



ORDO IURIS

INSTITUTE FOR LEGAL CULTURE

Warsaw, April 28 2018

**United Nations High Commissioner
for Human Rights**

Sir Zeid Ra'ad Zeid Al-Hussein

Office of the United Nations High
Commissioner for Human Rights (OHCHR)
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland.

Dear Sir Zeid Ra'ad Zeid Al-Hussein

United Nations High Commissioner for Human Rights,

The *Ordo Iuris* Institute for Legal Culture (hereinafter: the *Ordo Iuris* Institute) hereby respectfully submits this opinion and requests that the United Nations High Commissioner for Human Rights consider its relevant arguments and take appropriate actions *to secure respect for all human rights*, voicing concern about Alfie Evans' landmark case. According to the numerous opinions voiced by international community, non-governmental organizations and experts, the precedent case of Alfie Evans poses a serious threat to the enjoyment of international freedoms for family life, parental responsibility, right to life and internationally recognized right of the child to the highest attainable standard of health. This extraordinary case needs to be addressed by High Commissioner for Human Rights, who plays an *active role in (...) meting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world¹*, and should not be overlooked in the year of 70th jubilee of the Universal Declaration of Human Rights that states, that *Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized* (art. 28 of the UDHR).

¹ General Assembly Resolution 48/141 of 20 December 1993, par. 4 (f).



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The *Ordo Iuris* Institute for Legal Culture is an independent legal organization incorporated as a foundation in Poland. It gathers academics and legal practitioners aimed at the promotion of a legal culture based on the respect for human dignity and rights. The *Ordo Iuris* Institute pursues its objectives by means of research and other academic activities as well as advocacy and litigation. *The Ordo Iuris* Institute has ECOSOC consultative status. Moreover, third party interventions of the *Ordo Iuris* Institute have been accepted by Polish and international courts and institutions, e.g. the Polish Supreme Court, the European Committee of Social Rights and the European Court of Human Rights Institute submitted its opinions to the Venice Commission, Secretary General of the Council of Europe, Commissioner for Human Rights and the Committee on Political Affairs and Democracy of the PACE.

OPINION on ALFIE EVANS CASE

The Facts of the Case:

Alfie Evans was born on May 9, 2016 at the Liverpool Women's Hospital. Delivered at full term with a healthy weight and after three days, discharged home Alfie's mother was then 18 years old and his father, Tom, was 19 years of age. The first symptoms occurred in July 2016 when Alfie was noted to have a 'divergent squint'. Alfie's smile had become less frequent, he was sleeping to an extent that had begun to alarm his parents and after six months there was no doubt that Alfie was showing marked signs of significant developmental delay. He was examined in the general paediatric outpatient clinic in Alder Hey Hospital in November 2016.

Alder Hey Hospital Staff had not managed to find a conclusive diagnosis of his condition and could not find prospective treatment for him. Alder Hey started to seek a declaration that continued ventilatory support was not in Alfie's best interests and under the circumstances it was not lawful that such treatment continue. Alfie's parents, Tom Evans and Kate James, both resisted this application. The application brought by the Alder Hey was first heard by the court on December 19, 2017. Counsel appearing on behalf of the parents made a further application to adjourn the Directions Hearing on the December 19, but the court rejected it and authorised the instruction of another expert and set down the case for hearing.



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There was a mediation meeting that took place on January 8, 2018 that did not finalize with any agreement.

