

ACCESS TO JUSTICE FOR CHILDREN: FRANCE

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The CRC was ratified by France on 7 August 1990.¹ Duly ratified or approved treaties and agreements automatically have the force of law in France.²

B. Does the CRC take precedence over national law?

Yes. According to Article 55 of the Constitution of France, “treaties or agreements duly ratified and approved, shall upon publication, prevail over Acts of Parliament, with respect to each agreement or treaty, to its application by the other party.”³

C. Has the CRC been incorporated into national law?

The CRC was automatically incorporated into national law upon ratification. However, France maintains a reservation as to Article 30 and interpretive declarations as to Articles 6 and 40 (see part V below).

D. Can the CRC be directly enforced in the courts?

An individual can enforce a particular provision of the CRC once the provision has been recognised by the national courts as being directly applicable.⁴ As at January 2006, the Court of Cassation (France’s Supreme Court) finally aligned its opinion with that of the *Conseil d’État* (France’s Supreme Administrative Justice Court) by declaring the following Articles of the CRC to be directly applicable, thereby giving access to certain rights for individuals:

- Article 2(1) (non-discrimination);
- Article 3(1) (best interests of the child);
- Article 4 (implementation of rights);
- Article 6(1) (right to life);
- Article 10(2) (right to maintain personal relations and direct contact with both parents);⁵

¹ United Nations Treaty Collection, ‘Status of the Convention on the Rights of the Child’, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² French Constitution, Art. 55.

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur.5074.html>.

³ Ibid.

⁴ *Third and fourth periodic report of France to the UN Committee on the Rights of the Child*, CRC/C/FRA/4, 21 February 2008, para 12. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fFRA%2f4&Lang=en.

⁵ Ibid., Annex III.

- Article 12 (right to express opinion and be heard);
- Article 16(1) (protection of privacy);
- Article 18(1) (parental responsibilities);
- Article 19(1) (protection from abuse and neglect);
- Article 29(1) (aims of education); and
- Article 37 (torture and deprivation of liberty).⁶

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

As noted above, the Court of Cassation and the *Conseil d'État* have applied particular provisions of the CRC. See Annex III of France's third and fourth report to the Committee on the Rights of the Child, which contains a table outlining various cases from both courts in which provisions of the CRC have been applied.⁷

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Under France's Code of Civil Procedure, children and their representatives can bring cases in domestic courts to challenge violations of children's rights. Jurisdiction depends on the nature of the proceeding and the place of residence of the child and family.⁸ Child protection cases brought by a parent, guardian, the government, or a child themselves are generally heard in segregated children's courts by judges who specialise in such cases.⁹

Violations of children's rights may also be challenged in criminal, constitutional or administrative proceedings (see part III.A below).

The Children's Ombudsman is responsible for protecting the rights of the child established by law or international commitments.¹⁰ The Ombudsman can receive complaints by a child's family members, medical and social services, and by associations which defend children's rights.¹¹ The law of 29 March 2011 created the *Défenseur des droits* (Defender of Rights) which reorganised the mission of the Children's Ombudsman.¹² The law describes the *Défenseur des droits* as an independent institution, and grants the institution additional means through which it may intervene on behalf of children. Specifically, the *Défenseur des droits* may help settle a dispute by organising mediation or may intervene before a judge once a case has been initiated.¹³

⁶ Ibid., Annex III.

⁷ Ibid.

⁸ Patrick Geary, 'A Child's Right to Expression in the Courtroom under International Conventions and French National Law', Yale Law School, p. 30 (2005). Available at: <http://enoc.crin.org/en/library/publications/childs-right-expression-courtroom-under-international-conventions-and-french>.

⁹ Ibid.

¹⁰ *Third and fourth periodic report of France to the UN Committee on the Rights of the Child*, para. 17.

¹¹ Ibid., para. 21 note 9 (citing Article 7 of the Law for the reform of child protection).

¹² Loi organique n° 2011-333 relative au Défenseur des droits, 29 March 2011', available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167>.

¹³ Le Défenseur des Droits, 'Traiter vos demandes', available at: <http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes>.

Additionally, it may also intervene in situations in which the rights of a child are being challenged.¹⁴

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Article 388-1-1 of the French Civil Code provides that “[a] statutory administrator acts as an agent for the minor in all civil transactions, *except cases where the law or usage authorises minors to act for themselves.*”¹⁵ Traditionally, the parents of the child are considered the statutory administrators of the child’s interest.¹⁶ However, the Civil Code provides for certain instances in which a court appointed representative serves as the child’s statutory administrator.¹⁷ As such, the child’s ability to initiate a suit in their own name depends on specific and very limited provisions under which the child’s case is instituted.

Proceedings alleging a violation of children’s rights are generally brought through child protective proceedings. These types of proceedings may be brought under the provisions of the Civil Code which address ‘educational assistance.’¹⁸ Educational assistance may be judicially ordered “where the health, security or morality of a non-emancipated minor is imperiled or where the conditions of his education are seriously endangered.”¹⁹ Educational assistance proceedings, under Article 375, may be granted on the “request ... of the minor himself”,²⁰ who can write to, call or present himself to the tribunal. The matter is then automatically referred to a children’s judge, who may, after having heard the child and any other relevant person, either decide that there is no danger and close the matter, or order protective measures.

