on the violation of the rights of young people, as well as the positive evolution of the Court's jurisprudence, future areas of research and recommendations for future selections and similar analyses are presented in the subsequent chapters.

The selected case study includes 50 cases. In 36 of these cases, the Court concluded that there was a violation of at least one article of the European Convention on Human Rights, while in 14 cases, no violation was found. This allows for an analysis of the conditions under which a specific behaviour, decision, or regulation by a member State can be considered a violation of a fundamental right.

The judgements included in the selection were pronounced between 1983 and 2022, with 41 of the 50 cases pronounced after 2000, and 26 after 2010. The jurisprudence presented is recent, but the inclusion in the selection of older cases allows for a good understanding of the evolution of the Court's interpretation and of member States' implementation of the Convention and other documents on youth rights and youth access to rights.

The selection of the case law is organised in five sections, by topic. Under each topic, there is a high risk of a specific infringement, and one article of the European

Convention on Human Rights is more likely to be violated. However, in some cases, multiple rights are violated, mainly as a secondary or accessory effect of the primary violation.

Young people’s freedom from slavery and forced labour, their right to respect for private and family life, their freedom of thought, conscience and religion, their freedom from discrimination and their right to education appear to be the most endangered rights according to the selected case law. The table below presents the topics of the case law and the connected violation of rights in the Court’s jurisprudence.

Table 1. Topics of the selected case law of the European Court of Human Rights on young people

Topic	No. of cases where a violation was found	Convention article violated (primary)	Convention article violated (secondary)
Access to a professional career	3	Article 8. Right to respect for private and family life	Article 6. Right to a fair trial
Conscientious objection	9	Article 9. Freedom of thought, conscience and religion	Article 3. Prohibition of torture Article 6. Right to a fair trial Article 14. Prohibition of discrimination
Expulsion of second-generation migrants	11	Article 8. Right to respect for private and family life	Article 5. Right to liberty and security
Forced Labour	10	Article 4. Prohibition of slavery and forced labour , especially under its procedural limb	Article 1 of Protocol No. 1 to the Convention on the protection of property
University studies	3	Article 2 of Protocol No. 1 to the Convention on the right to education	Article 14. Prohibition of discrimination

Source: author, based on the “Selected case law of the European Court of Human Rights on young people”, 2022

Geographically, 17 states are involved in the selected case law. Three countries are involved in four or more cases: Austria, France, and Türkiye. However, the distribution of cases covers the entirety of Europe, and the selection seems to be an illustration of rights violations in multiple states.

There is an exception to this finding: Türkiye’s legislation and procedures on military service do not offer a civilian alternative and this leads to multiple violations of rights. As there is no legal possibility to refuse to perform military service, and since refusal after a criminal conviction on this ground leads to new criminal procedures and convictions, there is no time limit for the punishment of one crime.

This leads to a systematic violation of Article 9 of the Convention, on freedom of thought, conscience, and religion. Furthermore, there is also a high risk of violations of Article 3 prohibiting torture, inhuman or degrading treatment or punishment, and Article 6 § 1 on the right to a fair trial within a reasonable time.

As it refers to young people, the selection includes cases where the applicants are between 15 and 35 years old at the date of the facts reported to the Court.

However, the age of the applicants is not always clear and explicit in the presentation of cases in the 2022 selection report, therefore it is not possible to make an analysis of the differences that could be associated with different age groups.

Two-thirds of the applicants in the selected cases are men, but this may be as a result of the topics that framed the selection: a large number of the cases selected relate to conscientious objection to military service. However, men are in a slight majority among the applicants in the other cases.

In 30 of 50 cases, the applicants are immigrants, this shows clearly that immigrants tend to be very vulnerable to rights violations, compared to young people who are born nationals and live in the same states, with a larger and more stable family and social network to support their access to and enjoyment of rights.

Main breaches of rights of young people in the selected case law

Each topic in the selected case law shows at least one way in which the rights of young people can be breached.

