

Ο περί της Ευρωπαϊκής Σύμβασης για την Άσκηση των Δικαιωμάτων του Παιδιού (Κυρωτικός) Νόμος του 2005 εκδίδεται με δημοσίευση στην Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας σύμφωνα με το Άρθρο 52 του Συντάγματος.

Αριθμός 23(ΙΙΙ) του 2005

**ΝΟΜΟΣ ΚΥΡΩΤΙΚΟΣ ΤΗΣ ΕΥΡΩΠΑΙΚΗΣ ΣΥΜΒΑΣΗΣ
ΓΙΑ ΤΗΝ ΑΣΚΗΣΗ ΤΩΝ ΔΙΚΑΙΩΜΑΤΩΝ ΤΟΥ ΠΑΙΔΙΟΥ**

Η Βουλή των Αντιπροσώπων ψηφίζει ως ακολούθως:

1. Ο παρών Νόμος θα αναφέρεται ως ο περί της Ευρωπαϊκής Σύμβασης για την Άσκηση των Δικαιωμάτων του Παιδιού (Κυρωτικός) Νόμος του 2005.

Συνοπτικός
Τίτλος.

2. Στον παρόντα Νόμο, εκτός αν από το κείμενο προκύπτει διαφορετική έννοια-

Ερμηνεία.

«Σύμβαση» σημαίνει την Ευρωπαϊκή Σύμβαση για την Άσκηση των Δικαιωμάτων του Παιδιού, που υιοθετήθηκε από την Επιτροπή Υπουργών του Συμβουλίου της Ευρώπης στο Στρασβούργο, στις 25 Ιανουαρίου 1996, και η οποία υπεγράφη από την Κυπριακή Δημοκρατία στις 4 Σεπτεμβρίου 2002, κατόπιν σχετικής Απόφασης του Υπουργικού Συμβουλίου με Αρ. 56.045 και ημερομηνία 11.7.2002.

3. Με τον παρόντα Νόμο κυρώνεται η Σύμβαση, της οποίας το αυθεντικό κείμενο στην Αγγλική εκτίθεται στο Μέρος Ι του Πίνακα και σε Ελληνική μετάφραση στο Μέρος ΙΙ του Πίνακα αυτού:

Κύρωση της
Σύμβασης.
Πίνακας.
Μέρος Ι,
Μέρος ΙΙ.

Νοείται ότι σε περίπτωση αντίφασης μεταξύ του κειμένου του Μέρους Ι και εκείνου του Μέρους ΙΙ του Πίνακα, θα υπερισχύει το κείμενο που εκτίθεται στο Μέρος Ι αυτού.

ΠΙΝΑΚΑΣ
(Άρθρο 3)

ΜΕΡΟΣ ΙEUROPEAN CONVENTION ON THE
EXERCISE OF CHILDREN'S RIGHTS

Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Having regard to the United Nations Convention on the rights of the child and in particular Article 4 which requires States Parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the said Convention;

Noting the contents of Recommendation 1121 (1990) of the Parliamentary Assembly on the rights of the child;

Convinced that the rights and best interests of children should be promoted and to that end children should have the opportunity to exercise their rights, in particular in family proceedings affecting them;

Recognising that children should be provided with relevant information to enable such rights and best interests to be promoted and that due weight should be given to the views of children;

Recognising the importance of the parental role in protecting and promoting the rights and best interests of children and considering that, where necessary, States should also engage in such protection and promotion;

Considering, however, that in the event of conflict it is desirable for families to try to reach agreement before bringing the matter before a judicial authority,

Have agreed as follows:

Chapter I - Scope and object of the Convention and definitions

Article 1 - Scope and object of the Convention

- 1 This Convention shall apply to children who have not reached the age of 18 years.
- 2 The object of the present Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority.
- 3 For the purposes of this Convention proceedings before a judicial authority affecting children are family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children.