In family law cases (parental disputes, filiation, name etc.) and other civil law cases (for instance for compensation claims following an accident) cases are brought by the child’s parents or representative. From 2007 Courts have the duty to hear a child asking to be heard. Children can have legal assistance, but because they are not themselves a party to the case, they cannot appeal the decision. In child protection cases, children can appeal, however they are rarely notified in person of the decision.

In 2014, the *Conseil d’État* (France’s Supreme Administrative Justice Court) ruled that where a child does not have the capacity to take legal action, he or she can still have standing before a judge when emergency measures are necessary to protect a fundamental freedom.²¹

Additionally, the Code of Civil Procedure provides that where a child requests to

¹⁴ Le Défenseur des Droits, ‘Agir pour la protection des enfants’, available at:

<http://www.defenseurdesdroits.fr/fr/competences/missions-objectifs/defense-des-droits-de-lenfant>.

¹⁵ French Civil Code, § 388-1-1 (emphasis added). Available at:

http://www.legifrance.gouv.fr/telecharger_pdf.do?cidTexte=LEGITEXT000006070721.

¹⁶ *Ibid.*, § 382.

¹⁷ *Ibid.*, §§ 383 & 388-2.

¹⁸ Patrick Geary.

¹⁹ French Civil Code, § 375.

²⁰ *Ibid.*

²¹ Conseil d’Etat, juge des référés, decision n°375956, 12 march 2014, available at:

<http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000028721828>.

present testimony before a Court of Justice, their request may only be rejected if the judge determines that the child either lacks discernment or the proceeding does not concern the child.²²

Child victims can present themselves to a police station to make a complaint about alleged violations either on their own or with an adult. The Public prosecutor (*Procureur de la République*) will then decide whether there are grounds for prosecution. If the Public prosecutor does not bring charges, the parents or guardian of the child can lodge a complaint before an examining magistrate (*Juge d'instruction*).

C. In the case of infants and young children, how would cases typically be brought?

Under Article 388-1-1 of the Civil Code, statutory administrators act as agents for the child.²³ They must look after the child's interests and in particular appoint and dismiss lawyers. As such, a statutory administrator would initiate a case on behalf of the child. As noted above, statutory administrator authority typically belongs to the child's parents when they exercise parental authority in common - whether or not they are married and whether or not they live together.²⁴ Each of the parents is deemed to have authority to carry out alone transactions relating to the child's property.²⁵ If the parents cannot agree, a judge of guardianship must approve said transaction.²⁶ Where the two parents do not share parental authority, statutory administration belongs to the parent with parental authority.²⁷

D. Would children or their representatives be eligible to receive free or subsidized legal assistance in bringing these kinds of cases?

The French legal aid scheme is governed by the Legal Aid Act,²⁸ which provides legal assistance based on "resources, nationality, residence and admissibility."²⁹ The Legal Aid Act provides for legal aid in front of all tribunals, pursuant to Article 10, which includes family and administrative tribunals. The Act provides "complete assurance that minors will be defended in civil and/or criminal proceedings."³⁰ Under Article 5, "no account shall be taken of the resources of the child's parents or of the persons living in the home, once a divergence of interests exists between them, having regard to the subject of the legal proceedings."³¹ In cases where children are victim of criminal offences by a member of the family unit, the Legal Aid Bureau may not take account of the parent's resources.³²

According to the provisions of the Order of 2 February 1945 on young offenders, a

²² French Code of Civil Procedure, § 338-4. Available at: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070716>.

²³ French Civil Code, § 388-1-1.

²⁴ *Ibid.*, § 382.

²⁵ *Ibid.*, § 382-1. The list of such transaction is found in § 496 of the Civil Code.

²⁶ *Ibid.*, § 387.

²⁷ *Ibid.*

²⁸ Law No. 91-647 of 10 July 1991. Available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006077779>.

²⁹ European Judicial Network, 'Legal Aid- France', available at: http://ec.europa.eu/civiljustice/legal_aid/legal_aid_fra_en.htm.

³⁰ *Third and fourth periodic report of France to the UN Committee on the Rights of the Child*, para. 131.

³¹ *Ibid.*, para. 132.

³² *Ibid.*

minor must have the assistance of a lawyer to deal with their defence in a criminal case, whether the case is heard by a children's judge, a children's court, a juvenile correctional court or a criminal court (*Cour d'assises*).³³ Accordingly, Order No. 2005-1526 of 8 December 2005 provides that "when a request is made for legal aid concerning assistance for a minor who is being prosecuted for a criminal offence, no further account shall be taken of the resources of the parents or persons living in the minor's home, if they demonstrate lack of interest in him."³⁴

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

In cases arising under Article 375 of the Civil Code (educational assistance) the judge "must inform the Public Prosecutor of the opening of the proceeding . . . likewise, he must inform the father, mother, tutor, the person or the representative of the institution in whose care the child is placed when they are not applicants."³⁵

III. How can children's rights violations be challenged before national courts?

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The most common way to challenge violations of a child's rights is to initiate a civil proceeding under the French Civil Code and in accordance with the French Code of Civil Procedure. Most civil matters fall within the jurisdiction of ordinary civil courts.³⁶ However, cases involving juvenile crimes and children at risk are handled by a special justice system for young people under 18 (*Justice de mineurs*).³⁷ The children's judge initially had jurisdiction over criminal matters only, but since 1958 his jurisdiction has been extended to include civil matters involving children at risk. Courts with criminal jurisdiction (*Tribunal des enfants* and *Cour d'assises des mineurs*) rule over cases involving child offenders. At least one children judge must be sitting in child-specific courts with criminal jurisdiction.