- **February 20, 2018 High Court of Justice Judgment²** - The judge declared that it was not in Alfie's best interest for ventilation to continue and that it was lawful and in his best interest that ventilation be withdrawn; that he should receive only palliative care; and that "*the extubation and palliative care shall take place at Alder Hey Hospital*".
- **March 6, 2018 the Court of Appeal Judgment** - The Court of Appeal dismissed the parents' appeal and was clear that the transfer of Alfie to another country "*could not possibly be in (his) best interests.*"
- **March 20, 2018 the Supreme Court Judgment³** – The Supreme Court refused to grant permission to appeal. The refusal decision was based on the assessment that the courts of the lower resorts correctly interpreted the best interests of the child according to international and domestic law, by agreeing to disconnect Alfie Evans from the respirator.
- **March 28, 2018 the European Court of Human Rights decision⁴** - Evans v. the United Kingdom (application no. 14238 /18). The Court found that the application was inadmissible and that there was no appearance of a violation of the rights and freedoms set out in the European Convention on Human Rights. The Court also refused the applicants' request for an interim measure under Rule 39 of the Rules of Court.
- From **March 28, 2018**, Alfie's parents insisted that the hospital postpone the date of Alfie's disconnection from the life sustaining equipment.
- **April 11, 2018 the High Court of Justice Order** – The court declared that it would be lawful to withdraw artificial ventilation, which is currently being provided to Alfie, at the date and time specified in the order.
- **April 16, 2018 the Court of Appeal Judgement (Habeas Corpus Application)** – The Court declared that the application for habeas corpus was wholly misconceived and the appeal must

² <https://www.judiciary.gov.uk/judgments/alder-hey-nhs-trust-v-evans/>, access: 27th April 2018.

³ <https://www.supremecourt.uk/cases/docs/alfie-evans-order-200318.pdf>, <https://www.supremecourt.uk/cases/docs/alfie-evans-reasons-200318.pdf>, access: 27th April 2018.

⁴ <http://hudoc.echr.coe.int/eng-press?i=003-6046074-7771568>, access: 27th April 2018.



be dismissed. It was decided that the parents do not have the right to use the writ of habeas corpus to acquire the custody of their child if this is not in his best interest. As it was decided previously by court, parents have no right to direct future medical treatment of their child. The application for a writ of habeas corpus was made on the basis that Alfie is being “unlawfully detained” in the hospital. The application made reference to Article 5 of the ECHR, Article 56 of the TFEU, the right to health and the right to health protection including under Article 11 of the European Social Charter.

- **April 20, 2018 the Supreme Court Judgment⁵** - The Supreme Court rejected the parent’s case, which the Court considered to be unarguable.

The Supreme Court addressed the substantive argument, that rights of the parents were being unlawfully breached, as they were not being permitted to take Alfie to the hospital in Rome. The Supreme Court stated, that: *it is not in Alfie’s best interest, not only to stay in Alder Hey Hospital being treated as he currently is, but also travel abroad for the same purpose. It is not lawful therefore to continue to detain him (...). The release to which he is entitled, therefore, is release from imposition of treatment, which is not in his best interests.*

- **April 23, 2018 the European Court of Human Rights decision⁶** - Evans v. the United Kingdom (application no.18770/18). The case concerned the deprivation of liberty and a violation of Article 5 (right to liberty and security) of the European Convention on Human Rights. In its decision the Court found that the application was inadmissible. The Court also refused the applicants’ request for an interim measure under Rule 39 of the Rules of Court.
- **April 23, 2018.** On Monday evening Alfie Evans was disconnected from life support equipment. On the same day, the Italian Ministry of Foreign Affairs granted Italian citizenship to Alfie Evans and ensured that he was ready to be taken to Italy for treatment. Only after 10 hours of disconnection, oxygen and water began to be given back to Alfie. After 28 hours the nutrition was restarted.
- On **April 24, 2018**, parents' request was rejected for permission to take Alfie to Italy to the Bambino Gesù Hospital in Rome. Parents appealed against the above decision on April 25th, 2018.
- On **April 28, 2018** Alfie Evans died.

⁵ <https://www.supremecourt.uk/docs/in-the-matter-of-alfie-evans-court-order.pdf>, access: 27th April 2018.

⁶ https://www.echr.coe.int/Documents/Decision_Evans_v_UK.pdf, access: 27.04.2018



International community voices concern

Pope Francis supported Alfie Evans' parents' efforts to bring the child to the Bambino Gesù Hospital in Rome and provided military air ambulance for the boy. Polish⁷, American⁸ and Brazilian⁹ bishops supported parental rights and the child's right to life and right to the highest attainable standard of health.

Alfie Evans was granted citizenship by the Italian government recognizing and supporting his parents' efforts to secure the child's right to life and right to the highest attainable standard of health.

Andrzej Duda¹⁰, President of the Republic of Poland, and Beata Szydło¹¹, Vice Prime Minister of the Republic of Poland declared support for Alfie Evans' parents' efforts to secure the child's right to life and right to the highest attainable standard of health.

