

Towards a Uniform and Informed Interpretation of the Best Interests of the Child by the Judiciary: Inter-American and European Jurisprudence¹

Susana Sanz Caballero

Chair, Professor of Public International Law and Jean Monnet Chair, University CEU Cardenal Herrera (Spain); Ad hoc judge, European Court of Human Rights; Member, International Institute of Human Rights-René Cassin Foundation

ssanz@uchceu.es

Abstract

This article analyses the interpretations made by two regional human rights courts regarding the best interests of the child. In cases of controversy, it is for the judges to decide how, or whether, the best interests of the child should be applied. Due to the dependence and vulnerability of children, judicial remedies are a critical form of redress when children's rights are violated. This article analyses case law from two regional courts (the Inter-American Court of Human Rights (ICtHR) and the European Court of Human Rights (ECtHR)). The purpose of this analysis is twofold: first of all to see how the two courts interpret and apply the concept; and secondly, to ascertain whether there are similarities of interpretation or common grounds of understanding between the two courts, with particular regard to General Comment No. 14 (GC 14), on the right of the child to have their best interests taken as a primary consideration.

Keywords

best interests of the child – assessment and determination by the judiciary – case law of the Inter-American Court of Human Rights and the European Court of Human Rights

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1. The Concept of the Best Interests of the Child as expressed in the UN Convention on the Rights of the Child and General Comment no. 14

The “best interests of the child” (henceforth “best interests” or “child’s best interests”) is a concept well-familiar to both legal and non-legal operators, whose primary purpose or activity affects children. Not only is the concept frequently raised by parties but is often used by them to further their own ends. Best interests is routinely used by adults to support their own views, and even to support decisions. Thus, the “*I did this/that in the best interests of the child*” argument is a common refrain. However, a closer look at cases will often show that the best interests mantra has in fact been used to favour the interests of the adults; the child in question may not even have been consulted (Lücker-Babel, 1995: 393). Indeed, there are times when this same best interests’ argument is put forward by opposing sides in a case! The argument has also been known to lead to arbitrary and subjective pronouncements (Cantwell, 2016: 26; Cardona, 2014: 22). It is not unusual for a divorced mother to claim that in the child’s best interests exclusive guardianship should be granted to her, whereas the father may likewise use the same best interests defence to argue the contrary. A parent may claim that it is in a child’s best interests to not see their grandparents, whilst the very grandparents may argue that such visits are very much in the child’s best interests. Social workers may claim best interests to argue in favour of the non-detention of a child (even if such non-detention conflicts with the law), whereas the public prosecutor may argue that the detention is justified, again using the best interest’s argument. Similarly, in the matter of unaccompanied foreign minors, both those, (such as NGOs) who argue in favour of a child remaining in the country (and those who argue that the child should be returned to their country of origin), will often invoke “child’s best interests” to justify their respective viewpoints (Van Hooijdonk, 2016: 42).

“The best interests of the child” is an undetermined legal concept whose breadth is difficult to grasp and whose consequences are difficult to define (Cardona, 2016: 12). It is a controversial, indeterminate, value-laden principle, that can cloak prejudices (Freeman, 2010: 216). It has been argued that it should be considered an entitlement in international protection (Pobjoy, 2015: 328). Identifying children’s interests can become a highly complicated and nuanced process (Stalford and Hollingsworth, 2017: 69). As a result of its undefined nature, the final arbiters are the courts. In the event of conflict, it is up to the courts to determine, assess and balance where the best interests of the child

lie and whether such interests should prevail over other legitimate interests (Bennett Woodhouse, 1994: 333; Alston, 1994: 5; Parker, 1994: 26).

Articles 3, 9, 18, 20, 21, 37 and 40 of the Convention on the Rights of the Child make reference to the child's best interests to ensure the effective application of all rights recognized in that instrument. Respect for such interests will allow the individual to develop their potential to the highest degree. It has been argued that the concept was introduced in the Convention to limit the actions of adults empowered on the child's behalf (Lansdown, 2016: 31). On the 29th May 2013, the United Nations Committee on the Rights of the Child adopted General Comment No. 14 "...*the right of the child to have his or her best interests taken as a primary consideration*" (UN Doc CRC/C/GC/14). This General Comment (henceforth "the Comment" "GC 14") considers the child a subject of rights rather than an object of protection, as had traditionally been the case (Cardona, 2017: 109). GC 14 established that the best interests of the child is a right, a principle of interpretation, and a rule of procedure all in one and at the same time (§ 1). Therefore, in proceedings against the authorities (to include the judiciary), a child has the subjective right to have their best interests assessed and determined, in determining the outcome of the case. As a principle, where a legal norm has different interpretations, the interpretation that best suits the child's best interests should be chosen. As a rule of procedure, states must develop formal mechanisms including appropriate safeguards to ensure that decisions taken by public authorities are assessed and accurately taken with due regard to the child's best interests.

GC 14 mentions that, in accordance with Article 3 § 1 of the Convention on the Rights of the Child, any measures taken by public or private institutions which concern children, must take the best interests of the children into account as a primary consideration. The Comment explains the link between the best interests of the child and other general principles of the Convention (as identified by the Committee) such as the right not to be discriminated against (Article 2), the right to life, survival and development (Article 6) and the right to be heard (Article 12). The Comment also mentions other factors that should be considered to accurately assess best interests, namely; the safety of the child, their care and protection, identity, views, health, the vulnerability of their situation, the preservation of the family environment and the right to education. However, the Comment makes clear that this list is not a *numerus clausus*. There are thus other factors that may be identified that could be relevant to the determination of the individual case. The Comment also gives guidance on how to balance the aforementioned factors in

the event of conflict, as the weighting of the various elements will vary from case to case. Paragraph 85 of GC 14 determines that as the best interests of the child is a rule of procedure, child-friendly procedural safeguards must be adopted to ensure that the child's best interests is correctly applied as a primary consideration. The latter best interests, as specified in the Comment include, but are not limited to, the right of children to express their own views; the need for qualified professionals to establish the facts in cases that affect children; and the requirement that children receive appropriate legal representation.

GC 14 also helps legal and social operators identify elements and criteria to better assess, balance and determine the best interests of the child in each case. By its very nature, the best interests of the child changes from case to case, from child to child and from situation to situation (Vanderhole, Türkelli, Lembrechts, 2019: 3.09). It is a dynamic and evolving concept as what may be positive for one child may not be for another. The best interests concept aims to ensure that the child receives both full and effective enjoyment of their rights as recognized in the Convention, as well as having their holistic development taken into consideration (§ 4). That said, its interpretation is flexible, adaptable and dependent on the circumstances of each case. Usually, we consider to be positive if an institution or standard is defined by flexibility and adaptability, the opposites which are rigidity and one-sided solutions fail to balance the circumstances of the situation. However, such flexibility and adaptability also includes risks as they may lead to undue discretion and arbitrariness on the part of those taking decisions affecting the child's rights or interests. To avoid this, the assessment and determination of the child's best interests should be founded on objective criteria that guarantee the most complete and effective implementation of the rights enshrined in the Convention on the Rights of the Child (GC 14, § 48-84).