In addition, there is a separate system of judicial review which operates under the auspices of the *Conseil Constitutionnel* (Constitutional Council). Under Article 61-1 of the French Constitution, the *Conseil Constitutionnel* can rule on the constitutionality of statutory provisions challenged in the *Conseil d'État* or the Court of Cassation.³⁸ If a provision is deemed unconstitutional on the basis of Article 61-1, it is repealed as of the date of publication of the *Conseil Constitutionnel*'s decision.³⁹ An application for a preliminary ruling on the issue of constitutionality is provided for under Law No. 2009-1523. This procedure enables any party to a legal proceeding to dispute the

³³ Ibid., para. 133.

³⁴ Ibid.

³⁵ French Code of Civil Procedure, § 1182.

³⁶ Ministère de la Defense, 'The French Legal System', Nov. 2012, p. 11, available at: http://www.justice.gouv.fr/art_pix/french_legal_system.pdf.

³⁷ Ibid.

³⁸ French Constitution, Art. 61-1.

³⁹ Ibid., Art. 62.

constitutionality of a legislative provision in force at the time.⁴⁰ The *Conseil Constitutionnel* has traditionally been very conservative in expanding its jurisdiction. Importantly, it has refused to extend its powers to determine whether a law conforms to the terms of treaties and international agreements.⁴¹ However, in cases involving human rights the *Conseil Constitutionnel* has generally viewed its jurisdiction expansively.⁴²

Furthermore, recourse may be obtained from the administrative courts under the jurisdiction of the *Conseil d'État*.⁴³ Administrative courts settle disputes between public bodies and private entities.⁴⁴ Administrative courts have jurisdiction over disputes concerning public liberties, and only an administrative judge can quash or reformulate the decisions made by authorities exercising executive powers.⁴⁵ This type of jurisdiction might be relevant in cases involving determinations rendered by French administrative agencies, such as a school board, a state-run adoption agency or the foster care system.

In order to challenge an action or omission⁴⁶ by a public body (or a private body responsible for a public service) that has caused a serious and manifestly illegal violation of fundamental rights, an individual can submit a “*référé-liberté*” (petition for the protection of liberties) to the “*Juge des référés*” (a judge that hears only urgent causes). The judge has 48 hours to issue his/her ruling. One has to demonstrate the urgency of the situation.⁴⁷

Council of Europe - ECHR

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.⁴⁸ Any

⁴⁰ Conseil Constitutionnel, ‘Who May apply to the Constitutional Council’, available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/presentation/who-may-apply-to-the-constitutional-council-/who-may-apply-to-the-constitutional-council.137219.html>.

⁴¹ Louis M. Aucoin, ‘Judicial Review in France: Access of the Individual Under French and European Community Law in the Aftermath of France’s Rejection of Bicentennial Reform’, Aug. 1992, 15 Bos. Col. Int. and Comp. L Rev. 443, p. 451, available at: <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1351&context=iclr>.

⁴² Ibid., p. 452.

⁴³ Ibid., p. 462.

⁴⁴ Conseil d’État, ‘The Conseil d’État: An overview’, p. 3, available at: http://www.conseil-etat.fr/media/document/ce_uk_23122010.pdf.

⁴⁵ Ibid.

⁴⁶ For cases where an omission of the Administration were successfully challenged see case Ville de Paris du 16 novembre 2011: CE Sect., 16 novembre 2011, Ville de Paris, requête numéro 353172, rec available at:

<http://www.revuegeneraledudroit.eu/blog/decisions/conseil-detat-section-16-novembre-2011-ville-de-paris-requete-numero-353172-publie-au-recueil> ; and CE ORD., 22 décembre 2012, Section française Observatoire international des prisons et autres, requête numéro 364584, rec, available at: <http://www.revuegeneraledudroit.eu/blog/decisions/conseil-detat-ord-22-decembre-2012-section-francaise-observatoire-international-des-prisons-et-autres-requete-numero-364584-publie-au-recueil>.

⁴⁷ Code of Administrative Justice (“*Code de justice administrative*”), Article L521-2, available at: http://www.legifrance.gouv.fr/affichCodeArticle.do?jsessionid=B4D4A5A5EEC1BE029793296F173BB73B.tpdila1lv_2?idArticle=LEGIARTI000006449327&cidTexte=LEGITEXT000006070933&dateTexte=20150807.

⁴⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”), 1950, Articles 19 and 32, available at: <https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,⁴⁹ but the complaint will be admissible only if all domestic remedies have been exhausted.⁵⁰ Anonymous complaints are not permitted.⁵¹ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.⁵² After examining the case, the Court renders a judgment which is binding on the State⁵³ and also has powers to award monetary compensation to the victims of human rights abuses.⁵⁴ It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.⁵⁵

UN Committee on the rights of the child

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,⁵⁶ which France has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.⁵⁷ The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict⁵⁸ and must have occurred after the entry into force of the Protocol on 7 April 2016.⁵⁹ Anonymous complaints are inadmissible and so are complaints not made in writing.⁶⁰ In addition, only complaints made in one of the working languages of the UN will be accepted.⁶¹ After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.⁶²

B. What powers would courts have to review these violations, and what remedies could

⁴⁹ Ibid., Article 34.

