

WHEN THE STATE DOESN'T CARE

A GUIDE TO ACCESSING JUSTICE FOR VIOLATIONS OF
CHILDREN'S RIGHTS IN CARE INSTITUTIONS IN EASTERN
AND SOUTHEASTERN EUROPE AND THE CAUCASUS



ABOUT CRIN (www.crin.org)

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

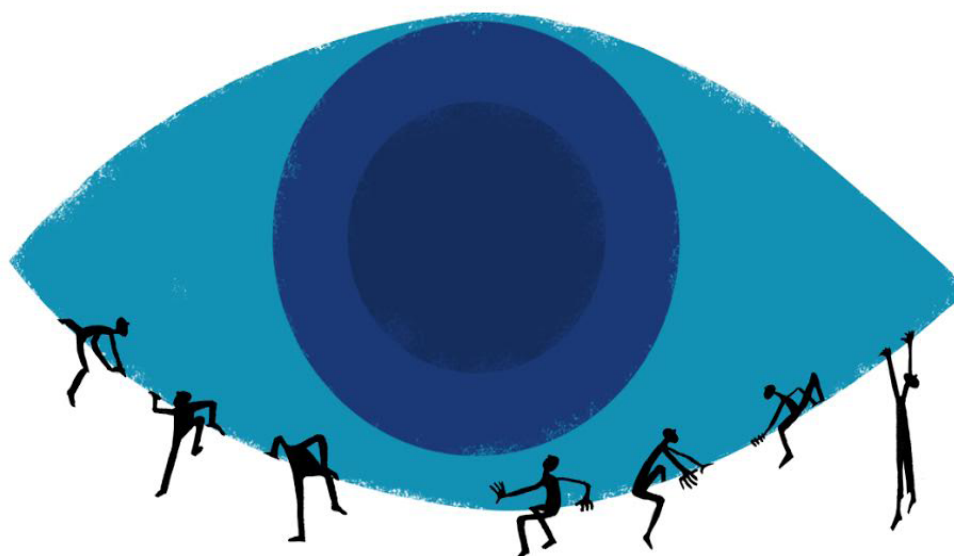
Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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Executive summary

Access to justice is a human right, but it is also what makes other rights a reality. For children's rights to be more than a promise, there must be a way for those rights to be enforced. In reality, access to justice is still an aspiration for most children, often even more so for children in care institutions.

Violations of children's rights in care and the need for deinstitutionalisation are not new. Many reports have emerged in the last few decades that reveal the neglect and abuse so many children have faced, and continue to face, across many countries. In some cases, the extent of the abuse is only revealed many years after the victims have grown up and left those institutions.

Why do violations persist? There are of course numerous factors that can explain why the abuse continues, starting with the need for legal and policy reform, accountability and human rights education. However one factor that underlies the persistence of these violations is the lack of access to effective remedies: the inability to challenge these violations, get compensation for the victims and hold perpetrators accountable.

In early 2016, CRIN published a global analysis of access to justice for children, ranking every country on whether, and how, children can use the legal system in their country to challenge violations of their rights.

As a next step, we decided to look more closely at whether and how children in care institutions in Eastern and South-eastern Europe and the Caucasus were able to seek redress for violations they suffered.

This guide explains which options are available to those seeking justice for children in care institutions across 11 countries: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Moldova, Romania, Russia, Serbia and Ukraine. This guide analyses national, regional and international law and compiles the redress mechanisms available to victims of rights violations while they are in state care and after leaving these institutions.

The global overview

Most advocacy efforts in Eastern and Southeastern Europe and the Caucasus have focused on prevention of future violations of children's rights in care. Discussions about litigation against the government are only just emerging, while lobbying for redress for historical institutional abuse through alternative compensation mechanisms has been somewhat neglected. International experiences examined in this guide could therefore serve as models for establishing inquiry commissions and redress schemes in the region.

The guide looks into the experience of Australia, Canada, Ireland, Sweden, the United Kingdom and other countries, where care leavers associations sought justice for historical widespread institutional abuse and neglect. By lobbying for different remedies, including wide-ranging public inquiries, official apologies and redress schemes, survivors networks achieved recognition and redress for the harm they have suffered.

International experience shows that creation of care leavers' associations is of paramount importance and, in combination with media campaigns, support from the public and even some international pressure, can force governments to take responsibility for neglect and abuse in care institutions. The failure of the State to investigate violations can also be a catalyst for action and redress, while official apologies and other forms of acknowledgment by government have helped raise awareness and increased the profile of institutional abuse of children.



Bringing a case domestically

The guide examines the kinds of challenges available within domestic legal systems and through the use of quasi-judicial mechanisms in the 11 countries covered. It analyses the potential for bringing different kinds of strategic litigation, including criminal, civil and administrative suits, and looks at the potential benefits and drawbacks of each. It also includes guidance on who has standing to represent children in each national system and where funding for legal work can be found.

As well as examining the practicalities of suing the government, the guide includes advice on working with national human rights institutions, referrals and cooperation with child protection bodies, the role of the media in campaigning and ways of gaining access to closed institutions for inspections and monitoring.