It must be stated however, that when a case is being assessed, the best interests of the child may contradict other legitimate interests (such as public interest or those of other interested parties). In such cases, the best interests of the child shall be a primary but not a sole consideration. A child's age, dependency, legal condition and maturity, as well as the fact that their voice is often unheard and that they cannot usually defend their viewpoints themselves should mean that the interests of the child takes priority, that is to say, it should be considered a high-ranking and overriding consideration (§ 37-39).

Notwithstanding the abovementioned, the use of the word "concerning" in Article 3 (1) of the Convention is significant (*"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"). GC 14 expands on this: "...the term 'concerning' refers first of all, to measures and decisions directly concerning a child, children as a group or children in general; and secondly, to other measures that have an effect on an individual child, children as a group or children in general, even if they are not the direct targets of the measure" (§ 19). Thus, the term "concerning" extends the scope of the "best interests" argument to any action that directly or indirectly affects children. However, the question has been posed that a direct affection of children's rights or interests in a case is different to an indirect affection, and therefore a distinction should be made between those cases where children are directly concerned (i.e. where the best interests of the child should play a "primary" determining role) and cases where children are only indirectly affected (i.e. where the best interests of the child should be a "primary" but not a sole consideration). In cases where children are affected only indirectly, "the focus of the decision-maker should be on reaching the "best" solution to the issue at hand; "in contrast, in the case of decisions directly about a child, the focus of the decision-maker should be on discovering a solution that has the best outcome for the child" (Eekelaar, 2015: 3). The best interests are not necessarily the determinative consideration in all actions concerning children, but they should be duly considered and any decision inconsistent with the child's best interests should be clearly justified and reasonable (Eekelaar and Tobin, 2019: 77).

Another important point that has been raised regards the bond that exists between the right of children to be heard (as enshrined in Article 12) and their best interests (Article 3). In order for the child's right to be heard to be adequately applied, the latter guiding principle of best interests should not take precedence over the former right to be heard, but rather should reinforce the Committee's instruction that the views of the child should always be considered when determining what is or is not in the child's best interests (Parkes, 2015: 487; Khazova, 2016: 29).

All the Committee's GCs refer, to some degree to the best interests of the child. However, some GCs go further and dedicate entire sections to how best interests relate to the specific focus of the GC (to wit GCs 1, 4, 5, 6, 7, 8, 11, 12, 13). GC 14 is not the only Comment to consider and expand on child's best interests, but it is the only one to fully focus on it.

In brief, the best interests of the child can be interpreted in many ways depending on the context of the case, but unfailingly concerns satisfying the child's needs (Cillero

Bruñol: 8), with those needs primarily focused on the child's well-being and protection (Vanderhole, Türkelli, Lembrechts 2019: 3.02). The right of the child to have their best interests taken as a primary consideration means that the child's interests are given high priority and are not just one of several considerations. The purpose of assessing and determining the best interests is to ensure the full and effective enjoyment of the rights recognized in the Convention on the Rights of the Child, and to ensure the holistic development of the child. However, the difference between assessment and determination of best interests is not self-evident. Such a distinction is related to the impact the decision could have on the child and the level of protection and procedural safeguards that would need to be put in place. In this respect, a best interests assessment should be conducted where the consequences of decisions are not far reaching for the child; whereas best interests determination should be used for decisions more relevant to the child's future, for which additional procedural safeguards would be required (UNICEF and UNHRC, 2014: 20; Vanderhole, Türkelli, Lembrechts 2019: 3.11). The *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008 make the distinction between assessment and determination clearer when it comes to refugees and unaccompanied children. An assessment does not require any formality and can be conducted at any time and in any circumstances where a child is identified as unaccompanied or otherwise at risk, until a more permanent solution can be found. Best interests' determination, on the other hand, describes the formal process designed to determine the child's best interests in particularly important decisions, i.e. decisions that require stricter procedural safeguards. Such a process should allow the views of the child to be given due weight in accordance with the child's age and maturity. The process should involve decision-makers with relevant areas of expertise and should balance all relevant factors in order to assess the best option for the child (Pages 22 and 23 of the Guidelines).

Once assessed and determined, the best interests of the child may conflict with other interests or rights (e.g. of other children, the public, or of parents). As a result, potential conflicts will always have to be resolved on a case-by-case basis, carefully balancing the interests of all parties to find a suitable compromise (Barrie, 2011: 126).

2. The best interests of the child in the jurisprudence of the ICtHR and the ECtHR

Where contradictory interests arise, the judiciary will make the final decision in the case (Stalford and Hollingworth, 2017: 22). Courts reach binding decisions that can

be crucial and decisive to a child's life or future. Over the years, the judiciary has attempted to lay down guidelines on how to determine and assess the child's interests (Barrie, 2011: 127, Hansen & Ainsworth: 2009: 1). As such it is particularly important to analyse the extent to which judges are familiar with the concept of best interests and to analyse whether the concept is applied uniformly

In order to ascertain judges' familiarity with, and uniformity of application of, the best interest's concept, the following sections will analyse case-law from two international courts; the Inter-American Court of Human Rights (ICtHR) and the European Court of Human Rights (ECtHR). We will study the extent to which the two courts apply the best interests of the child in accordance with GC 14. It will be particularly interesting to analyse decisions delivered after 20th May 2013 (i.e. the date GC 14 was issued) to see if adoption really was a milestone, and is making a difference. With regard to case-law issued before the 20th May 2013 date, comparison of the rulings with GC 14 will help us identify the extent to which the Comment codifies pre-existing practices and/or customary law.

An analysis of case-law from the Inter-American Court of Human Rights (ICtHR) and the European Court of Human Rights (ECtHR) shows that both have expressed views on the best interests of the child concept, however, the intensity and depth of their legal argumentation on the matter has differed.

2.1. The best interests of the child in ICtHR case-law

Despite the fact that the Inter-American system of human rights has no specific instrument to protect the rights of children, Article 19 of the American Convention on Human Rights states that "*Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state*". It is in the context of applying both the above provision and the UN Convention on the Rights of the Child that the ICtHR has expounded on the best interests of the child, both in its advisory opinions and in contentious cases.