⁵⁰ Ibid., Article 35.

⁵¹ Ibid.

⁵² Rules of Court, July 2014, Rule 36, available at:

http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁵³ European Convention on Human Rights, Article 46.

⁵⁴ Ibid., Article 41.

⁵⁵ See cases *Mennesson v. France* on a birth registration in France of children born through a surrogacy agreement abroad, a summary is available at:

<https://www.crin.org/en/library/legal-database/mennesson-v-france>, and *Gas and Dubois v. France* on the legal provisions prohibiting a person in a same-sex relationship to adopt their partner's child, a summary is available at: <https://www.crin.org/en/library/legal-database/gas-and-dubois-v-france>.

⁵⁶ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en.

⁵⁷ Ibid., Article 5.

⁵⁸ Ibid.

⁵⁹ Ibid., Article 7(g).

⁶⁰ Ibid.

⁶¹ Office of the United Nations High Commissioner for Human Rights, '23 FAQ about Treaty Body complaints procedures', available at:

<http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

⁶² Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

they offer?

The Civil Courts of France have power to award money damages or to issue injunctions. In proceedings before the *Conseil Constitutionnel*, laws deemed unconstitutional are repealed as of the date of the *Conseil Constitutionnel's* decision.⁶³ As noted above, administrative judges have jurisdiction to quash or reformulate the decisions made by executive agencies.⁶⁴ In a “*référé-liberté*” procedure, the judge can take “all necessary measures” to protect the right, which includes issuing injunctions with penalties if the administration fails or is late to comply with them⁶⁵ and ordering the administration to suspend their actions.⁶⁶

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It appears that a legal challenge must directly involve one or more named child victims. The Code of Civil Procedure states that “[u]nless otherwise provided by law, only the parties may institute a proceeding.”⁶⁷ Article 375 of the Civil Code, which relates to claims for educational assistance, allows proceedings to be initiated by representatives, but such representatives must have a relationship to a specific child whose health, security or morality is at risk.⁶⁸ There are no procedures by which interested third parties can initiate cases on behalf of unnamed children, because French law limits enforcement of rights to individual parties.⁶⁹ The Code of Civil Procedure allows parties to intervene in a case only when the intervening party is connected to the claims of the parties by a sufficient link.⁷⁰

The jurisdiction of the administrative courts is obtained through a formal request. The request must state the name and address of the parties and contain the claims and conclusions upon which the judge must decide.⁷¹ If the request is presented by more than one person, it should designate a single representative.⁷²

The *Conseil Constitutionnel* may only rule upon the constitutionality of a law if it has been referred to it by the *Conseil d'État* or the Court of Cassation.⁷³ “Such referrals may only be made if the contested provision is applicable to the dispute.”⁷⁴ As such, review by the *Conseil Constitutionnel* must directly involve a specific victim, with a formal

⁶³ French Constitution, Art. 62.

⁶⁴ Conseil d'État, p. 3.

⁶⁵ Available at:

<http://www.revuegeneraledudroit.eu/blog/2015/03/28/dignite-police-et-injonction-la-recette-indigeste-du-ta-de-nice/#.VcTDy6H8ubk>

⁶⁶ For an example of suspension:

<http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000018573353&fastReqId=61684417&fastPos=1>.

⁶⁷ French Code of Civil Procedure, § 1.

⁶⁸ French Civil Code, § 375.

⁶⁹ Clifford Chance, ‘Collective Actions in Europe’, July 2010, p. 8, available at:

http://www.cliffordchance.com/content/dam/cliffordchance/PDF/collective_actions_europe_2010.pdf.

⁷⁰ French Code of Civil Procedure, § 325.

⁷¹ French Code of Administrative Justice, § R411-1.

⁷² *Ibid.*, § R411-5.

⁷³ Conseil Constitutionnel, ‘Comment saisir le Conseil Constitutionnel?’, available at:

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/le-conseil-constitutionnel/la-saisine/comment-saisir-le-conseil-constitutionnel/-comment-saisir-le-conseil-constitutionnel.17421.html>.

⁷⁴ *Ibid.*

case before either the *Conseil d'État* or the Court of Cassation.⁷⁵

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Collective action and representative litigation is very limited in France, because, “the right to bring a legal action is vested in individual parties who claim enforcement of their rights; French judges cannot issue judgments binding third parties that are not part of the proceedings . . . their decisions are only binding on the parties to the proceedings and claimants may only claim for their personal loss.”⁷⁶

French law nonetheless permits collective actions in limited instances, mainly in the consumer protection context. Certain non-profit organisations have the power to initiate representative actions, before civil and criminal courts aimed at protecting consumer interests.⁷⁷ These types of proceedings can be brought to seek compensation for consumers, investors, and victims of environmental risk.⁷⁸ There have been several attempts to reform the law in order to allow collective actions. However, these reform efforts also seem to be limited to consumer protection matters.⁷⁹

E. Are non-governmental organizations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Generally, a party must be directly affected by a matter in order to initiate a proceeding.⁸⁰ However, a non-governmental organisation may file challenges to potential children's rights violations if permitted by the provisions of the Civil Code.

