

ACRiSL NETWORK NEWSLETTER

CONTENTS

PROJECT NEWS

- Research
- Litigation
- Events
- New additions to the ACRiSL Case-Law Database

OTHER CRSL CASES

NETWORK MEMBER PUBLICATIONS

CALL FOR NEXT EDITION

PROJECT NEWS

Research

- ❖ September saw the ACRiSL project issue a [report](#) on ‘**Advancing Child Rights-Consistent Strategic Litigation Practice**’. We published an [Executive Summary](#) and ‘[Key Principles for Child Rights-Consistent Child Rights Strategic Litigation](#)’.

By clarifying what child rights-consistent CRSL practice looks like and identifying examples of good practice and areas for development, the report aims to support litigators and others involved in CRSL in putting children’s rights at the heart of their practice. The report draws on in-depth interviews with CRSL practitioners and people with lived experience of CRSL as children across a wide range of global regions. It is also informed by the work of the project’s Child and Youth Advisory Group.

The report focuses on four key areas:

1. the **scoping, planning and design** of CRSL;
 2. the **operationalisation** of CRSL;
 3. **follow-up** to CRSL, including implementation; and
 4. **extra-legal advocacy** (political advocacy and other campaigning, media and communications work).
- ❖ In October, more project research was published in an [article on “Turning the Rights Lens Inwards”: The Case for Child Rights-Consistent Strategic Litigation Practice](#)’.

Authored by Aoife Nolan and Ann Skelton, this article appeared open access in the *Human Rights Law Review*. It is available open access so can be shared widely.

This article considers the case for child rights strategic litigation (CRSL) practice that is child rights-consistent. In doing so, it identifies CRSL-relevant rights under the UN Convention on the Rights of the Child and outlines how such rights arise in the litigation process. It ultimately posits that child rights can serve as a clear, multi-faceted framework that enables litigators to strengthen their existing practice in a legitimate, unified and coherent way.

Litigation

- ❖ [*Centre for Child Law v Director of Public Prosecutions, Johannesburg and Others*](#) [2022] ZACC 35 (29 September 2022). The Constitutional Court of South Africa confirmed the constitutional invalidity of section 4(1)(b) of the Drugs and Drug Trafficking Act 140 of 1992, which was found to be inconsistent with the Constitution to the extent that it criminalised the use and/or possession of cannabis by children. **The focus of the matter was decriminalisation and the proper process to be followed when a child is found to have used cannabis, which should not include the criminal justice.** ACRiSL partner, the [Centre for Child Law](#), served as amicus curiae in the matter and presented arguments at the court of first instance on the most appropriate response to children’s use and/or possession of cannabis. In its confirmation of the High Court decision, the Constitutional Court stated that decriminalisation does not mean that children are permitted to possess and/or use cannabis, but that the consequence of possession and/or use should not result in the criminal sanction of such a child. The court also considered, in line with the Centre’s arguments at first instance, that children should instead receive the support of parents, communities and the support already provided by the Department of Social Development and/or other certified social welfare services to ensure that the children receive the rehabilitative programmes needed, having taken their individual needs into account. The aim of this approach is to avoid children being exposed to the brutalising effect of the criminal justice system that does not have the necessary mechanisms to properly deal with cannabis dependency.

Read more on the case [here](#).

- ❖ In 2022, [ECCHR](#), as part of the ACRiSL project, together with [Blindspots](#), supported an unaccompanied Rohingya child (U.F.) in submitting **two individual communications to the UN Committee on the Rights of the Child challenging Croatia and Slovenia over violent pushbacks**. These are the first complaints of their kind against the two States. The applicant has argued multiple violations of the CRC in relation to his expulsions and ill-treatment, including the States’ failure to assess his age or apply any of the relevant safeguards under articles 3, 8, 20(1), and 37 CRC. U.F. was 8 years old when he became separated from his family while fleeing a military attack on his village. After many years in search of protection, he was pushed back five times, over the period of one year, from Croatia to Bosnia and Herzegovina and was consistently faced with violence. He was subjected to a “chain” pushback in Slovenia, by which he was forcibly returned first to Croatia and then onwards to Bosnia and Herzegovina in a coordinated operation between the authorities of these States.

