

ACCESS TO JUSTICE FOR CHILDREN: GERMANY

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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?

Germany ratified the CRC on 6 March 1992.¹ Ratified international treaties do not automatically have the force of law in Germany; rather, they must be transferred into national law through implementing legislation in order to have legal effect.² The CRC was ratified by statute, thereby giving it the status of federal law.³ In 2010, the German government revoked all reservations of the Convention made upon ratification.⁴

B. Does the CRC take precedence over national law?

According to the German Basic Law, the CRC forms part of federal law and takes precedence over Land laws.⁵ Federal law, including the CRC, ranks below the Constitution. It can also be altered by federal laws enacted after the CRC was incorporated into national law (*lex posterior*). However, such laws should be interpreted in light of the CRC in order to confirm with international obligations.

C. Has the CRC been incorporated into national law?

The CRC has been incorporated into national law and forms part of federal law.⁶

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

German Basic Law stipulates that any person's rights that have been violated by public authorities may have recourse to the courts.⁷ This includes the CRC.⁸ However, Basic

¹ See

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² Art. 59(2) of the German Basic Law (§ 59 GG), available at:

<https://www.btg-bestellservice.de/pdf/80201000.pdf>.

³ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Germany*, at para. 9: "The Committee further notes that under article 59, paragraph 2 of the Basic Law, the Convention is placed at the level of an ordinary federal law." Available at:

<http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/14-kinderrechteausschuss-englisch,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

⁴ Deutscher Bundestag, *Bundestagsdrucksache 17/2509*, 9 July 2010, p. 2, Available at:

<http://dip21.bundestag.de/dip21/btd/17/025/1702509.pdf>. See also Lundy et al., *The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries*, at p. 16, available at: http://www.unicef.org.uk/Documents/Publications/UNICEFUK_2012CRCImplementationReport%20FINAL%20PDF%20version.pdf.

⁵ Art. 25 of the German Basic Law (§ 25 GG), Art. 31 of the German Basic Law (§ 31 GG). For more information on legislation in Germany, see

https://www.bundestag.de/htdocs_e/bundestag/function/legislation/competencies/245700.

⁶ Art. 25 of the German Basic Law (§ 25 GG).

⁷ Art. 19(4) of the German Basic Law (§ 19(4) GG).

Law does not offer any remedies for rights violations by non-state actors. The German Courts do refer to the CRC for interpretative guidance.⁹

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

There have been court decisions in Germany, in which the CRC has been cited and interpreted. The German Constitutional Court (Bundesverfassungsgericht) cited and interpreted the CRC in a recent case regarding the commitment of juveniles to mental hospitals.¹⁰ Other courts have also cited the CRC in cases concerning the appointment of an attorney as guardian for an unguided and underage refugee,¹¹ child support,¹² and the contribution of parents to the expenses of school transportation.¹³

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 the German Civil Procedure Code (Zivilprozessordnung) and the German Administrative Procedure Code (Verwaltungsgerichtsordnung), children and their representatives are entitled to bring cases in German civil or administrative courts to challenge violations of their rights.¹⁴

Additionally, children and their representatives are entitled to challenge violations of their constitutional rights and rights under the CRC in the federal constitutional court (Bundesverfassungsgericht) directly, if all other legal remedies have been exhausted or if no other legal remedies are available.¹⁵ Even though children's rights under the CRC cannot be enforced directly, the constitutional court will use them as a source of interpretation regarding rights under the German Basic Law.

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?

According to the German Civil Procedure Code, children of any age can be a party to court proceedings in their own name and on their own behalf, regardless if the matter is

⁸ Simma, B., Khan, D., Zoetler, M. and Geiger, R. "The Role of German Courts in the Enforcement of International Human Rights" in Conforti, B. and Francioni, F. (Eds.), *Enforcing International Human Rights in Domestic Courts*, Martinus Nijhoff Publishers: The Hague, 1997, p. 80.

⁹ Ralph Alexander Lorz, *Nach der Ruecknahme der deutschen Vorbehaltserklärung*, National Coalition, p. 39, Available at: http://www.netzwerk-kinderrechte.de/fileadmin/publikationen/Lorz_Expertise_gesamt.pdf

¹⁰ Court order (Beschluss) of the Constitutional Court (Bundesverfassungsgericht), 5 July 2013, Citation: 2 BvR 708/12.

¹¹ Court order (Beschluss) of the Supreme Court (Bundesgerichtshof), 29 May 2013, Citation: XII ZB 530/11.