The Code of Civil Procedure allows interventions in a case only “if it is connected to the claims of the parties by a sufficient link.”⁸¹ There are two types of intervention: voluntary and compulsory.⁸² Voluntary intervention permits a third party to support the claims of a party to a case.⁸³ However, such an intervention is only “receivable where its originator, in order to preserve his rights, has an interest in supporting the party.”⁸⁴

In some criminal cases and under certain conditions, an NGO can appear as a civil party (*partie civile*) alongside the victim. The Code of Criminal Procedure details an NGO's ability to do so according to their mission and issues at stake in the case.⁸⁵

NGOs specialized in children's rights may file a “*référé-liberté*” in the name of a child

⁷⁵ Ibid.

⁷⁶ Clifford Chance, p. 8.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ See Dan Macuill, ‘France Mulls US-Style ‘class action’ law suits’, 2 May 2013, The Local, available at: <http://www.thelocal.fr/20130627/france-considers-us-style-class-action-law-suits>.

⁸⁰ French Code of Civil Procedure, § 1.

⁸¹ Ibid., § 325.

⁸² Ibid., § 327.

⁸³ Ibid., § 330.

⁸⁴ Ibid.

⁸⁵ Code of Criminal Procedure, § 2-1 to 2-21. Available at: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154&dateTexte=20160128>.

whose liberties are at stake.⁸⁶

European Social Charter - European Committee of Social Rights

France has ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints,⁸⁷ meaning that complaints of violations of children's rights contained in the European Social Charter⁸⁸ can be made to the European Committee of Social Rights. Such complaints of unsatisfactory application of the Charter may only be submitted by international NGOs that have participatory status with the Council of Europe.⁸⁹ The Committee reviews the information provided by both sides and writes a report with its conclusions, which is sent to the Committee of Ministers of the Council of Europe that adopts a resolution and makes a recommendation to the State.⁹⁰ The State then must provide information about the steps taken to comply with the recommendation in its next report under the Charter.⁹¹

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

There are two types of courts where cases can be brought: Administrative courts and all other courts (civil courts, criminal courts commercial courts etc), known as "*ordre judiciaire*". When a proceeding is brought under Article 375 of the Civil Code, the Court seized of the matter is the *Tribunal pour Enfants*.

The procedures outlined in the Code for Civil Procedure must be followed in order to initiate a proceeding before the Civil Courts. "Jurisdiction of the different civil courts is determined by the rules relating to court organisation and particular provisions."⁹² Cases may be brought in the *Tribunal d'Instance* or the *Tribunal de Grand Instance* depending on the monetary amount at stake in the case.⁹³ "The territorially competent court is that of the place where the defendant lives," or as otherwise provided by law.⁹⁴ Civil cases are generally initiated "by way of a writ of summons or by delivery of a joint petition to the clerk's office of the court."⁹⁵

⁸⁶ This possibility derives from the decision CE ord., 12 November 2005, *Asso. SOS Racisme*, n°286832, available at: <http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000008253281>, pursuant to which NGOs may file a "*référé-liberté*" within the scope of the interests it aims to defend.

⁸⁷ Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

⁸⁸ Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

⁸⁹ Additional Protocol for a System of Collective Complaints, Article 1. See also: <http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure1>.

⁹⁰ Additional Protocol for a System of Collective Complaints, Articles 8-9.

⁹¹ Additional Protocol for a System of Collective Complaints, Article 10.

⁹² French code of civil procedure, § 33.

⁹³ IPR2, 'Comparative study between the Civil Procedure of France, Germany and China', July 2010, p. 7, available at:

<http://www.ipkey.org/en/resources/ip-information-centre/15-civil-law-procedures/1704-comparative-study-between-the-civil-procedures-of-france-germany-and-china>.

⁹⁴ French code of civil procedure, § 42.

⁹⁵ *Ibid.*, § 54.

The Code of Administrative Justice outlines the necessary procedure which must be followed in order to initiate a case before the administrative courts. As noted above, a request must be filed which outlines the names of the parties, their address and the complaint to be adjudicated.⁹⁶

Criminal proceedings involving minors are brought in the *Tribunal pour Enfants*. The sanctions imposed depend on the child's age.⁹⁷

- B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As noted in part II.D above, the Legal Aid Act assures that minors will receive legal assistance to defend themselves in civil and criminal cases.⁹⁸ Typically, legal aid is provided based on resources of the child's parents. However, the Act includes special provisions to ensure legal aid to children whose interests diverge from those of their parents or guardians. Specifically, the law provides that under such circumstances no account shall be taken of the resources of the child's parents.⁹⁹

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organization, or under an agreement that does not require the payment of legal fees up front?

Legal services may be secured on a pro bono basis in France. "French *avocats* have always assisted and represented on a charitable basis individuals and legal entities that cannot afford to pay for legal services."¹⁰⁰ The American terminology of pro bono does not exist in the French jurisprudential lexicon. Instead, the French refer to *assistance juridique gratuite* (free legal assistance) or *assistance bénévole* (benevolent assistance).¹⁰¹ *Assistance bénévole* is highly centralised and organised by the French Bar through its rules and regulations pertaining to the practice of law. Most of this type of work is centralised through the Paris Bar.¹⁰²

⁹⁶ French Code of Administrative Justice, § R411-1.

⁹⁷ Ministère de la Defense, 'The French Legal System', pp. 11-12. No child can be sentenced under the age of 13 (although educative measures are available for children between 10 and 13 years of age). Under the age of 16, sentences are reduced to half the sentence an adult would face for the same offence. Children older than 16 still benefit from these reduced sentences, but a judge can in exceptional circumstances waive this benefit, and the child would then face the same sentences as an adult (including life imprisonment).