Access to a professional career

A violation of Article 8 of the Convention (right to respect for private and family life) occurs when young people are allowed to plan for a career, even to start a career and a life based on it but are subsequently excluded or denied access to the profession based on rules that are not consistently applied. Young people's access to a professional career can be regulated by states, and, while there is no infringement of rights in cases where states limit the access to a profession to certain individuals (e.g. nationals or people without a prior criminal conviction etc.), a violation of rights occurs when the regulation on the access to a profession is not applied in a consistent way over time.

Conscientious objection

A violation of Article 9 of the Convention (freedom of thought, conscience and religion) of young people is violated by countries that impose a military service without offering an alternative civilian service that is not linked to the military,

* All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

and without a clear, non-discriminatory and mostly civilian procedure to assess the seriousness of an individual's beliefs. States are allowed to impose a mandatory military service on their citizens and the military service, if it exists, is performed by young people (usually men). However, the Court repeatedly underlines that “any system of compulsory military service imposed a heavy burden on individual citizens, which would be acceptable if it was shared in an equitable manner and if exemptions from this duty were based on solid and convincing grounds”³

In cases where no violation was found, the procedural arrangements examining the request for exceptions from the military service had been put in place by civilian state authorities, with the participation of a minority of military officers.

As mentioned above, in one of the cases relating to Türkiye, the Court concludes that “conscientious objectors have no other choice, if they are to remain true to their convictions, but to refuse to be drafted into the army. In so doing, they open themselves to a form of “civil death”, on account of the numerous criminal proceedings that the authorities invariably bring against them, the cumulative effects of the resulting criminal convictions and the possibility of being prosecuted throughout their lives.”⁴ A continuous and systematic infringement of the freedom of thought, conscience and religion, in the form of a violation of the right to conscientious objection, takes place in Türkiye and this leads to numerous other breaches of the provisions of the Convention, especially violations of Article 3 on the prohibition of torture and Article 6 on the right to a fair trial.

Expulsion of second-generation migrants

A violation of Article 8 of the Convention occurs when (young) migrants are deported to their country of origin, after a criminal conviction, if there is no thorough examination of their case, and the expulsion and infringement of their right to private and family life is not proportional with the legitimate aim of preventing disorder or crime. The Court repeatedly underlines that expulsion is a limitation of the freedom of movement – Protocol 4, Article 2 – and should be “in accordance with the law” and “necessary in a democratic society”.

What is apparent from the existing case law, including the cases where no violation was found, is the need for a case-by-case approach every time a decision on deportation is made. To comply with human rights when deciding on deportation, the state authorities need to examine (a) the family and personal ties of each person with their country of residence, (b) as well as with their country of origin (to which they would be deported), (c) the circumstances and gravity of their crime(s), (d) the risk of reoffending, (e) the length of the prohibition to re-enter the country from where the deportation takes place, etc.

In this context, a few salient issues are visible in the case law:

3. ECtHR (2022). *Selected case-law of the European Court of Human Rights on young people*, p. 8, case: Teliatnikov v. Lithuania, no. 51914/19, 7 June 2022.
4. ECtHR (2022). *Selected case-law of the European Court of Human Rights on young people*, p. 14, case: Savda v. Turkey, no. 42730/05, 12 June 2012

- ▶ considering the ties of a person with their country of residence, second-generation migrants with no or very limited links with the country of their parents should not be deported solely because they have the legal nationality of the country of origin, without other concrete links to its communities and/or culture;
- ▶ young people convicted as juveniles should be granted more leniency if their crimes are not repeated as adults and are not very serious;
- ▶ the situation of young parents with small children should be analysed in a way that takes into consideration the best interest of those children.

Forced Labour

A violation of Article 4 of the Convention (prohibition of slavery and forced labour) occurs when member States fail to regulate all forms of forced labour (including slavery, servitude, human trafficking, etc.) and/or fail to investigate and follow-up the applications from victims or witnesses of any form of forced labour. What appears from the case law is that states fail to regulate domestic servitude and, in some cases, modern slavery as specific offences, distinct from trafficking. Additionally, states are failing to put in place appropriate legal and administrative frameworks to combat trafficking or forced labour, including domestic servitude and forced prostitution, and, in the absence of such frameworks, to take operational measures to protect (potential) victims and to react effectively and quickly to applications regarding forced labour cases.