2.1.1. Advisory opinions

The ICtHR contributes to the International Law of Human Rights by means of its advisory opinions (Pasqualucci, 2013: 39). Advisory Opinion No. 17, from 28th August 2002 on *the Juridical Condition and Human Rights of the Child* is especially generous in its characterization of the best interests of the child. The Opinion devotes an entire section to the topic. The Court links the best interests of the child to the child's comprehensive protection and their intrinsic human dignity. It considers best interests a point of reference in ensuring the effective realization of all rights contained in the Convention on the Rights of the Child, observance of which will allow the child to fully realise their potential. The best interests of the child requires the adoption of special measures depending on the nature of the specific situation, given any weakness, immaturity or inexperience on the part of the child. Adopting these measures is a responsibility of the State, the family, and the community or society to which the child belongs (§ 56-62). Best interests requires that any potential decision on the separation of the child from the family be duly justified. Lack of material resources cannot be the sole basis for a judicial or administrative decision to separate a child from their family. In other words, the child must remain in their household unless determining reasons, based on the child's best interests, advise otherwise. Effective and timely protection of the interests of the child and the family must be provided through the intervention of duly qualified institutions with appropriate staff, adequate facilities, suitable means and proven experience in these type of tasks (§ 73 and 77). Thus, "the best interests of the child", as set forth in Article 3 of the Convention on the Rights of the Child, entails that a child's development and full enjoyment of their rights must inform decisions pertaining to all aspects of their lives (Burgorgue-Larsen, 2012: 393).

Interestingly, the content of this Advisory Opinion reflects what GC 14 later asserted.

In Advisory Opinion no. 21, 10th August 2014 *on the rights and guarantees of children in the context of migration or in need of international protection*, the ICtHR fully accepted the Committee on the Rights of the Child's *acquis*. In Opinion no. 21, the Court referred to various of the Committee's GCs (including GCs 3, 5, 6, 7, 9, 10, 11 and 12) on more than a hundred occasions; in addition, the (by then) recently issued GC 14 was mentioned on multiple occasions.

In this second Opinion [no 21] the ICtHR describes best interests as a guideline and a principle, confirming its priority consideration in the design of public policies and the drafting of laws, and its implementation in all matters related to the life of the child

(§ 70). In migration and asylum procedures, priority must be given to the determination, consideration and protection of the best interests of the child involved. In migration matters best interests requires a clear and comprehensive assessment of the child's identity (§ 84). GC 14 is cited in relation to: 1) the essential requirement of special measures where the child has a disability, has been trafficked, or is vulnerable - in such cases, specific additional measures should be put in place (§ 71); 2) the need to guarantee best interests as a paramount consideration in all administrative and judicial decisions (§ 115) and that the opinion of the child is heard (§ 141); 3) the obligation that judges and competent officials apply measures pursuant to the best interests of the child and that the child's representatives receive necessary and appropriate training (§ 165 and 251); 4) the obligation to prevent family separation except in cases of neglect or abuse (§ 273); and 5) the obligation to weigh the best interests of the child against the legitimate interests of the State in the case of expulsion of the parents (§ 278).

In Advisory Opinion No 21, the ICtHR shows that it is fully aware of the content of the GCs (including GC 14), and carefully applies and interprets them. Not only does the Court elaborate at length on the best interests of the child in the context of migration, but it also enshrines the doctrine of the Committee on the Rights of the Child in its case-law.

It is worth mentioning that in Opinions 17 and 21 the Court usually qualifies the best interests of the child as a principle. It has also referred to it on occasion as a standard; a limit to the authority's discretion; the basis for the protection of the rights of the child; and even as the premise upon which legal norms on childhood and adolescence should be interpreted and applied. However, the Court stops short of explicitly referring to it as a right.

2.1.2. Contentious cases

The ICtHR has used its own legal reasoning in contentious cases brought before it (González, 2017: 146; Baeza, 2001: 355). The term "best interests of the child" has only been used in a minority of cases. In others, whilst the term itself was not quoted, reading the Court's argumentation it can be inferred that the best interests of the child were somehow considered even if not mentioned explicitly.

The latter cases include "*Niños de la calle*", (*Villagrán Morales and Others vs. Guatemala*), Judgement issued 19th November 1999) where street kids were abducted,

tortured and killed by police forces. The Inter-American Commission alleged that Guatemala had violated Article 19 of the American Convention by omitting to take measures destined to safeguard the development and lives of the victims, to investigate and eradicate the abuse, to punish those responsible, and “to train and impose adequate disciplinary measures and penalties on its agents” (§ 133). Due to the vulnerability of children and their inability to personally ensure respect for their rights, the consequent protection responsibilities lie in principle, with their family (Rosenthal, 2019: 183). However, State measures are necessary especially where at-risk children are concerned. When States violate the rights of “street children”, these children suffer doubly. Firstly, the State is guilty of not preventing the children from living in misery, depriving them of the minimum conditions for a dignified life and preventing them from “full and harmonious development of their personality”; secondly, the State is guilty of violating the children’s physical, mental and moral integrity and even their right to life (§ 191).

Since both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of the child, the Court took into account, among others, the provisions of Articles 2, 3, 6, 20, 27 and 37 of the Convention on the Rights of the Child in interpreting Article 19 of the American Convention (§ 194). This analysis allowed the ICtHR to define from different angles, the scope of “measures of protection”, as referred to in Article 19 of the American Convention. Amongst such perspectives the Court put particular emphasis on those that refer to not discriminating; special assistance for children deprived of their family environment; the guarantee of the survival and development (of the child); the right to an adequate standard of living; and the social rehabilitation of all abandoned or exploited children (§ 196). This is clearly a ruling where the best interests of the child is served albeit not being couched in such terms. The Court refers to several aspects that are always associated with children’s interests to include, their safety, survival, freedom from fear and prosecution, full and harmonious development, as well their dignity and right to an adequate standard of living. This encompasses the need for the protection of a “wide range of social, economic, civil and political interests of the child” (§ 185).

Since then however the Court has steadily incorporated the expression “the best interests of the child” into its jurisprudence. One example of this is *Bulacioio vs. Argentina*, (18th September 2003) which concerned the illegal arrest and torture in police facilities of a minor who subsequently died. While elaborating on the conditions of detention, the ICtHR made a short reference to the best interests of the child (§ 133). The

Court stressed that the adoption of measures to protect the rights of the child demand application of the best interests of the child principle, on the basis of the dignity of the human being, the characteristics of children and the need to foster the child's development while allowing them fulfil their potential (§ 134).

In *Instituto de Reeducación del Menor vs. Paraguay*, (2nd September 2004) the ICtHR developed still further the concept of the best interests of the child. The case concerned a public institution where children in conflict with the law were placed and where they suffered malnutrition, contagious diseases, corporal punishment, cold, and lack of sanitation. The representatives of the applicants argued that the best interests of the child had been seriously undermined. The ICtHR accepted this argument and ruled that children have additional rights and that the State has to take additional/special measures to uphold the best interests of detained children (§ 225).