⁹⁸ *Third and fourth periodic report of France to the UN Committee on the Rights of the Child*, para. 131.

⁹⁹ *Ibid.*, paras 132, 133.

¹⁰⁰ Gillian C. Lemaire, 'Pro Bono Practice in France: The Current State and Direction', 25 January 2011, available at:

http://www.pilnet.org/index.php?option=com_content&view=article&id=52:enabling-civil-society&catid=29:books&Itemid=53.

¹⁰¹ Latham & Watkins, 'A Survey of Pro Bono Practices and Opportunities in 71 Jurisdictions', August 2012, p. 76, available at: <https://www.lw.com/admin/Upload/Documents/PBI-2012-survey-France.pdf>.

¹⁰² *Ibid.*

The Paris Bar has put into place various initiatives in order to improve access to the judicial system. A section of the Paris Bar's website explains to the general public how to obtain legal aid, how to benefit from free consultations with Bar members, advice and assistance available from members of the Paris Bar (*Barreau de Paris Solidarité*).¹⁰³ Additionally, the Paris Bar provides free consultations to anyone interested in receiving legal advice or counseling. This counseling is provided by members of the Paris Bar and is free, anonymous, confidential and accessible to all.¹⁰⁴ Such counseling is available in several locations throughout the city, including the *Palais de Justice*, at the *Mairies d'arrondissement* and at the *Maisons de la Justice et du Droit*.¹⁰⁵

The Paris Bar also has specific initiatives geared to protecting the rights of children and providing them access to the legal system. The Paris Bar provides free and confidential legal consultations specifically for children on Monday through Friday at the *Palais de Justice*.¹⁰⁶ The Lyon Bar does the same on Wednesdays. Since 1989, most French local bar associations have followed in setting up such programmes, intended to provide children with legal aid and to answer legal questions. The lawyers that participate in this program (*Antenne des mineurs*) are especially trained to address legal issues relating to the rights of children.¹⁰⁷

Pro bono legal services may also be obtained through non-profit organisations or other non-governmental organisations. One such example is *Droits d'Urgence* which also maintains offices for free legal consultations throughout the city of Paris. *Droits d'Urgence's* mission is to provide free legal assistance and counseling to persons in financial need, and to help them know and enforce their rights.¹⁰⁸

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

For civil proceedings, the time limit for bringing cases depends on the type of claim brought. Cases must be brought in accordance with the time limits set out in the Civil Code. In general, actions to enforce a personal right have a five-year statute of limitations.¹⁰⁹ The calculation of the statute of limitations begins on the date when the holder of such right knew or should have known facts which entitled them to exercise such right.¹¹⁰ The Civil Code provides for an exception to the general statute of limitations in actions for damages arising out of an event that causes physical injury by the direct or indirect victim of such injury. Under such circumstances the statute of limitations is 10 years.¹¹¹ The statute of limitations does not run, or is suspended, as to non-emancipated children and adults under guardianship. This suspension generally does not apply to actions for payment of all that is payable within a period of a year or

¹⁰³ Ibid. See also Ordre des Avocats de Paris, 'Les Aides à l'accès au droit et à la justice', available at: <http://www.avocats.paris/les-aides-laccès-au-droit-et-la-justice>.

¹⁰⁴ Barreau de Paris, 'Les Aides à l'accès au droit et à la justice'.

¹⁰⁵ Ibid.

¹⁰⁶ Barreau de Paris, 'L'Antenne des mineurs', available at: <http://www.avocats.paris/lantenne-des-mineurs-0>.

¹⁰⁷ Ibid.

¹⁰⁸ Droits d'Urgence Missions de l'association, available at: <http://www.droitsdurgence.org/nous>.

¹⁰⁹ French Civil Code, § 2224.

¹¹⁰ Ibid.

¹¹¹ Ibid., § 2226.

less, such as rent, interest on money lent and alimony.¹¹²

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Code of Civil Procedure outlines the requirements of evidence for a case. “Each party must prove, according to the law, the facts necessary for the success of his claim.”¹¹³ Additionally, the judge has the ability to order investigative measures,¹¹⁴ and order the delivery of documents held by third parties.¹¹⁵

The Code of Civil Procedure also outlines certain provisions for testimony to be presented by a child before the court. In accordance with Article 388-1 of the Civil Code (2007 amendment), a child may request to be heard by a court - either by the judge or, when the child’s interests require it, the person designated by the judge for this purpose - in any proceedings that concern them.¹¹⁶ Such a request may be presented without formality at any stage of the proceeding by the interested party.¹¹⁷ This hearing shall be a right, and automatically takes place when the child requests it. The child may be heard alone or with a lawyer or a person of his or her choosing; if this choice does not appear to be in keeping with the interests of the child, the judge may designate another person. Where a child requests to present testimony before a court, their request may only be rejected if the judge determines that the child either lacks discernment or the proceeding does not concern the child.¹¹⁸

In criminal proceedings, the hearings of child victims of abuse or sexual offences and children in conflict with the law in juvenile criminal court must be videotaped, even if the child or his parents are opposed to it.¹¹⁹ Article 14 of the order of 2 February 1945 prohibits the publication, in any form, of any text or any illustration concerning the identity or personality of child offenders. The Act of 15 June 2000 makes it an offence to publish the identity of a child victim. Article 39 bis of the Freedom of the Press Act of 29 July 1881 makes the act of disseminating, by any means and through any medium, information concerning the identity of a child victim punishable by a fine. This provision protects the privacy and image of child victims of sexual aggression or acts of incest.¹²⁰

The 2013 annual report of the *Défenseur des droits* dedicated to the rights of the child makes several observations and proposals regarding children and their legal testimony, including the following:

- Article 388-1 of the Civil Code should be amended to recognise a presumption

¹¹² Ibid., § 2235.