¹² Court order (Beschluss) of the State Social Court North-Rhine Westfalia (Landessozialgericht NRW), 24 April 2013, Citation: L 20 AY 153/12 B ER.

¹³ Court order (Beschluss) of the Higher Administrative Court Berlin (Oberverwaltungsgericht Berlin), dated 30 April 2013, Citation: (OVG 3 N 80.12).

¹⁴ Sec. 50 of the German Civil Procedure Code (§ 50 ZPO).

¹⁵ Sec. 90 of the German Federal Constitutional Court Code (§ 90 BVerfGG).

specifically a children's rights case or not (Parteifähigkeit).¹⁶ The same goes for administrative court proceedings. In certain cases, even the unborn child (nasciturus) can bear rights.¹⁷ However, the power to take valid legal actions in court rests with the representative of the child (Prozessfähigkeit).¹⁸ Therefore, the claimant or defendant in the proceedings is, as a matter of law, the child themselves, but the representative of the child pleads the case.

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

In the case of infants and young children under the age of 7, the child's parent or legal guardian would typically bring the lawsuit on behalf of the child as representative in the same way as for other children, as described above.¹⁹ Possessing "parental responsibility" over a child grants the holder the right to pursue legal claims relating to personal and property matters of the child (Personen- und Vermögenssorge).

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

In civil cases, if a prospective claimant or defendant, whether a child or not, is not able to bear the costs of a lawsuit, and the underlying case generally appears as bearing some prospect of success, any costs deemed necessary will completely or partially (depending on the financial capability of the applicant) be subsidised by the German state. If the applicant prevails in court, the opposing party will have to bear any costs incurred by the parties and the court; otherwise the government will bear the costs on behalf of the applicant. This type of legal aid (Prozesskostenhilfe)²⁰ does not only include the court fees, but also any legal fees incurred in bringing a case and is available to anyone. The same laws apply to administrative proceedings.²¹

Whether a person qualifies for governmental financial assistance depends on the financial situation of that person and the likelihood of prevailing in court. Whether children qualify for legal aid depends on the financial situation of their parents, or, if a guardian or representative is appointed, on their financial situation or income.

In some criminal cases, where a defense attorney may be required by law, a public defender (Pflichtverteidiger)²² will be appointed by the court, regardless of the applicant's age, if the defendant cannot afford his or her own lawyer.

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)?

Generally, a child does not have the power to take legal actions in court by his or

¹⁶ Sec. 51 of the German Civil Procedure Code (§ 51 ZPO).

¹⁷ *Opinio Juris, § 1 BGB: Beginn der Rechtsfaehigkeit*, 16 August 2013, para. 3.4.2.1., Available at: <http://opiniojuris.de/kommentar/bgb/1#Nasciturus>.

¹⁸ Sec. 52 of the German Civil Procedure Code (§52 ZPO).

¹⁹ Sec. 50, Sec. 51, German Civil Procedure Code (§§ 50, 51 ZPO); Sec. 105 of the German Civil Code (§ 105 BGB)

²⁰ Sec. 144 and following of the German Civil Procedure Code (§§144 ff. ZPO).

²¹ Sec. 166, German Administrative Procedure Code (§ 166 VwGO).

²² Sec. 140 of the German Criminal Procedure Code (§140 StPO).

herself, but needs to be represented by his or her parents or an appointed representative or guardian. Principally, the parents are the legal representatives of the child and are not subject to any restrictions or limits in bringing a case. However, under certain circumstances - i.e. if the legal representative has a self-interest in the outcome of the case, or is the opposing party of the child in need of a representative²³ - the parents (or any other legal representatives) are legally barred from pleading the child's case. In this case, an official representative²⁴ (Ergänzungspfleger) will be appointed by the competent family court to exclusively represent the child in the matter.

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?

In case of a violation of their constitutional rights, children and their representatives may bring suits in civil or administrative courts to challenge such violations, according to the Civil Procedure Code and the Administrative Procedure Code, if the violation at the same time constitutes a breach of another provision of German law which provides for relief in case of such a violation and the court has the power to grant such relief. Civil actions typically ask for compensation in form of monetary damages, but may also seek an injunction ordering a party to carry out or cease a particular action. Generally, civil cases are brought in the District Court (Amtsgericht), however, claims for compensation exceeding a certain amount have to be brought before the County Court (Landgericht).²⁵

In civil and administrative suits, judgments can be appealed for judicial review to a higher court within set deadlines.