The selected case law shows that most of the victims of forced labour are migrants, falling prey to human trafficking (especially for prostitution, though not exclusively), exploitation by persons who are in a position of authority,⁵ or servitude in the houses of their employers (who are not paying for the work) or relatives. It is clear that young people, including young adolescent refugees, young women trafficked for prostitution and young adults searching for a better job are more exposed to abuses and rights violations in relation to their work.

The Court's decisions underline the obligations of the state to adopt effective legislation, and to ensure that this legislation may not be interpreted in a way which allows for impunity for perpetrators of crimes (including human trafficking, exploitation, forced labour, forced prostitution, modern slavery and domestic servitude). The case law also draws attention to the procedural obligations of states to regulate criminal procedures, and to train and supervise police officers and

5. In the case *S.M. v. Croatia* [GC], no. 60561/14, 25 June 2020, the applicant was 22 years old when she lodged a criminal complaint against a former policeman ("T.M."), alleging that he had forced her into prostitution. On the facts of the case, the Court found that, while the prosecuting authorities had reacted promptly to the applicant's allegations, they had failed to follow some obvious lines of inquiry capable of elucidating the circumstances of the case. The multiple shortcomings in the conduct of the case by the prosecuting authorities had fundamentally undermined the domestic authorities' ability to determine the true nature of the applicant's and T.M.'s relationship and whether the applicant had been exploited by him as she had alleged. In sum, there had been significant flaws in the domestic authorities' procedural response to the arguable claim and prima facie evidence that the applicant had been subjected to treatment contrary to Article 4.

prosecutors to ensure appropriate follow-up to all cases, even if the victim is not a national (e.g. if they are an immigrant). If the statute of limitation or other procedural limitations result in impunity for the perpetrators of any form of forced labour, a violation of Article 4 of the Convention, under its procedural limb, is found. In other words, member States are not found responsible for imposing forced labour, but they are responsible for not ensuring administrative and judicial procedures that would prevent forced labour and ensure appropriate remedies for the victims and accountability for the perpetrators.

Moreover, states are obliged to take measures to prevent human trafficking, exploitation, forced labour, forced prostitution, modern slavery, and domestic servitude. This entails a regular analysis of the legal and procedural provisions that are mostly linked with cases that are not prevented, as well as initiatives to change these provisions. For example, in the case *Rantsev v. Cyprus and Russia*, the Court found that “there had been a violation by Cyprus of its positive obligations arising under Article 4” and this is firstly linked with “its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas” (used by cabarets to employ young foreign women and linked often with human trafficking and prostitution).

University studies

A violation of Article 2 of Protocol No. 1 to the Convention on the right to education and of Article 14 of the Convention (prohibition of discrimination) occurs when states fail to take active measures to make it mandatory for education institutions (including universities) to ensure the right to education for all students, including those with disabilities. The Court underlines that a person with disabilities must receive equal access to education or an alternative instrument for accessibility, based on an assessment of the person’s actual needs and an honest appraisal of the potential impact on their safety, dignity, and independence.⁶

Stressing the obligation of states, the Court decided that states cannot accept and use the lack of funding to justify failure to provide access or an alternative instrument for accessibility to education for young people with disabilities. The Court actually states that, as the funds are allocated by the state, a lack of funds equates to no action being taken and represents an indicator of the violation of Article 2 of Protocol No. 1 to the Convention, and of Article 14 of the Convention.⁷

In a separate case concerning the suspension from University of 18 Turkish nationals who had petitioned the University requesting that optional Kurdish language classes be introduced, the Court found a violation of their right to education.⁸ The Court confirms the decision of the competent court that annulled the disciplinary sanctions against the applicants, “finding that their petitions to the authorities for optional Kurdish language classes were fully in line with the general aim of the Turkish

6. ECtHR (2022). *Selected case-law of the European Court of Human Rights on young people*, p. 57, case: *Enver Şahin v. Turkey*, no. 23065/12, 30 January 2018.