The ICtHR elaborated similarly on the best interests of the child in *Mapiripán Massacre vs. Colombia*, (15th September 2005) This case concerned a massacre carried out by paramilitaries, in the context of the Colombian armed conflict. Children were brutally tortured and beheaded and others witnessed the acts. The ICtHR reiterated that the principle of the best interests of the child is associated with the dignity of the child, the characteristics of children, the need to foster their development, and to fulfil their potential (§ 152). In the *Ituango Massacres vs. Colombia*, 28th February 2011 the Court repeated the same arguments (§ 244).

Chitay Nech and Others vs. Guatemala, (21st December 2009) refers to the forced disappearance of an indigenous political leader and the subsequent flight of his family from their ancestral lands. In its ruling the Court gave special consideration to the rights of the children of the family involved. The Court stated that the forced displacement of the children, the subsequent family disintegration and the loss of their indigenous worldview, language, land and religion brought about a loss of cultural identity that unquestionably affected the children's interests (§ 168 and 169).

In *Girls Yean and Bosico vs. Dominican Republic*, (8th September 2005) the ICtHR restates the argument in Advisory Opinion no. 17 that the prevalence of the child's interests should create a binding obligation on States to satisfy all the rights of the child. This principle affects the interpretation of the other rights established in the American Convention where children are involved (§ 134). In this specific case, the Dominican Republic had refused to issue late birth certificates to two children under the pretext that

their parents had not handed in all the required documentation to the registering authorities. The Court found that the State acted arbitrarily, without using reasonable and objective criteria, and in a way that was discriminatory and contrary to the interests of the children (§ 166). This situation kept the children stateless, in a legal limbo, in a situation of extreme vulnerability (Feria Tinta, 2008: 400).

González and Others ("Campo algodnero" vs. Mexico), Judgment of 19th January 2009, concerned teenage girls working in cotton factories whose disappearance and assassination were neither investigated nor prosecuted. In its ruling, the ICtHR established that children have special rights and the family, society and State have parallel duties towards them (§ 408). Moreover, children deserve special protection and rights. As in *Girls Yean and Bosico*, the Court added that the prevalence of the best interests of the child should be understood as a State obligation, the need to satisfy fully the rights of minors, which irradiates its effects on the interpretation of all further rights in the American Convention (§ 410). A similar analysis was used by the Court in *The Massacre of two Rs vs. Guatemala*, Judgment of 24th November 2009 (§ 184).

With regard to the best interests of the child in situations where the parents are homosexual, in *Atala Riffo and daughters vs. Chile*, Judgment of 24th February 2012 the ICtHR pointed out that, although the best interests of the child was a legitimate and compelling goal, the national authorities had not proven that living with their mother and the mother's new female partner had adversely affected the development of the children. This ruling expressed that Chile had not shown how and why the best interests of the children would have been better served had they lived with their father. In matters of child custody and guardianship it must be determined that the specific behaviour of the parent has had a proven negative effect on the children's welfare and development. Custody should not be granted based simply on perceived or possible risks or on generic stereotyped arguments about the conservative and intolerant character of a given society (§ 109-131). A similar reasoning was used by the Court in a case concerning the decision by a single mother to give her newborn baby up for adoption to a married family, against the wishes of the father (*Formerón and daughter v. Argentina*, 27th April 2012). The ICtHR ruled that enjoyment of the mutual company between a father and a child is a key element of family life (§ 46), therefore, their separation should only be granted in exceptional circumstances, and preferably, for a temporary period (§ 47). In assessing the child's interests in cases of custody or guardianship, specific bad behaviour on the part of

the parents has to be shown, as well as how such behaviour has negatively impacted on the child's welfare or development. Similarly, applications for custody or guardianship could not simply be based on arguments of cultural presumptions or preferences for traditional married families or speculative harm to the child (§ 50). As can be seen, this reasoning follows very closely that of *Atala Riffo*. Additionally, the Court underlined the importance of diligence and celerity when administrative and judicial authorities take decisions on guardianship given the inexorable effects that the passage of time has on children, both on the biological family and the ties that the child has developed with the adoptive family (§ 51-52).

Mention should also be made of *Mendoza and Others vs. Argentina* (14th May 2013) where life sentences were imposed on five teenagers for events that occurred when they were minors. This case interpolates the Argentinian juvenile justice system which allowed minors to be treated as adult offenders, subjected them to life imprisonment, improper prison conditions, and torture. In its legal reasoning the Court is especially discursive in its explanation of what constitutes the best interests of the child. This is probably due to the particular circumstances of the case and the right of children to be free from torture and inhuman treatment. The ICtHR stated that all State, social or family decisions that involve limitations on the exercising of any right of a child should consider the best interest's principle and rigorously respect the provisions of that principle. Based on the consideration that the best interests of the child is a regulating standard and an interpretative principle aimed at ensuring maximum satisfaction of the rights of the child, States should ensure minimal restriction of such rights. Furthermore, rights should be exercised progressively as children grow up and develop higher levels of personal autonomy (§ 142-143).

About post-GC 14 case-law, the elaboration of the ICtHR on the best interest's argument differs from case to case. Best interests is a concept that is cited on numerous occasions in *Expelled Dominicans and Haitians vs. Dominican Republic*, Judgement 28th August 2014). The legal reasoning of the Court references various of the Committee's GCs, including GC 14 (which had been delivered a year beforehand). This proves that the ICtHR is keeping itself up to date with prevailing opinion. The case involved discriminatory domestic legislation that prevented children from enjoying their right to a juridical personality, name, nationality and identity. The Court was clear that treating children as adults disregarded the best interests of the child (§ 344). In expulsion procedures, circumstances should be rigorously evaluated to ensure the best interests of

the child is balanced against the same public interest the expulsion seeks to protect (§ 357). The Court specifically refers to GC 14 to support its assertion that any measure of expulsion or deportation may negatively affect a child's life, well-being or development, and as such best interests should be an overriding consideration (§ 416). As a result, separation of the child from their family is only advisable if it is duly justified, exceptional and, insofar as is possible, temporary.

Conversely, in *Rochac Hernández and Others vs. El Salvador* (14th October 2014) the Court does not mention any GC and only cites the best interests principle on one occasion (§ 98). The case originated in a situation of armed conflict and concerned the abduction by armed forces of rural children and the subsequent forced disappearance of the children. The judgment expounded in detail on the right of children to the protection of their family, their private life, and their identity. It also described the forced disappearance of children as a multiple and continuous violation of rights, but it did not appear to need to rely on either the Committee's GCs or on the Convention on the Rights of the Child to make such a pronouncement.