¹¹³ French Code of Civil Procedure, § 9.

¹¹⁴ Ibid., § 10.

¹¹⁵ Ibid., § 138.

¹¹⁶ Ibid., § 338-1.

¹¹⁷ Ibid., § 338-2.

¹¹⁸ Ibid., § 338-4.

¹¹⁹ Code of Criminal Procedure, Article 706-52, introduced by the Law of 17 June 1998, Circular of 20 April 1999; modified by law of 5 March 2007 on crime prevention.

¹²⁰ Second periodic report of France to the UN Committee on the Rights of the Child, CRC/C/65/Add.26 9 October 2003, para. 146. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f65%2fAdd.26&Lang=en.

of discernment for any child who asks to be heard by the court in proceedings concerning them. The judge thus hearing the child may then assess the child's discernment and maturity.

- Although hearings of child victims must be videotaped and these recordings are available to judges, experts and lawyers, who can watch them at any time during the proceedings, the law is silent on the obligation to view them. The Children's Defender has observed that they are rarely consulted by the professionals for whom they are intended, and has recommended that use of the information they provide be promoted.
- The legal status of the child witness is "not covered by procedural safeguards". Child witnesses should be given a precise legal status that guarantees their rights and takes into account their vulnerability.
- When a child or adolescent has been heard during legal proceedings, whether civil or criminal, it is rare that the terms or the motives for the judge's final decision are explained to them so that they truly understands them. The judge, the child's lawyer, the assistant public prosecutor (*délégué du procureur*) and representatives of the educational services should give the child an oral explanation of the judicial decisions in proceedings that concern them, in clear terms, adapted to favour their understanding.¹²¹

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

According to the 2013 statistics available from the Ministry of Justice, the average duration of a civil case before the *Tribunaux d'instance* is 4.8 months.¹²² Civil cases before the *Tribunaux de grande instance* on average last 6.9 months.¹²³ Civil cases before the Courts of Appeal have an average duration of 11.7 months.¹²⁴

In the criminal context, the average duration of a criminal trial is 37.9 months. The duration on appeal is 18.6 months.¹²⁵ For minor offences the duration of the initial proceedings is on average 11.9 months and 16.3 months on appeal.¹²⁶

G. Appeal. What are the possibilities for appealing a decision to a higher court?

First instance decisions from civil and criminal courts may be appealed to the Court of Appeal for that jurisdiction.¹²⁷ The Court of Appeal may re-examine all the factual and

¹²¹ Le Défenseur des Droits, '2013 Annual Report dedicated to the rights of the child', available at: http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_ra_e_2013_synthese_en.pdf. These recommendations were reinforced in the 2014 report presented to the Minister of Family, on the request of the Défenseur des droits: Rosenczveig Commission, 'De nouveaux droits pour les enfants ? Oui, dans l'intérêt des adultes et de la société', January 2014. The report recommends to strengthen children's freedom of expression, to recognise legal capacity from 14 years of age, and to improve children's access to legal assistance. Available at:

www.ladocumentationfrancaise.fr/rapports-publics/144000326/index.shtml.

¹²² Ministère de la Justice, 'Les chiffres clés de la justice 2014, October 2014, p. 11. Available at: http://www.justice.gouv.fr/art_pix/1_stat_livret_final_HD.pdf.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid. at 18.

¹²⁶ Ibid.

¹²⁷ IPR2, p. 8.

legal aspects of the case.¹²⁸ Decisions from the Court of Appeal may be appealed to the Court of Cassation in limited circumstances.¹²⁹ “When decisions are referred to the Court of Cassation the Court is required to decide whether the rules of law have been correctly applied by the lower courts based on the facts.”¹³⁰

First instance decisions from administrative courts may be appealed to Administrative Courts of Appeal. Decisions from Administrative Courts of Appeal may be appealed to the “*Conseil d’État*” (which will not reexamine the facts, but will only examine if the law was correctly applied).¹³¹ If the “*juge des référés*” refuses to grant the measures claimed, the claimant has 15 days to appeal directly to the “*Conseil d’État*”, which has 48 hours to issue its ruling.¹³²

- H. **Impact.** What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

As outlined above, provisions of treaties are only actionable before French courts if the provision concerned has been recognised by the national courts as being directly applicable.¹³³ As such, if a court determines that a specific provision of the CRC is not directly applicable, plaintiffs will be unable to advance causes of action through such a provision. However, the trend in France has been toward the recognition of the direct applicability of the CRC in domestic law.¹³⁴

In light of the extensive protection afforded to children throughout the French legal system, it is difficult to foresee any potential backlash or repercussions which could come about as a result of a positive decision. In fact, the trend in France seems to be toward the greater provision of rights and access to the judicial system to children. This is shown by the special judicial regime designed to address matters affecting children,¹³⁵ the special powers afforded to the *Défenseur des droits* regarding the protection of children,¹³⁶ and the provision of free and confidential legal consultations to children by the Paris Bar.¹³⁷

- I. **Follow up.** What other concerns or challenges might be anticipated in enforcing a positive decision?