7. *Ibid.*

8. ECtHR (2022). *Selected case-law of the European Court of Human Rights on young people*, pp. 60-61, case: *İrfan Temel and Others v. Turkey*, no. 36458/02, 3 March 2009.

higher education, which was to train students in becoming objective, broad-minded and respectful of human rights.”⁹ However, the Court still found a violation of Article 2 of Protocol No. 1 to the Convention as the decision of the Turkish court came two years after the decision on suspension and, meanwhile, the Turkish State had failed to ensure the right to education. The Court “reiterated that while the first sentence essentially established access to primary and secondary education, it would be hard to imagine that institutions of higher education existing at a given time did not come within its scope. Nevertheless, in a democratic society, the right to education, which was indispensable to the furtherance of human rights, played such a fundamental role that a restrictive interpretation of the first sentence of Article 2 would not be consistent with the aim or purpose of that provision.”¹⁰

9. Ibid.

10. ECtHR (2022). *Selected case-law of the European Court of Human Rights on young people*, p. 63, case: Leyla Sahin v. Turkey [GC], no. 44774/98, ECtHR 2005-XI.





Evolution in regulation and interpretation of legal documents

As mentioned in the introduction, the evolution of the Court's interpretation of rights and its influence, in time, on the regulations and their interpretation in member States is one of the key issues of interest for this analysis. The selected case law shows that there is a positive feedback loop that reinforces better practices of ensuring access to rights for young people in the member States and the jurisprudence of the Court.

The Court's case law has evolved significantly over time, reflecting the changing societal and legal landscape in Europe. In the initial years, the Court's decisions were relatively cautious and offered a narrow interpretation of the Convention's rights. However, as societal norms evolved and Europe underwent significant political and social changes, the Court adopted a more expansive approach. Notable shifts occurred in areas like privacy and non-discrimination, where the Court expanded its interpretation to cover new dimensions of human rights concerns, related to use of personal data, access to abortion, the gender definition and same-sex marriage.¹¹

11. Examples of cases showing the evolution of the Court jurisprudence: A, B, and C v. Ireland (2010), Application Nos. 25579/05, 25581/05, and 25582/05; Oliari and Others v. Italy (2015) - No. 18766/11; Hämäläinen v. Finland (2014) – No. 37359/09; Vallianatos and Others v. Greece (2013) – Nos. 29381/09 and 32684/09; X. v. Austria (2019), A.P., Garçon, and Nicot v. France (2017);

In recent years, the Court has faced complex challenges related to the application of Convention rights in modern contexts, such as issues arising from technological advancements, national security concerns, and the rights of vulnerable groups. The Court has continued to evolve its case law, and this evolution, as briefly presented above, shows the Court's commitment to protecting human rights in these dynamic circumstances. The Court's jurisprudence plays a pivotal role in shaping human rights standards in Europe and, to a certain degree, is also an influential reference for human rights protection worldwide.

Within the selected case law under analysis, there are three main cases depicting a clear evolution of the Court's and/or states' interpretation of rights and their capacity to ensure effective access to rights to young people. They refer to (a) the application of Article 9 on freedom of thought, conscience and religion to conscientious objection to military service; (b) the interpretation of the unpaid or underpaid work performed by young professionals, even if it is not forced labour, as a violation of the right to property; (c) the regulation of forced labour, slavery and servitude as criminal offences, separated from human trafficking in several countries, to cover cases when forced labour is not associated with trafficking.

Evolved interpretation on conscientious objection

Concerning the interpretation and application of Article 9 on freedom of thought, conscience and religion to conscientious objection, the selected case law includes the first case when this interpretation was provided by the Court: the case *Bayatyan v. Armenia*.¹² Previously, the interpretation of conscientious objection had been bound by the provisions under Article 4 § 3 (b) of the Convention, stating that the term "forced labour" should not include "any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service". A literal and strict interpretation of the text led the Court to consider, until 2011, that the recognition or not of conscientious objectors was left to states. Consequently, the Convention was not interpreted as providing a right to conscientious objection and Article 9 of the Convention was not applied as guaranteeing freedom from prosecution for declining to enlist in the military for religious or ideological reasons.