Antonio Tajani¹², President of the European Parliament and Stephen Woolfy, Member of European Parliament for North West England and Jeffrey Donaldson, Member of Parliament for Lagan Valley voiced support for Alfie Evans' parents' efforts to secure the child's right to life and right to the highest attainable standard of health.

The Medical Ethics Alliance¹³ who stated in their supporting letter: "*Actions such as these have now brought the Alder Hey Hospital to worldwide attention and by extension bring our whole profession into disrepute. Medical tyranny must stop. Poor Alfie must not be killed in this way. We demand that the authorities to allow Alfie safe passage to Rome*"¹⁴.

⁷ <http://episkopat.pl/stanowisko-zespołu-ekspertów-kep-ds-bioetycznych-w-sprawie-alfiego-evansa>

⁸ <https://twitter.com/USCCB/status/989167178372059136>

⁹ <https://www.lifesitenews.com/news/brazilian-bishops-express-their-support-for-alfie-evans-in-a-video-and-publ>

¹⁰ <https://twitter.com/AndrzejDuda/status/98905415215258880>

¹¹ <https://dorzeczy.pl/kraj/62804/Bedzie-interwencja-Polski-ws-Alfiego-Evansa-Bezbronne-dziecko-umiera-na-oczach-swiata.html>

¹² https://twitter.com/EP_President/status/988750374650699776

¹³ <http://www.medethicsalliance.org.uk/press-release-alfie-evans.html>, access: 27 April 2018

¹⁴ The M E A is a coalition of faith based and Hippocratic medical and nursing bodies which seeks to promote discussion within the medical profession and the general public on ethical aspects of medicine. It looks to the Declaration of Geneva 1948 and the Hippocratic Oath for inspiration.



Alfie Evans died during the night on 28th of April in Liverpool. He was irreversibly rejected his chance of further diagnosis and treatment. His fundamental right to life and to the highest attainable standard of health was violated despite of universal international legal standards and international community resistance.

Legal Status of the Case according to International Law:

Rights of the child. Obligations of the State.

The legal arguments presented by the courts of law were based on the “interests of the child” construed by the High Court of Justice (Family Division) in judgement on February 20, 2018. According to this decision, is not in Alfie’s best interest for artificial ventilation to be provided to him. It is lawful and in his best interest to withdraw artificial ventilation providing only palliative care that shall take place at Alder Hey Hospital. Transferring Alfie to another hospital as proposed by the parents was irreconcilable with Alfie’s best interest.

Both, the lack of consent for continuing ventilation and for transferring Alfie to another hospital, based on the legal principle of the best interest of the child, was determined by the High Court of Justice as expression of respect to dignity and autonomy of the child. However, human dignity that is the fundamental principle of human rights can only be protected when the specific rights that are contained in the CRC are fully enjoyed. This is especially important in relation to rights such as the right to life (art. 6 of the CRC), the right of the child to the enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health (art. 24 of the CRC) and the right of the disabled child to special care (art. 23 of the CRC). This constitutes the best interest of the child. Moreover, the best interest of a child in a vulnerable situation should also be determined with regard to



the norms contained in the Convention on the Rights of Persons with Disabilities¹⁵ (arts. 5, 7, 10, 12 and 26 of this Convention).

Considering as an inherent right of all children, also those with disabilities, the right to the highest possible standard of health as well as access and affordability of quality healthcare, these two rules should be taken into account.¹⁶

First of all, health care service should be provided to the child with disabilities without any discrimination (art. 2 of the CRC); and secondly, State that provides health services should, especially if the situation so required, cooperate with the international organizations, as well as other State Parties to the CRC.

In the case of Alfie Evans, the Italian Ministry of Foreign Affairs offered such cooperation, when he offered free transport for Alfie Evans to the Bambino Gesù Hospital in Rome.

Parental rights and responsibility. Right of the child to the highest attainable standard of health.