Additionally, in case of violation of personal rights under the German Basic Law, children may file a constitutional complaint (Verfassungsbeschwerde)²⁶ with the German Constitutional Court (Bundesverfassungsgericht) for judicial review of a certain legal act, decree or judgment or any other legal action conducted by an official body. However, a precondition for such a complaint is that the plaintiff has exhausted all other possibilities for relief. Therefore, a primary complaint to the Constitutional Court is rarely available and relief must first be sought before civil or administrative courts (Rechtswegerschöpfung).²⁷

The European Court on Human Rights decides cases concerning alleged violation of one of the rights contained in the European Convention on Human Rights.²⁸ Any individual, group of individuals or an NGO who considers to be a victim of a violation of one of these rights may submit a complaint to the Court,²⁹ but the complaint will be

²³ Sec. 181 of the German Civil Code (§181 BGB).

²⁴ Sec. 1666 of the German Civil Code (§1666 BGB).

²⁵ Sec. 23, Sec. 71, German Judicature Act (§§ 23, 71 GVG).

²⁶ Art. 93 of the German Basic Law (Grundgesetz).

²⁷ Sec. 90 of the German Federal Constitutional Court Code (§ 90 BVerfGG).

²⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Articles 19 and 32, available at: http://www.echr.coe.int/Documents/convention_ENg.pdf.

²⁹ European Convention on Human Rights, Article 34.

admissible only if all domestic remedies have been exhausted.³⁰ Anonymous complaints are not permitted.³¹ 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.³² After examining the case, the Court renders a judgement which is binding on the state³³ and also has powers to award monetary compensation to the victims of human rights abuses.³⁴ 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.

Finally, once all domestic remedies have been exhausted, complaints of 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,³⁵ which Germany 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.³⁶ The violations must concern a right granted by either the CRC, its Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict³⁷ and must have occurred after the entry into force of the Protocol on 14 April 2014.³⁸ Anonymous complaints are inadmissible and so are complaints not made in writing.³⁹ In addition, only complaints made in one of the working languages of the UN will be accepted.⁴⁰ After examining the complaint, the Committee can make recommendations to the state, which are not legally binding.⁴¹

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

Civil courts, when reviewing specific violations, can grant an injunction or award monetary damages. If a decision is appealed, civil courts may either directly revise the decision in question or direct the lower court that rendered the judgment to reconsider its decision in accordance with the court's judgment.⁴²

In administrative court proceedings the plaintiff usually challenges an official ordinance, repudiation, permit or authorisation. The administrative court may either grant an order revising the decision by the public authority in question, thereby

³⁰ European Convention on Human Rights, Article 35.

³¹ *Id.*

³² Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

³³ European Convention on Human Rights, Article 46.

³⁴ European Convention on Human Rights, Article 41.

³⁵ 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.

³⁶ Optional Protocol on a communications procedure, Article 5

³⁷ *Id.*

³⁸ Optional Protocol on a communications procedure, Article 7(g).

³⁹ *Id.*

⁴⁰ 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>

⁴¹ Optional Protocol on a communications procedure, Article 10.

⁴² Sec. 511 and following of the German Civil Procedure Code (§§ 511 ff. ZPO).

declaring the decision in question unlawful, direct the public authority to reconsider their decision in light of the court's ruling, make a specific legal declaration with regard to the claim or order the public authority to undertake a specific action.⁴³ Several appeals stages are available to the parties in the administrative court system as well.⁴⁴

In both civil and administrative proceedings, a party may file for an injunction or other measures to ensure the outcome of the lawsuit on the matter in dispute until the judgment is fulfilled by the losing party or to prevent the public authority from enforcing its decision before the judgment is handed down by the court.⁴⁵

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?

Normally, under German law, to challenge a law or a violation of rights, an individual victim who is directly and adversely affected by this law or action needs to be directly involved.

However, there is a judicial review proceeding before the German Constitutional Court, where a specific law may be reviewed without any individual right having been violated.⁴⁶ The involvement of an individual child victim is not required in these proceedings. However, such a claim may only be brought by the federal government, one of the federal state governments, one-third of the members of the German parliament (Bundestag) or by a German court.⁴⁷ All other proceedings before domestic courts require the involvement of an individual victim who claims that his or her rights have been violated by a certain law or act.

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

The German legal system does not provide for class or group actions. A joining of actions is possible, provided that the plaintiffs form a legal community with respect to the subject in dispute or that they are entitled or bound on the same legal and/or factual basis.⁴⁸

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?