However, in 2011, in the judgment in the case *Bayatyan v. Armenia*, the Court acknowledged that "important developments had taken place both on the international level and in the domestic legal systems of Council of Europe member States. By the time of the alleged interference with the applicant's Article 9 rights in 2002-03, there was virtually a consensus among the member States, the overwhelming majority of which had already recognised the right to conscientious objection. [...] Moreover, the Parliamentary Assembly of the Council of Europe and the Committee of Ministers had on several occasions called on the member States which had not yet done so

12. ECHR (2022). *Selected case-law of the European Court of Human Rights on young people*, pp. 15-16, case: *Bayatyan v. Armenia* [GC], no. 23459/03, ECtHR 2011.

to recognise the right to conscientious objection and this had eventually become a pre-condition for admission of new member States into the Organisation.”¹³

Beside the practice within the Council of Europe, the Court considers (i) the practice of the United Nations Human Rights Committee, which considers that the right to conscientious objection could be derived from Article 18 of the International Covenant on Civil and Political Rights¹⁴ and (ii) the provisions of the Charter of Fundamental Rights of the European Union¹⁵ that explicitly states under Article 9 that the right to conscientious objection was recognised in accordance with the national law governing its exercise. Therefore, **“the Court concluded that a shift in the interpretation of Article 9 was necessary and foreseeable.”**¹⁶

In this case, the evolution of member States’ legislation, as well as international documents and practices and the changes in social values reflected by this evolution, determined also the shift in the Court’s interpretation of the right to conscientious objection. This allows a large number of young men to access this right with confidence in most Council of Europe member States, although there are still exceptions where a civilian alternative to military service is not provided.

Evolved interpretation of unpaid or underpaid work of young people

Two cases are included in the selected case law, providing a guide to understanding how the Court changed its jurisprudence concerning the unpaid or underpaid work of young people. In 1983, in the case of *Van der Musselle v. Belgium*,¹⁷ wherein a pupil advocate was called upon to provide free lawyer’s services to assist indigent defendants, the Court found no violation of Article 4, regarding forced labour, and a minor violation of Article 1 of Protocol No. 1 of the Convention, regarding the protection of property (only as regards the non-reimbursement of his expenses, but not the free work performed). The Court concluded that receiving some advantages for the work performed, including contributions to the professional training needed by a young person, compensates for the work done by a young person. Moreover, the Court noted that the applicant must have been acquainted with the pupillage system (unpaid) before he entered the profession.

In 2022, in the case *Dănoiu and Others v. Romania*,¹⁸ the Court considered that the decisions of the Bucharest Court of Appeal to cap the amount of fees payable to lawyers under their regular fee (the young lawyers had been appointed to represent, *ex officio*, several thousand civil parties in criminal proceedings) represented

13. ECHR (2022). *Selected case-law of the European Court of Human Rights on young people*, p.16, case: *Bayatyan v. Armenia* [GC], no. 23459/03, ECHR 2011.

14. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

15. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

16. ECHR (2022). *Selected case-law of the European Court of Human Rights on young people*, pp. 15-17, case: *Bayatyan v. Armenia* [GC], no. 23459/03, ECHR 2011.

17. ECHR (2022). *Selected case-law of the European Court of Human Rights on young people*, p. 56, case: *Van der Musselle v. Belgium*, 23 November 1983, Series A no. 70.

18. ECHR (2022). *Selected case-law of the European Court of Human Rights on young people*, pp. 38-39, case: *Dănoiu and Others v. Romania*, no 54780/15 and 2 others, 25 January 2022.

a violation of Article 1 of Protocol No. 1 of the Convention regarding the protection of property. The Court, on the other hand, found that Article 4 of the Convention was manifestly ill-founded in the case.

The evolution of the case law shows the progression of the respect provided by professionals and public and international institutions, including the Court, to work performed by young people. According to the Court, asking young people to work without proper payment is a violation of young people's rights to property. This not only concerns the expenditure they advanced, but also young people's property of their work and their right to decide if it should be provided for free (as volunteering) or for payment. This does not mean that volunteering is not allowed, but young volunteers should be properly informed.