¹²⁸ Cour de Cassation, ‘The Role of the Court of Cassation’, p. 1, available at: http://www.courdecassation.fr/IMG/File/The%20role%20of%20the%20Court%20of%20cassation%2025_10_2010%20Version%20definitive.pdf.

¹²⁹ IPR2, p. 8.

¹³⁰ Cour de Cassation, p. 1.

¹³¹

https://upload.wikimedia.org/wikipedia/commons/thumb/2/2d/Organisation_juridictionnelle_nationale_fr.gif/500px-Organisation_juridictionnelle_nationale_fr.gif; There are some exceptions to the jurisdiction of administrative courts at first instance. For example, cases are heard at first instance directly by the “*Conseil d’État*”, namely, when challenging decrees and normative acts issued by ministers. Available at: <http://www.conseil-etat.fr/Conseil-d-Etat/Missions/Juger-l-administration>. For a list of all the exceptions, see: <http://vosdroits.service-public.fr/particuliers/F2640.xhtml>.

¹³² Available at: <http://vosdroits.service-public.fr/particuliers/F2551.xhtml>.

¹³³ *Third and fourth periodic report of France to the UN Committee on the Rights of the Child*, para. 12.

¹³⁴ *Ibid.*

¹³⁵ See Ministère de la Défense, ‘The French Legal System’, p. 11.

¹³⁶ Le Défenseur de Droit, ‘Défense des droits de l’enfant’, available at:

<http://www.defenseurdesdroits.fr/competences/missions-objectifs/defense-des-droits-de-lenfant>.

¹³⁷ Ordre des Avocats de Paris, ‘J’ai droit à mon avocat’.

“Under French law there are three types of civil obligations: to pay, to do (or not do) something, and to return.”¹³⁸ “Obligations to pay are enforceable by means of attachments. . . . Obligations to do or refrain from doing something are enforced by means of a pecuniary penalty, which is a sum of money the debtor must pay in addition to the obligation he must perform.”¹³⁹ The sum to be paid is determined by a judge and correlates to the party’s failure to comply with the judgment. All enforceable titles may be subject to compulsory enforcement measures. Such titles include decisions by administrative and ordinary courts, as well as foreign judgments, when they are directly enforceable, and arbitral awards.¹⁴⁰ “Court rulings not subject to an appeal suspending enforcement are enforceable without another judgment. These rulings, like notarial acts, are certified enforceable by the clerk of the court or by the notary. There is no other intermediate procedure that permits enforcement.”¹⁴¹

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

France has entered a reservation as to Article 30 and interpretative declarations as to Articles 6 and 40 of the CRC. Despite invitations from the Committee on the Rights of the Child to withdraw such reservations and declarations, France continues to maintain that these reservations are necessary.¹⁴² In relation to Article 30 (on the rights of minorities), France claims that its legal framework, specifically Article 2 of the Constitution of 1958, does not permit the recognition of collective rights attaching to any group, and, as such, the reservation is warranted.¹⁴³ France claims that the two interpretative declarations do not call into question the applicability of the CRC under French law. The declaration relating to Article 6 (on the right to life) clarifies that such a right does not forbid the right to a voluntary interruption of a pregnancy as provided by law.¹⁴⁴ Additionally, France explains that its declaration relating to Article 40 (on the right to penal review) is limited to a number of minor offences under the jurisdiction of the Police Court which are not subject to appeal. However, penalties arising from these offences do not involve the loss of liberty.¹⁴⁵

Another point worth highlighting is the applicability of the CRC to the departments and territories of France located overseas. Under the Constitution, “[t]here is no longer any legal discrimination between people from metropolitan France and those from overseas France.”¹⁴⁶ According to the *Conseil d’État*, an international convention “published in metropolitan France applies fully as a matter of law in overseas France without any need for further formalities provided that it does not include an express exclusion clause.”¹⁴⁷ As such, all instruments relating to the rights of the child which have been ratified by France are fully applicable in French overseas territories. However, some of the overseas territories have local and customary law regimes which operate alongside

¹³⁸ European Judicial Network, ‘Procédures d’exécution d’une décision de justice - France’, available at: https://e-justice.europa.eu/content_enforcing_a_judgment_in_the_same_member_state-52-fr-fr.do/.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² *Third and fourth periodic report of France to the UN Committee on the Rights of the Child*, para. 5.

¹⁴³ Ibid., para. 7

¹⁴⁴ Ibid., para. 10.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid. Annex I, para. 1.

¹⁴⁷ Ibid. Annex I, para. 26.

the ordinary law. These legal regimes could impact the way in which the CRC is applied and interpreted.¹⁴⁸ For example, in New Caledonia ordinary and customary law coexist as provided for under the Institutional Law of 19 March 1999.¹⁴⁹ This law contains provisions favouring customary law and measures dealing with cultural matters.¹⁵⁰

This report is provided for educational and informational purposes only and should not be construed as legal advice.

¹⁴⁸ Ibid., Annex I, para. 54.

¹⁴⁹ Ibid., Annex I, para. 61.

¹⁵⁰ Ibid.