Peasants Community Santa Barbara vs. Peru, 1st September 2015 concerned the forced disappearance of an entire community, including six children, the remains of whom were discovered in an abandoned mine years later. In its reasoning, the Court mentions Article 19 of the American Convention as well as Advisory Opinion no. 17 from 2002. The Court also insisted that States had a special duty to protect the rights of children (§ 192). However, it makes no reference at all to GC 14 or to the best interests of the child.

In sum, the ICtHR considers the best interests of the child a) to be an interpretative principle based on the dignity of the human being, the inherent characteristics of children and on the need for the children's comprehensive protection; b) aimed at ensuring the maximum satisfaction of the rights of children; c) to enjoy preferential application when compared to adults' interests; and d) to require the adopting of special measures given the weakness, immaturity and inexperience of children. The adoption of these measures is a responsibility of the State, the family, the community and society at large. However, the Court does not clearly declare the best interests of the child as a right per se.

2.2. The best interests of the child in the ECtHR

Despite the increasing number of cases involving children coming before the Strasbourg court, a survey of the circumstances in these cases shows they are invariably brought by adults claiming violation of the rights they [the adults] enjoy under the European Convention of Human Rights and/or its Additional Protocols. This often means that the ECtHR will build its legal reasoning around the adult's rights and the focus will not be put on the effects on the children in the case (Stalford, Hollingsworth and Gilmore, 2019: 5). Moreover, the ECtHR, in contrast with the ICtHR, usually takes a minimalist approach, seldom elaborating on details or aspects of cases which had not been brought to its attention by the parties. In other words, it does not usually answer *motu proprio* questions that have not been raised by either the applicant or the defendant. Since most of the applications before the ECtHR are brought by adults, cases are frequently adjudicated from the perspective of the adult's rights rather than from the child's. That said, it has to be acknowledged that ultimately, in cases affecting children, the ECtHR is showing more sensitivity to children's rights and is starting to elaborate more on the situation of the child, especially where arguments on the best interests of the child are raised by one of the parties (e.g. *P. V. vs. Spain* no. 35159/09, 30th November 2010). On more and more occasions the Court is grounding its arguments not only on the European Convention of Human Rights -which is the Court's *raison d'être*- but also on other international instruments. Indeed the Court is trying to interpret those other instruments (which include the Convention on the Rights of the Child; The Hague Convention on Civil Aspects of International Child Abduction of 1980; and the European Convention on the Exercise of Children's Rights of 1996) in a way harmonious with the European Convention of Human Rights (Keller and Heri, 2015: 270; Kilkelly, 2001: 309).

The ECtHR has mentioned GC 14 in some of its rulings. Among them, *Nazarenko vs. Russia* no. 39438/13, 16th July 2015; *G. S. sv. Georgia* no. 2361/13, 21st July 2015; *N. TS. and Others vs. Georgia*, no. 717776/12, 2nd February 2016; *Vujica vs. Croatia* no. 56163/12, 8th October 2016; *Ndidi vs. United Kingdom* no. 41215/14 14th September 2017; and *Strand Lobben and Others vs. Norway* no. 37283/13, 10th September 2019. In *Nazarenko* the Court quotes a paragraph from GC 14 in the section of its ruling devoted to the "relevant international and comparative law materials" (§ 43) but it does not really go into detail on it. In *G. S.* the Court goes further, not only quoting a paragraph from GC 14 but also reaffirming that the best interests of the child is to be the primary consideration

in all cases affecting children, as set out in GC 14 (§ 34 and 60). In *N. TS. and Others* the Court only quotes GC 14 but does not go into more detail. Conversely, it does elaborate on other documents from the Committee, such as GC 12 (§ 42). In *Vujica* the Court cites GC 14 as one of the relevant international instruments and also refers to the Comment as the mechanism to solve potential conflicts between the best interest of an individual child and a group of children (§ 55-56 and 101). In *Ndidi*, GC 14 is only mentioned in a footnote to the ruling. However, Judge Turkovic in his separate opinion states that “*The right of the child to have his or her best interests taken as primary consideration means that the child’s interests may not be considered on the same level as all other considerations; they have higher priority and thus a greater weight must be attached to what serves the child best than to other competing considerations. There are, however, circumstances in which the community or other parties might have superior interests (e.g. religious or economic) so that a child’s interests may not prevail*”. And in *Strand and Lobben* reference is made to GC 14 in the relevant international law materials consulted as well as in the legal reasoning of the Court. The GC helps the ECtHR to support its argument that it is incumbent on the contracting State to put in place practical and effective procedural safeguards for the protection of the best interests of the child and to ensure implementation of such safeguards (§ 207). This document is also used by judges Koskelo and Nordén in their Joint Dissenting Opinion to justify that the key standard of the child’s best interests is an important procedural component, as set out in GC 14 (point 8).

Before GC 14 was adopted in 2013, the ECtHR had already developed extensive jurisprudence on children’s rights in situations of family law (Grgic, 2016: 106; Kilkelly, 2001: 308). The situations concerned mainly cases on Article 8 of the European Convention of Human Rights, the right to the enjoyment of private and family life (Gomien, 1989: 435; FRA and Council of Europe, 2015: 75) and Article 14, the right not to be discriminated against (Szemesi, 2008: 64). Within the ECtHR’s case-law, Article 8 is by far the most invoked provision in cases involving children. Subsequent to adoption of GC 14 the Court’s jurisprudence has not changed that much, if anything it has continued as before.

In guardianship cases concerning divorced parents, the Court has developed the theory that mutual enjoyment by a parent and child of each other’s company is a crucial element of the right to family life (*Elshoz vs. Germany* no. 25735/94, 13 July 2000 § 50). However, a fair balance must be struck between the interests of the child and of the parent

(see, among others, *Olsson vs. Sweden* (no. 2) of 27 November 1992, § 90). Indeed, in striking such a balance particular importance has to be given to the best interests of the child which, depending on their nature and seriousness, may override the interests of the parent. In particular, the parent cannot be entitled (under Article 8 of the Convention) to have measures taken that would harm the child's health or development (see *Johansen vs. Norway* no. 17383/90, § 78) or the child's safety (*Scozzari and Giunta vs. Italy* nos. 39221/89 and 41963/98 of 13 July 2000). The Court has also acknowledged that poor relations between the parents may cause the child stress which could go against the child's interests.

Where contact with a parent/the parents may appear to threaten the best interests of the child or interfere with the child's rights, it is for national authorities to reach a fair balance between the rights of the child and of the parent(s) (*Iglesias Gil and A.U.I. vs. Spain*, no. 56673/00 of 29 April 2003 § 50)². Thus, the reuniting of a parent with a child who has lived for some time with the other parent, may not be able to take place immediately and may require preparatory measures to be taken before any reunification can take place (see *Sylvester vs. Austria*, nos. 36812/97 and 40104/98, 24 April 2003, § 58).