The complaints submitted by U.F. are pending examination by the UN Committee on the Rights of the Child.

Read more about the case and the context of violent pushbacks of migrants [here](#).

Forthcoming events

‘Challenging child pushbacks from Croatia and Slovenia: Panel discussion on widespread rights violations against minors along the Balkan route’

Date & time: 21 November 2022, 11:00 am (CEST)

Venue: Online

On the occasion of World Children’s Day, we will hear the story of a Rohingya child’s search for safety and the violence and rightlessness he experienced at Europe’s borders. In the wake of his submission of a complaint to the UN committee on the Rights of the Child, a superb panel of speakers, moderated by Delphine Rodrik (ECCHR), will engage with policy makers and key actors to address the current state of child rights on the move along the Balkan route. The panel includes: Sandra Benčić (Croatian MP), Miha Nabergoj (Advisor to the Slovenian Human Rights Ombudsman), Almir Štrkljević (Save the Children) and Aoife Nolan (Advancing Child Rights Strategic Litigation Project).

This event and the litigation pending before the CRC fall under the auspices of the **ACRiSL** project.

Please register for the event at the following link: [ECCHR: Challenging child pushbacks from Croatia and Slovenia: Panel discussion on widespread rights violations against minors along the Balkan route](#)

Past Events

On 27 September, the ‘**Advancing Child Rights-Consistent Strategic Litigation Practice**’ report was **launched**. A recording of that event is available [here](#).

The event consisted of a panel where speakers presented key findings and recommendations from the report, followed by a Q&A discussion with participants.

Find out about our previous events on CRSL-related issues [here](#).

New additions to the ACRiSL Case-Law Database

A key objective of the project is to map [existing CRSL practice](#). This entails gathering and collating information on who is doing or has done CRSL, on which child rights-related topics, where, and before which bodies.

Some of the cases recently added to the **ACRiSL Case-Law Database** are:

- [Neubauer et al. v Germany, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20](#) – Germany. (Climate change – environmental rights)
- [Civil Association for Equality and Justice \(ACIJ\) against Government of the City of Buenos Aires \(Ministry of Education\) and others on precautionary measures, EXP 8849/2019](#) – Argentina. (children with disabilities – right to education – discrimination)
- [Colombia Supreme Court - Sentencia STC 4360-2018, Radicación No. 11001-22-03-000-2018-00319-01](#) – Colombia. (Right to health – right to life – right to a healthy environment)
- [Supreme Federal Court of Brazil, Habeas Corpus nº 143.641 / SP](#) – Brazil. (Early childhood – primary caregiver – deprivation of liberty – children with disabilities)
- [Bachpan Bachao Andolan v. Union of India and Others \[2011\] INSC 403; Writ Petition \(C\) No. 51 of 2006](#) – India. (Child labour – trafficking and sexual exploitation – sexual violence)
- [Centre for Child Law v Minister of Justice and Constitutional Development 2009\(2\) SACR 477 \(CC\)2009\(6\) SA 632 \(CC\)BCLR 1105 \(CC\)](#) - South Africa. (Criminal justice – deprivation of liberty)

OTHER CRSL CASES

Poland

- ❖ *Supreme Administrative Court (ref. II OSK 1182/21)*. The Supreme Administrative Court of Poland overturned the judgement of a lower court stating that, in cases concerning the deportation of a foreign national parent, the rights of the children involved would not be violated in a way that would significantly endanger their psycho-physical development. The overturned lower court judgement had also ruled that the children’s situation could not be invoked for the purposes of legalising the parents’ stay in Poland. The Supreme Administrative Court stated that parents’ violation of immigration law does not exempt authorities from examining whether deportation would violate children’s rights under the UN Convention on the Rights of the Child. The court noted that the degree of integration of a child with their peers may affect the assessment of whether deportation would violate the child’s rights. The court also noted that the fact that the whole family was obliged to leave Poland does not automatically justify the claim that deportation would pose no risk to the children’s psycho-physical development.