According to art. 3 (1) of the Convention on the Rights of the Child (hereinafter as: the CRC) *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.* The same obligation applies to parents whose primary concern should be the best interest of the child. Also art. 18 (1) of the CRC asserts *[The] States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.* Thus, it is the responsibility of the parents to ensure upbringing and development of the child according to the best interest of him or her. The similar parent's pre-eminence's principle is confirmed in art. 24 (1) of the International Covenant on Civil and Political Right (hereinafter as: the ICCPR) that states that it is family's responsibility to guarantee children the necessary protection, and particularly the parents are the main responsible for creating conditions to promote the development of the child's personality and his or her enjoyment of the rights recognized

¹⁵ Par. 75 of the General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para 1) adopted by the Committee on the Rights of the Children.

¹⁶ See also art. 12 of the International Covenant on Economic, Social and Cultural Rights and art. 26 of the Convention on the Rights of Persons with Disabilities.



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in the ICCPR.¹⁷ State Party only assists the parents and support them in their responsibilities. The child's development (physical, mental, spiritual, moral and social) is secured by the parents, and only on the basis of the principle of subsidiarity [*the States Parties, (...) shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing* (Art. 27 (3) of the CRC). The same rule applies while exercising the right of the child to the highest attainable standard of health. According to art. 24 (2) of the CRC, *parents should fulfil their responsibilities while always acting in the best interest of the child, if necessary with the support of the State*¹⁸. The abovementioned principles of prioritized parental responsibility supported by the State on the basis of subsidiarity should be construed in the case of Alfie Evans jointly with the primary State's obligation to provide the child with *the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health* (Art. 24 (1) of the CRC). Normative content of article 24 (1) of the CRC guarantees that *children are entitled to quality health services, including prevention, promotion, treatment, rehabilitation and palliative care services*¹⁹ and defines the core obligations, under children's right to health, that includes *developing, implementing, monitoring and evaluating policies and budgeted plans of actions that constitutes a human rights-based approach to fulfilling children's right to health*²⁰.

In assessing the best interest of the child, whether by parents or by the state *the ultimate purpose of the child's best interest should be to ensure the full and effective enjoyment of the rights recognized in the CRC and the holistic development of the child*²¹.

From the information available publicly the Bambino Gesu Hospital in Rome, as well as hospitals in Milan and Munich, are ready and determined to provide the child with further diagnosis and possible treatment. Polish paediatrician Izabela Pełgan, who examined Alfie Evans in January 2018, confirmed that further diagnosis is recommended, as the child is not in the terminal state and is perceptibly reacting

¹⁷ Par. 6 of the General Comment No. 17: Article 24 (Rights of the child) adopted by the Human Right Committee.

¹⁸ Par. 78 of the General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)

¹⁹ Par. 25 of the General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)

²⁰ Par. 73 of the General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)

²¹ Par. 51 of the General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para 1) adopted by the Committee on the Rights of the Children.



to the presence of his father and other stimuli with opening of eyes, sucking the pacifier, closing the eyelids, withdrawing the limbs after pressure. Based on those reliable premises, both parents of the child recognise additional diagnosis in Italy to be in the best interest of their child as execution of Alfie Evans' *right to the enjoyment of the highest attainable standard of health* (Art. 24 (1) of the CRC).

The High Court of Justice stated that transferring Alfie to the Bambino Gesù Hospital in Rome *might be worth risking if there were any prospect of treatment*²². Nevertheless, the court did not recognise abovementioned circumstances to be enough to constitute *any prospect of treatment*.

Violation of the international obligations of the State

The *Ordo Iuris* Institute for Legal Culture voices an opinion, that in the case of Alfie Evans an evident violation has taken place of art. 6 (1) of the ICCPR, art. 7 of the ICCPR, art. 24 (1) of the ICCPR, art. 3 (1) of the CRC, art. 18 (1) of the CRC, art. 24 (1) of the CRC, art. 24 (2) of the CRC, art. 27 (3) of the CRC, arts. 5, 7, 10, 12 and 26 of the Convention on the Rights of Persons with Disabilities.

Jerzy Kwaśniewski
President of the Board
Ordo Iuris Institute for Legal Culture

²² Par. 64 of the Judgement of the High Court Justice (Family Division) in case between Alder Hey Children's NHS Foundation Trust and Mr Thomas Evans, Ms Kate James and Alfie Evans of 20th February 2018.