Similarly, authorizing access rights to one parent when these visits are contraindicated by psychological tests could contravene the best interests of the child (*Hoppe vs. Germany* no. 28422 of 5 December 2002). Forced visits will rarely go in favour of the child's interests (*Sommerfeld vs. Germany* no. 31871/96, 8th July 2003), however, national authorities should try to persuade the controversial parties to undergo therapy in order to ease and facilitate relations between parent and child (*Sbarnea vs. Romania*, no. 2040/06 of 28 November 2011).

The obligation of the State to facilitate contact between parents and their children is not an absolute one (*Edina Toth vs. Hungary*, no.51323/14, 30th January 2018). A child's mistreatment, abuse, or any risk to their safety would certainly justify separation, even where this would sever family bonds (*Nuutinen vs. Finland* no. 32842/96 of 27 June 2000;

² However, the obligation of national authorities to take measures to facilitate reunion is not absolute. The nature and extent of such measures will depend on the circumstances of each case, but the understanding and cooperation of all concerned is always an essential factor. Whilst national authorities must do their utmost to facilitate such cooperation, any attempt to apply coercion in this area must be limited, since the interests as well as the rights and freedoms of all concerned must be considered. In particular, the best interests of the child and their rights under Article 8 of the Convention must be considered. Where contact with the parent may appear to threaten or interfere with the rights and interests of the child, it is for the national authorities to strike a fair balance between the rights of all parties.

P. C. and S. vs. United Kingdom no. 56547/00 of 26 July 2002; *D. M. D. vs. Romania* no. 23022/1, 3 October 2017). That said, in deciding on the removal of a child, economic reasons alone or the possibility of the child procuring a more beneficial environment do not in and of themselves constitute sufficient grounds to claim best interests of the child (*Saviny vs. Ukraine* no. 39948/06 of 18 December 2008). Therefore, reduced economic circumstances or substandard accommodation are not sufficient on their own to separate children from their parents. However, where in addition, parents show no interest whatsoever in improving their children's state of health, development or education, the best interests of the child may be better served by placing the child in a different and improved environment (*Achim vs. Romania*, no. 45959/11 of 24 October 2017).

In all cases, not only should the child be heard but their opinion should be considered (*G. N. vs. Poland* no. 2171/14 of 19 July 2016). This is repeated in *MK vs. Greece* no. 51312/16 of 1 February 2018 in a dispute between a father and a mother on both the custody and country of residence of the child. The ECtHR understood the child had clearly indicated he wanted to live in Greece with his father rather than moving to France with his mother. Given the child's age, (he was 13), the best interests of the child justified giving due weight to his opinion in taking the final decision.

In cases of abduction by one of the parents the Hague Convention on International Child Abduction applies. According to this instrument two general rules apply: 1) it is for the courts of the country where the child was abducted to decide the child's guardianship; and 2) the child should be returned to the country from which they were separated.

Typically, national courts tend to confer guardianship on the parent who suffered the separation as a way of penalizing the unilateral action of the parent who irregularly fled with the child (Pérez-Vera, 1980: 431). However, in *Neulinger and Shuruk vs. Switzerland* no. 41615/07 of 6 July 2010, the ECtHR decided to stop applying mechanically the doctrine of return as this may disregard the best interests of the child. Indeed, from this judgment onwards, the Court has been far less automatic in its application of the general rule of return and has been much more generous in its interpretation of the exceptions to the rule as provided for in the Convention. The belief is that a swift and thoughtless return of the child to the country of origin which does not take into account other relevant factors may not always be in the best interests of the child (Walker & Beaumont, 2011: 231). Other circumstances that may have a bearing on deciding whether a child should be allowed remain or should be returned include (Ball, 2014: 164; Nikolina, 2012: 122): the time that has elapsed since the abduction; whether or not the abducting parent would be jailed in the

case of returning; whether the abducting parent would be granted access to the child; whether the child had adapted to the new environment; whether the child has familial or social ties in the country of residence; whether the child has familial or social ties in the country where the abduction took place; whether the abducting parent has adequate means to procure for the child's well-being; whether the other parent has the means to procure for the child's well-being; whether the non-abductor has tried to visit the child; whether he or she contributes to the child's upkeep; whether the State of origin is a safe country, etc. (*X vs. Latvia* no. 27853/09 of 26 November 2013).

In sum, the ECtHR has been steadily incorporating the best interests of the child in its jurisprudence (Sanz-Caballero, 2017: 256). It is not for the Court to make lengthy disquisitions on the best interests of the child but to apply the ECHR, a treaty that does not specifically talk about children's rights or child protection. The Court is self-constrained and has not elaborated profusely on the matter. It only states whether the defendant country has surpassed what would reasonably be expected of it with the measures it has taken, what the Court calls the States' margin of appreciation. That said, the Court has on occasion (when applying Article 8 of the ECHR) created "involuntary" jurisprudence that indirectly touches upon and theorizes on the best interests of the child. The reason the ECtHR jurisprudence is said to be involuntary is because the majority of the cases in it, whilst involving children, were taken by adults on the adults' own behalf. According to this doctrine, particular importance should be attached to the best interests of the child, it should not just be a consideration to be taken into account. Indeed, depending on their nature and seriousness, the best interests of the child may override the interests of the parents (*Malinin vs. Russia* no. 70135/14 of 12 December 2017, § 65). Secondly, only reasons related to the child's best interests could possibly justify the separation of a child from the parents; and thirdly, the best interests of the child require that the opinion of the child is heard and taken into consideration.

However, it is not clear if the best interests of the child is considered by the ECtHR a fundamental right by per se.

3. Similarities and differences in how the different jurisdictions consider and use "child's best interests"

The jurisprudence of the two regional human rights' courts (Inter-American and European) presents a good number of similarities. However, there are also some

peculiarities that are specific to each jurisdiction. Both Courts have mentioned and interpreted the best interests of the child in their case-law, but equally they have avoided referring to the concept in a number of cases where the child's best interests were clearly at stake. Hitherto, the ICtHR has been more generous than its European counterpart in its elaboration and description of what constitutes the best interests of the child. In this regard, the ECtHR seems less willing to define the concept on a theoretical level whereas the ICtHR has expounded at length and in abstract terms using several international instruments to support its decisions. That said, at a practical level, both Courts apply and implement the best interests of the child in those specific situations where they deem it necessary.