- 4 Every State shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, specify at least three categories of family cases before a judicial authority to which this Convention is to apply.
- 5 Any Party may, by further declaration, specify additional categories of family cases to which this Convention is to apply or provide information concerning the application of Article 5, paragraph 2 of Article 9, paragraph 2 of Article 10 and Article 11.
- 6 Nothing in this Convention shall prevent Parties from applying rules more favourable to the promotion and the exercise of children's rights.

Article 2 - Definitions

For the purposes of this Convention:

- a the term "judicial authority" means a court or an administrative authority having equivalent powers;
- b the term "holders of parental responsibilities" means parents and other persons or bodies entitled to exercise some or all parental responsibilities;
- c the term "representative" means a person, such as a lawyer, or a body appointed to act before a judicial authority on behalf of a child;
- d the term "relevant information" means information which is appropriate to the age and understanding of the child, and which will be given to enable the child to exercise his or her rights fully unless the provision of such information were contrary to the welfare of the child.

Chapter II - Procedural measures to promote the exercise of children's rights

A. Procedural rights of a child

Article 3 - Right to be informed and to express his or her views in proceedings

A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights:

- a to receive all relevant information;
- b to be consulted and express his or her views;
- c to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.

Article 4 - Right to apply for the appointment of a special representative

- 1 Subject to Article 9, the child shall have the right to apply, in person or through other persons or bodies, for a special representative in proceedings before a judicial authority affecting the child where internal law precludes the holders of parental responsibilities from representing the child as a result of a conflict of interest with the latter.

- 2 States are free to limit the right in paragraph 1 to children who are considered by internal law to have sufficient understanding.

Article 5 - Other possible procedural rights

Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular:

- a the right to apply to be assisted by an appropriate person of their choice in order to help them express their views;
- b the right to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer;
- c the right to appoint their own representative;
- d the right to exercise some or all of the rights of parties to such proceedings.

B. Role of judicial authorities

Article 6 - Decision-making process

In proceedings affecting a child, the judicial authority, before taking a decision, shall:

- a consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;
- b in a case where the child is considered by internal law as having sufficient understanding:
 - ensure that the child has received all relevant information;
 - consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;
 - allow the child to express his or her views;
- c give due weight to the views expressed by the child.

Article 7 - Duty to act speedily

In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable.

Article 8 - Acting on own motion

In proceedings affecting a child the judicial authority shall have the power to act on its own motion in cases determined by internal law where the welfare of a child is in serious danger.

Article 9 – Appointment of a representative

- 1 In proceedings affecting a child where, by internal law, the holders of parental responsibilities are precluded from representing the child as a result of a conflict of interest between them and the child, the judicial authority shall have the power to appoint a special representative for the child in those proceedings.
- 2 Parties shall consider providing that, in proceedings affecting a child, the judicial authority shall have the power to appoint a separate representative, in appropriate cases a lawyer, to represent the child.

C. Role of representatives

Article 10

- 1 In the case of proceedings before a judicial authority affecting a child the representative shall, unless this would be manifestly contrary to the best interests of the child:
 - a provide all relevant information to the child, if the child is considered by internal law as having sufficient understanding;
 - b provide explanations to the child if the child is considered by internal law as having sufficient understanding, concerning the possible consequences of compliance with his or her views and the possible consequences of any action by the representative;
 - c determine the views of the child and present these views to the judicial authority.
- 2 Parties shall consider extending the provisions of paragraph 1 to the holders of parental responsibilities.

D. Extension of certain provisions

Article 11

Parties shall consider extending the provisions of Articles 3, 4 and 9 to proceedings affecting children before other bodies and to matters affecting children which are not the subject of proceedings.

E. National bodies

Article 12

- 1 Parties shall encourage, through bodies which perform, *inter alia*, the functions set out in paragraph 2, the promotion and the exercise of children's rights.
- 2 The functions are as follows:
 - a to make proposals to strengthen the law relating to the exercise of children's rights;
 - b to give opinions concerning draft legislation relating to the exercise of children's rights;
 - c to provide general information concerning the exercise of children's rights to the media, the public and persons and bodies dealing with questions relating to children;
 - d to seek the views of children and provide them with relevant information.