Bringing court cases on behalf of children while they are in care can be very challenging due to various limitations and obstacles, such as lack of legal standing for NGOs, lack of access to legal aid and investigations being dropped because of scarce evidence. Inquiry and redress mechanisms for institutional abuse, therefore, have an important role in addition to traditional litigation.

Getting justice at the regional and international level

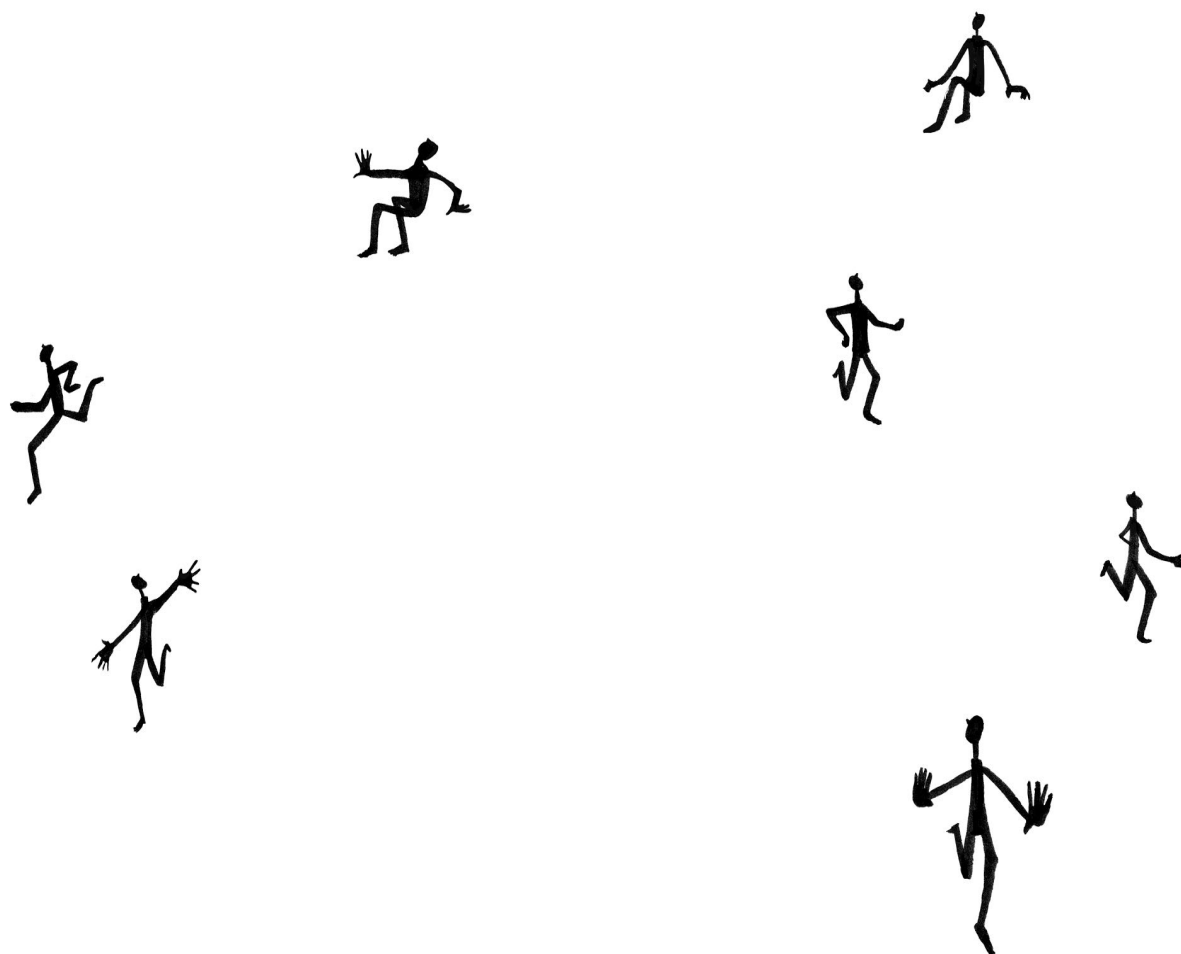
The guide also looks into strengths and weaknesses of regional and international complaints mechanisms, evaluating which are most useful for challenging particular violations that children in care experience.

The European Court of Human Rights is the most well established regional human rights court and is likely to be the most effective regional mechanism for providing redress for rights abuses that fall under its jurisdiction. In very limited circumstances it is possible for an NGO to file a complaint on behalf of another person, but the Court has been very strict in limiting these kinds of cases. In the notorious case of *Campeanu v. Romania*, the Centre for Legal Resources was allowed to bring a complaint before the ECHR as representatives of the deceased orphan.

The nine core human rights treaties of the UN all have complaints mechanisms, which present options for bringing complaints in relation to the rights they protect. The complaints procedure under the Convention on the Rights of the Child is likely to most directly address abuses of children in institutions, but as it is so new, ratified by so few countries across the region and it cannot receive collective complaints, strategic use of the full range of international complaints mechanisms will be key to protecting rights of children in institutions.

CRIN hopes this guide will be useful for children's rights advocates in the region and beyond, will inspire those seeking justice and give hope to survivors of institutional abuse and neglect. We welcome feedback on the guide and would like to hear from you about relevant court cases, positive law and policy developments, and ideas for further regional advocacy. Please contact us at info@crin.org





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