Both Courts are familiar with and regularly apply, the Convention on the Rights of the Child. Indeed, they were using child's best interests long before GC 14 was adopted in 2013. Both Courts give the best interests of the child a very high weighting when balancing competing interests, including with those of the parents. Both the ICtHR and the ECtHR acknowledge that the best interests of the child is a primary consideration in all actions affecting children. Therefore, where competing interests arise both Courts consider that due justification must be provided should other interests prevail over the child's best interests. Both institutions have applied best interests in a vast number of differing situations and contexts where children are involved, to include migration, guardianship, adoption, abduction, forced disappearances, nationality, etc. However, the two Courts do not always mention the best interests of the child in cases where they could well have done so. This shows that both the ICtHR and the ECtHR do not always look at the cases from a child's rights' perspective.

The ICtHR has been more generous than the ECtHR in its characterization of best interests of the child and in its search for a definition. Unlike the ECtHR, the obvious willingness of the Inter-American system to deliver advisory opinions has been especially fruitful in this respect. Thus, the ICtHR has elaborated on the best interests of the child not only in contentious cases but also in its Advisory Opinions. The ICtHR has defined best interests as the need to satisfy the rights of all minors (children and adolescents). The best interests of the child is founded in the dignity of the person and is designed for them to achieve their development. Best interests also constitutes a State obligation which has effects on all the rest of the rights of the American Convention in cases involving minors. The Inter-American Court also considers best interests an interpretative principle based on the inherent characteristics of children and on the need to protect children fully. The

Court is clear that this principle enjoys preferential application when compared to adults' interests and entails the need to adopt special measures in view of a child's weakness, immaturity or inexperience. The adoption of these measures is a responsibility of the State, the family, the community and society at large. Thus far, the Court has considered the interests of the child as the basis for the enjoyment of rights rather than as a right in and of itself.

For its part, the ECtHR has been less forthcoming than the ICtHR in its characterization of what the best interests of the child means in abstract terms. It has not really argued whether it is a right, a principle or both. It has not elaborated on what the best interests of the child means in theoretical terms. Notwithstanding the aforementioned, the ECtHR has steadily incorporated best interests' considerations into its jurisprudence. It is not for the Court to either conceptualize or make lengthy disquisitions on the best interests of the child, the Court is self-constrained and does not elaborate on legal concepts in abstract terms to a great degree. The Court is only focussed on confirming that the State has met its obligations and has not surpassed its margin of appreciation. However, and this is interesting for our purposes, the ECtHR always revises the measures that were taken by the State, including measures taken in order to apply the best interests of the child, or their absence if none were taken. The ECtHR continues to aver that a fair balance must be struck between the interests of children and adults, especially the parents, but in so doing particular importance must be attached to the best interests of the child which, depending on the nature and seriousness of those interests, may override those of parents. The Court includes in best interests, the child's right to be heard, to be free from violence and hunger, the child's well-being, holistic development and highest attainable standard of health. In line with the ECtHR's minimalist approach, it can be said that the best interests of the child is more than a mere consideration.

However, while there has clearly been an overall positive evolution in how (and how often) the best interests of the child has been considered, determined and weighed up by the ICtHR and the ECtHR in relation to other legitimate interests; and despite the fact, that in general terms the courts have tended to use arguments that underline the special relevance the concept has in cases affecting children, it cannot be concluded that there is a fully uniform and informed "universally accepted" jurisprudence on the matter. In this sense, the best interests of the child is routinely used and argued but the ICtHR and the ECtHR do not always refer and apply identical arguments under this heading.

Conclusions

Nowadays children's rights is an increasingly sensitive issue in society, and it is to be expected that this sensitivity would be reflected in court decisions both at national and international levels. Courts and tribunals worldwide are becoming more and more aware of the need to implement the best interests of the child in the decisions they take. The ICtHR and the ECtHR show a deal of knowledge and commitment to the Convention on the Rights of the Child, but they do not always rely on the General Comments of the Convention's Committee, at least not formally.

With respect to GC 14 of the Committee on the Rights of the Child (regarding the best interests of the child), since its adoption in 2013 the two Courts have shown they are aware of the existence of this document as they have used it in a number of cases brought before them. However, they have not always been eager to refer to this interpretative instrument in their respective jurisprudence in cases where children were directly or indirectly involved. The upshot is that they do not always approach cases from a child rights' perspective.

According to the Committee on the Rights of the Child the best interests of the child should be considered a right, a principle of interpretation and a rule of procedure. It should also be considered a primary consideration in all cases affecting children. Additionally, when assessing the child's best interests, judges should look at the specific circumstances of each individual case. Such circumstances should include the child's age, sex, level of maturity, whether they belong to a minority group, as well as the socio-cultural context in they find themselves. However, the two Courts have not clearly labelled it as a substantive right of the child.

Although clear progress has been made in the way how these Courts deal with cases involving children, there is still considerable scope for improvement in their case-law. Both Courts show knowledge and respect for the best interests of the child concept but at times they clearly fail to view cases from a child's rights perspective.

A child is a child irrespective of where they are, and what court is making a ruling that will affect them. The best interests of the child should be a primary consideration in all cases involving children. The two international human rights courts that have been studied appear to be aware of this and as a result are improving their jurisprudence on the matter. Despite this, the two Courts have not yet fully mastered how to implement the best interests of the child as there still appears to be a good number of missed opportunities where the courts have failed to view cases from the standpoint of the child's

rights or even where the best interests of the child argument has gone completely unmentioned.

REFERENCES

Agency of Fundamental Rights EU and Council of Europe: *Handbook of European Law relating to the rights of the child* (2015), Strasbourg.

Alston, P.: "The best interest principle: Towards a reconciliation of culture and human rights", *International Journal of Law and the Family* 8 (1994): 1-25.

Baeza Concha, G.: "El interés superior del niño: Derecho de rango constitucional, su recepción en la legislación nacional y aplicación en la jurisprudencia", *Revista Chilena de Derecho* 28 (2001): 355-362.

Ball, K.: "The Rights-Bearing Child's Best Interests: Implications of the ECtHR's Rejection of a Child Return Order in X v. Latvia", *Regent Journal of Global Justice and Public Policy* 201 (2014): 163-189.

Barrie, G.N.: "The best interests of the child: Lessons from the first decade of the millennium", *J. S. Afr. L.* 2011: 126-134.

Burgorgue-Larssen, L.: "The Rights of the Child" Burgorgue-Larssen, L. and Úbeda, A. (coords.), *The Inter-American Court of Human Rights. Case-law and Commentary*: (Oxford University Press, 2012): 393-410.

Bennett Woodhouse, B.: "Out of children's needs, Children's rights: The child's voice in defining the family", *BYU J. Pub. L.* 8 (1994): 321-341.

Cantwell, N.: "The concept of the best interests of the child: What does it add to children's human rights?", Council of Europe (ed.), *The Best Interests of the Child: A dialogue between Theory and Practice* (Council of Europe, Strasbourg, 2016): 18-26.