Read more on the case [here](#).

- ❖ *District Court in Olsztyn, judgment of 15 March 2022, II Ko 192/21*. The District court awarded compensation in the amount of PLN 20,000 for the wrongful placement of an unaccompanied minor applying for refugee status in Poland, in a guarded centre for foreigners for a period of over 4 months. The border guard that handled the case had not considered the boy to be unaccompanied because he came to Poland with his adult friend. The court held that the competent authorities had not taken sufficient steps to establish

the actual relationship between the boy and his friend, and that the child was not properly represented in the proceedings against him.

Read more on the case [here](#).

United Kingdom

[Secretary of State for the Home Department v HA \(Iraq\) \[2022\] UKSC 22](#). The case concerned the assessment of whether the deportation of foreign national offender parents or guardians would be considered ‘unduly harsh’ on a child or partner and therefore in breach of article 8 of the ECHR on the right to private and family life (per s117C (5) & (6) of the Nationality, Immigration and Asylum Act 2022). The UK Supreme Court held that the correct approach is ‘for the tribunal to make an informed assessment of the effect of deportation on the qualifying child or partner and to make an evaluative judgment as to whether that elevated standard [of being unduly harsh] has been met on the facts and circumstances of the case before it.’ The Supreme Court upheld the Court of Appeal judgment that rejected the idea that the degree of harshness of deportation on a child should be assessed by reference to a comparison with that which would ‘necessarily’ be involved for any child faced with the deportation of a parent.

An analysis of the case is available [here](#).

United States

Layla H. v. Commonwealth of Virginia, 16 September 2022. A district court dismissed the constitutional climate lawsuit against the Commonwealth of Virginia, filed by 13 youths from across the state. The case argued that the Commonwealth’s historic and ongoing permitting of fossil fuels is causing and contributing to the climate crisis and violating the plaintiffs’ constitutional rights. The youth plaintiffs asserted that Virginia had violated its public trust duty to protect elements of the public domain, including atmosphere, required to preserve constitutional rights. They also asserted that the Commonwealth of Virginia was continuing to rely primarily on fossil fuels as its main energy source and is thereby exacerbating climate change by polluting the atmosphere with excessive greenhouse gas emissions. The youth plaintiffs are represented by **ACRiSL** Network member, [Our Children’s Trust](#).

In a ruling from the bench, the court cited the doctrine of “sovereign immunity” as justification, which means that the state cannot always be sued unless it agrees to be sued. Consequently, the Virginia government is immune from being sued for violating Virginia citizens’ rights to life and liberty, which are protected by the Virginia Constitution Bill of Rights. The court declined to address the merits of the youth plaintiff’s constitutional claims.

Read more about the case [here](#).

NETWORK MEMBER PUBLICATIONS

Liesl Muller, 'The impact of a child-rights approach to litigation on the realisation of the right to education of pregnant learners in Africa' (2021) *LLM Mini-dissertation*, available at <https://repository.up.ac.za/handle/2263/82801>

FOR NEXT EDITION

Many thanks to all Network members who submitted information for this edition of the Newsletter. We are very keen that the Newsletter should highlight the great work that Network members are doing in order to promote information exchange and communication among network members.

We would be very grateful if network members could send us (brief) information by a deadline of **1 December 2022** on:

1. Information on **new CRSL decisions** (including a short description of the decision and (where possible) links to judgments)
2. Network member **events on CRSL-related issues**
3. Network member **publications or news items** on CRSL. (These need to include links, please).