In order to have the right to bring legal proceedings, individuals or organisations must usually be directly affected by the violation in question. In civil as well as administrative proceedings, third parties may intervene in an existing case where they have their own legitimate interest in the prevalence of the main party or the outcome of the suit.⁴⁹

⁴³ Sec. 40 and following, Sec. 113 of the German Administrative Procedure Code (§§ 40 ff., 113 VwGO).

⁴⁴ Sec. 124 and following of the German Administrative Procedure Code (§§ 124 ff. VwGO).

⁴⁵ Sec. 80, Sec. 123 of the German Administrative Procedure Code (§§ 80, 123 VwGO); Sec. 916 and following of the German Civil Procedure Code (§§ 916 ff. ZPO).

⁴⁶ Sec. 93(1)(2) of the German Basic Law (Art. 93 I 2 GG).

⁴⁷ Sec. 76 of the German Federal Constitutional Court Code (§ 76 BVerfGG).

⁴⁸ Sec. 59 and following of the German Civil Procedure Code (§§ 59 ff. ZPO); Sec. 64 of the German Administrative Procedure Code (§ 64 VwGO).

⁴⁹ Sec. 64 and following of the German Civil Procedure Code (§§ 64 ff. ZPO); Sec. 65 of the German

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?

If a case concerns a dispute between private parties it must be filed with the competent civil court. Apart from few exceptions regulated by the German Judicature Act (Gerichtsverfassungsgesetz), civil cases must be filed with the district courts (Amtsgerichte)⁵⁰ if the disputed amount is less than 5,000 Euros. If the amount in question exceeds 5,000 Euros, the case has to be filed in the regional courts (Landgerichte) in the first instance.⁵¹ Cases involving family disputes must always be brought before the competent family court (Familiengericht), which is always a subdivision of the local district court.⁵²

Cases concerning disputes between state actors and individuals in which the state exercises authority over the individual must always be brought in administrative courts (Verwaltungsgericht).⁵³

In criminal cases, special criminal courts for juveniles are competent if children or adolescents are the defendant or victim of the crime in question. Depending on the offences and the severity of the expected punishment, district courts (Amtsgerichte)⁵⁴ or regional courts (Landgerichte)⁵⁵ are competent as juvenile courts. Some offences, such as treason or high treason, which are unlikely to involve juvenile criminals, are assigned to the higher regional courts (Oberlandesgerichte)⁵⁶ in the first instance.

In all three jurisdictions - civil, administrative and criminal - any judgment made by a court can be challenged by all parties by appealing to the next higher court. Few exceptions apply.

The Civil Procedure Code and the Administrative Procedure Code provide extensive guidance on how to initiate proceedings.⁵⁷ Criminal complaints before the criminal courts must usually be brought by a prosecutor. However, in some criminal cases, the victim may make a claim directly in front of the court if the alleged offence only constitutes a minor crime (Privatklage).⁵⁸ In addition, the victim may participate as a joint plaintiff (Nebenkläger),⁵⁹ together with the public prosecutor, in criminal proceedings in all other cases. Also, the victim of a crime may bring a claim for

Administrative Procedure Code (§ 65 VwGO).

⁵⁰ Sec. 23 of the German Judicature Act (§23 GVG).

⁵¹ Sec. 71 of the German Judicature Act (§71 GVG).

⁵² See the German Family Court Procedure Code (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit).

⁵³ Sec. 45 of the German Administrative Procedure Code (§34 VwGO).

⁵⁴ Sec. 24, 25, 26, 28 of the German Judicature Act (§§24, 25, 26, 28 GVG).

⁵⁵ Sec. 74 and following of the German Judicature Act (§§74ff. GVG).

⁵⁶ Sec. 120 of the German Judicature Act (§120 GVG).

⁵⁷ Sec. 253 of the German Civil Procedure Code (§ 253 ZPO); Sec. 82 of the German Administrative Procedure Code (§ 82 VwGO).

⁵⁸ Sec. 374 of the German Criminal Procedure Code (§374 StPO).

⁵⁹ Sec. 375 of the German Criminal Procedure Code (§375 StPO).

monetary damages based on the alleged offense as part of the related criminal proceedings (Adhäsionsverfahren),⁶⁰ without having to sue the perpetrator in civil court following the conclusion of the criminal proceedings.

- 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 described above, legal aid (Prozesskostenhilfe) is granted in form of financial assistance by the government if the applicant cannot afford the costs of a suit and the case has some prospect of success.

- 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?