Evolved legal framework on forced labour

Several countries added provisions and clarifications to their legislation on forced labour and human trafficking in order to meet the standards of the Court. In the case of *Kawogo v. the United Kingdom*, the Court decided to strike the application from its list of cases, in accordance with Article 37 § 1 (c) of the Convention, due to the new legislation adopted in the UK to provide greater protection for potential victims of slavery, servitude and forced labour. Prior to these changes, the legislative provisions restricted authorities "to investigating and penalising offences which often, but not necessarily, accompanied the offences of slavery, servitude and forced or compulsory labour. Victims of such treatment who were not also victims of one of these related offences were thus left without any remedy."¹⁹

19. ECHR (2022). *Selected case-law of the European Court of Human Rights on young people*, p. 48, case: C.N. v. the United Kingdom, no. 4239/08, 13 November 2012.



Conclusions and avenues for future analyses

The analysis reveals the significant and dynamic role of the Court in promoting, validating and consolidating the rights of young people in Europe. During the period covered by the selected case law analysed, the Court has demonstrated a growing commitment to safeguarding the rights and interests of young people in Europe. In the early 1980s-90s, the Court's decisions often leaned towards a more conservative and traditional interpretation of the European Convention on Human Rights. However, over time, it has adapted to address the unique challenges and concerns faced by young people in a rapidly changing world. The Court's jurisprudence has evolved to encompass a broader range of rights, including those related to education, private and family life, freedom of thought, and non-discrimination.

The selected case law shows the vulnerability of young immigrants, as they are usually deprived of stable family and social networks to support their access to and enjoyment of rights.

Moreover, the selected case law underscores the importance of non-discrimination and accessibility that should govern the organisation of schools and universities; the importance of an equitable and consistent application of the rules governing

access to professions; the need for states to enact effective legislation, proper criminal investigations, and protection for victims of forced labour; the need for individualised assessments that take into account family ties, the gravity of the crimes, and the risk of reoffending when deciding on the deportation of young migrants.

Future selections of the case law of the Court could also consider other rights and topics of interest for young people, both their transition and their participation in contemporary society and global issues. In relation to youth transition (education, employment, housing, relationship, health, financial), issues relevant to youth rights in the Court's case law, but not in the selected cases in the present analysis, are:

- ▶ the right to private and family life of LGBTQI+ young persons (cases *X. v. Austria* (2019), *A.P., Garçon, and Nicot v. France* (2017), *Oliari and Others v. Italy* (2015) and others);
- ▶ reproductive rights (several cases *v. Ireland* and *Poland*);
- ▶ the right of young women to private and family life (cases on the rights to abortion, but also the right to religion);
- ▶ the right to housing and humane and dignified treatment and living conditions for young people (cases *Kamminga and Others v. the Netherlands* (2019), *M.S.S. v. Belgium and Greece* (2011) and others).

Global and current issues to be further explored include the analysis of the case law and cases in front of the Court in 2023, the year of this analysis, regarding:

- ▶ freedom of expression, assembly and association and protection against disinformation and manipulation (the case *Delfi AS v. Estonia* (2015) and others);
- ▶ the right to life, security and non-discrimination of young people in the context of climate change and climate crisis, and climate and environment protection policies, as revealed by the case of the six young people from Portugal against 33 countries for failing to tackle the human-caused climate crisis (*Duarte Agostinho and others v. Portugal and 32 other states*).

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How are young people affected by human rights violations in Europe? How are their rights safeguarded? What deficiencies exist in the legal systems requiring further action to ensure the protection of their rights in the Council of Europe member states?

This edition of Insights examines the rights of young people within the framework of the Council of Europe Committee of Ministers Recommendation CM/Rec(2016)7 on Young people's access to rights. Focused on rights enshrined in the European Convention on Human Rights and its Protocols, it relies on lessons learnt from the selected case law of the European Court of Human Rights on young people and relevant legal and policy documents.

The selected case law underscores the vulnerabilities faced by young immigrants, emphasising the necessity for supportive social networks. Additionally, it emphasises the high significance given by the Court to non-discrimination and accessibility in educational settings, equitable application of professional access rules, effective legislation to combat forced labour that may have young people as victims, and the importance of limiting and carefully examining the need for young migrant deportations, when they are required by national legislations.

<http://youth-partnership-eu.coe.int>
youth-partnership@partnership-eu.coe.int

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