Cardona Llorens, J.: "El Interés Superior del Niño a los 4 Años de la Aprobación de la Observación General 14 del Comité de los Derechos del Niño", Sanz Caballero, Susana (coord.): *El interés superior del niño en la jurisprudencia internacional, comparada y española* (Aranzadi, Madrid, 2017): 99-112.

Cardona Llorens, J.: "Interés superior del niño. Balance y perspectivas del concepto en el 25º aniversario de la Convención sobre los Derechos del Niño", 34 *Revista Española de Desarrollo y Cooperación* (2014): 21-24.

Cardona Llorens, J.: "Presentation of General Comment no. 14: Strengths and limitations, points of consensus and dissent emerging in its drafting", Council of Europe (ed.), *The Best Interests of the Child: A dialogue between Theory and Practice* (Council of Europe, Strasbourg, 2016): 11-17.

Cillero Bruñol, M.: “El interés superior del niño en el marco de la Convención Internacional de los Derechos del Niño”, Instituto Interamericano de Niños, Niñas y Adolescentes (http://www.iin.oea.org/Cursos_a_distancia/el_interes_superior.pdf): 1-16.

Eekelaar, J.: “The Role of the Best Interests Principle in Decisions Affecting Children and Decisions about Children”, 23 *International Journal of Children's Rights*, (2015): 3-26.

Eckelar, J. and Tobin, J.: “The best interests of the child”, Tobin, J. (ed.), *The UN Convention on the Rights of the Child. A Commentary* (OUP, Oxford, 2019): 73-107.

Feria Tinta, M.: *The Landmark Rulings of the Inter-American Court of Human Rights on the Rights of the Child* (Martinus Nihjoff, 2008).

Freeman, M.: “Upholding the dignity and best interests of children: International law and the corporal punishment of children”, 73 *Law and Contemporary Problems* 2010: 211-251.

Gomien, D.: “State powers and the best interests of the child under article eight of the European Convention on Human Rights”, 7 *Netherlands Quarterly of Human Rights*, (1989): 435-450.

González, M.: “El Interés Superior del Niño en la Jurisprudencia Mexicana”, Sanz Caballero, Susana (coord.): *El interés superior del niño en la jurisprudencia internacional, comparada y española* (Aranzadi, Madrid, 2017): 131-150.

Grgic, A.: “Jurisprudence of the European Court of Human Rights on the best interests of the child in family affairs”, Council of Europe (ed.), *The Best Interests of the Child: A dialogue between Theory and Practice* (Council of Europe, Strasbourg, 2016): 105-116.

Hansen, P. and Ainsworth, F.: “The “best interests of the child” thesis: Some thoughts from Australia”, *International Journal of Social Welfare* (2009): 1-9.

Hollingsworth, K. and Stalford, H.: “Towards Children's Rights Judgments”, Stalford, H.; Hollingsworth, K. and Gilmore, S. (eds.): *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Hart Publishing, Oxford, 2017): 53-87.

Keller, H. and Heri, C.: “Protecting the Best Interests of the Child: International Child Abduction and the European Court of Human Rights”, 84 *Nordic Journal of International Law* (2015): 270 – 296.

Khazova, O.: “Interpreting and applying the best interests of the child: The main challenges”, Council of Europe (ed.), *The Best Interests of the Child: A dialogue between Theory and Practice* (Council of Europe, Strasbourg, 2016): 27-30.

Lansdown, G.: "Best interests of the child and the right to be heard", Council of Europe (ed.), *The Best Interests of the Child: A dialogue between Theory and Practice* (Council of Europe, Strasbourg, 2016): 31-35.

Kilkelly, U.: "The Best of Both Worlds for Children's Rights - Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child", *23 Hum. Rts. Q.* (2001): 308-326.

Lücker-Babel, M. F.: "The right of the child to express views and to be heard: An attempt to interpret Article 12 of the UN Convention on the Rights of the Child", *3 International Journal of Children's Rights* (1995): 293-404.

Nikolina, N.: "The influence of International Law on the issue of co-parenting emerging trends in International and European instruments", *Utrecht Law Review* 8 (2012): 122-144.

Parker, S.: "The best interests of the child: Principles and problems", *International Journal of Law and the Family* 8 (1994): 26-41.

Parkes, A.: "Children and International Human Rights Law/The Right of the Child to be Heard", *23 International Journal of Children's Rights*, (2015): 482-487.

Pasqualucci, Jo M.: *The practice and procedure of the Inter-American Court of Human Rights* (Cambridge University Press, 2013).

Pérez-Vera, E.: *Explanatory Report of The Hague Convention on the Civil Aspects of the International Child Abduction* (offprint, Results 14th Hague Conference on Private International Law, 1980).

Pobjoy, J. "The best interests of the child principle as an independent source of international protection", *International Comparative Law Quarterly* 64 (2015): 327-341

Rosenthal, E. "The right of all children to grow up with a family under International law", *25 Buffalo Human Rights Law Review* (2019): 101-186.

Sanz-Caballero, S.: «La jurisprudencia del TEDH sobre el interés superior del niño: la custodia y los derechos de visita como casos de estudio», Sanz-Caballero, Susana (coord.): *El interés superior del niño en la jurisprudencia internacional, comparada y española* (Aranzadi, Madrid, 2017): 31-56.

Stalford, H.; Hollingsworth, K. and Gilmore, S., "Introducing Children's Rights Judgments", Stalford, H.; Hollingsworth, K. and Gilmore, S. (eds.): *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Hart Publishing, Oxford, 2017): 3-16.

Stalford, H. and Hollingsworth, K.: "Judging Children's Rights: Tendencies, Tensions, Constraints and Opportunities", Stalford, H.; Hollingsworth, K. and Gilmore, S. (eds.): *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Hart Publishing, Oxford, 2017): 17-52.

Szemesi, S.: «From Hajduhadház to Strasbourg: Article 14 of the ECHR in the jurisprudence of the European Court of Human Rights, with special regard to Roma educational cases», *Miskolc Journal of International Law* 5 (2008): 64-72.

UNICEF and UNHRC: *Safe and Sound. What States can do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe* (2014).

Vanderhoule, W.; Turkelli, E.; Lembrechts, S.: *Children's Rights: A Commentary on the Convention on the Rights of the Child* (Edward Elgard Publishing, Glos, 2019).

Van Hooijdonk, E.: "Children's best interests: A discussion of commonly encountered tensions", *The best interests of the child: A dialogue between theory and practice*, (Council of Europe, 2016): 40-51.

Walker, L. & Beaumont, P.: "Shifting the balance achieved by the abduction Convention: The contrasting approaches of the European Court of Human Rights and the International Court of Justice", *Journal of International Private Law* 7 (2011): 231-249.