Due to the provided statutory legal aid, legal assistance on a pro bono basis is not common in Germany. However, many of the bigger law firms provide free legal assistance on a pro bono basis. In addition, there are a number of charitable organisations which offer free legal assistance like Caritas,⁶¹ Diakonie,⁶² Pro Familia,⁶³ Kinderhilfswerk⁶⁴ or Kinderschutzbund.⁶⁵

- 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?

The statute of limitations (Verjährungsfrist), meaning the time frame after the violation occurred in which the claimant has to file his or her suit, depends on the type of claim brought or the relief sought.⁶⁶ As a matter of principle, any claim has to be brought timely under the applicable statute of limitations. The statute of limitations starts to run on the date of the violation. If the plaintiff was unaware, without being grossly negligent, of the facts constituting the violation, the statute of limitations starts to run from the time the plaintiff obtained or could have obtained knowledge of those facts.⁶⁷ In the case of children, the knowledge of the legal representative determines the commencement of the limitation period.

In civil proceedings, the limitation period varies from three to thirty years, with the standard time period being three years.⁶⁸ In administrative proceedings, the statute of

⁶⁰ Sec. 403 of the German Criminal Procedure Code (§403 StPO).

⁶¹ <http://www.caritas.de/>.

⁶² <http://www.diakonie.de/>.

⁶³ <http://www.profamilia.de/>.

⁶⁴ <http://www.dkhw.de/cms/>.

⁶⁵ <http://www.jugendrechtsberatung.de/>.

⁶⁶ Sec. 195 - 197 of the German Civil Code (§§195 - 197 BGB).

⁶⁷ Sec. 195 - 197 of the German Civil Code (§§195 - 197 BGB).

⁶⁸ Sec. 195 - 197 of the German Civil Code (§§195 - 197 BGB).

limitations is generally one month from the date of the decision of the public body which is being challenged.⁶⁹

The time period in which a criminal case has to be brought depends on the alleged crime and again ranges from three to thirty years.⁷⁰ However, some offenses - such as murder - never become time-barred.⁷¹ Particularly cases involving crimes like sexual abuse, rape or mistreatment of a child have their own statute of limitations. Here, the victim has until he or she turns 21 to make a complaint.⁷²

In all proceedings, a judgment must generally be appealed within one month after becoming legally binding.

A constitutional complaint before the Federal Constitutional Court must be brought either within one month after the final judgment that constitutes the violation.⁷³ Or, if the complaint is directed against a specific statute, the complaint has to be brought within one year after the coming into force of that statute.⁷⁴

- 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?

Under the German Civil Procedure Code, each party has the burden of proof for all facts that work in his or her favour (Beibringungsgrundsatz). The plaintiff has the burden of proof for all elements of his or her claim by a preponderance of the evidence, while the defendant carries the burden of proving any defense in their favour. In criminal and administrative proceedings, investigations are carried out by the public prosecutor or the court (Amtsermittlungsgrundsatz). In criminal proceedings, the public prosecutor bears the burden of proof for every element of the crime asserted beyond a reasonable doubt. The different types of evidence which are admissible in all proceedings are set out in the particular procedural codes and include expert testimony, certificates and certain documents, inspection of physical evidence, witness statements and testimony and party statements. Children may give evidence or testify before any court so long as they are able to understand the seriousness of legal proceedings and the importance of telling the truth. Children under the age of 16 are not permitted to testify under oath in civil proceedings;⁷⁵ in criminal proceedings, the age limit is 18 years.⁷⁶ However, in both cases the child may give an unsworn testimony.

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

Due to the fact that Germany is a federal republic, the length of court proceedings varies from state to state and is difficult to predict. It depends greatly on the individual federal state and the particular case. As of 2008, civil cases in district courts took on average

⁶⁹ Sec. 45 of the German Administrative Procedure Code (§34 VwGO).

⁷⁰ Sec. 78 of the German Criminal Code (§78 StGB).

⁷¹ Sec. 211 of the German Criminal Code (§ 211 StGB).

⁷² Sec. 78 b of the German Criminal Code (§ 78 b StGB).

⁷³ Art. 93, paragraph 1 of the German Constitution (§ 93 Abs. 1 S. 1 BVerfGG).

⁷⁴ Art. 93, paragraph 3 of the German Constitution (§ 93 Abs. 1 S. 1 BVerfGG).

⁷⁵ Sec. 393 of the German Civil Procedure Code (§393 ZPO).

⁷⁶ Sec. 60 of the German Criminal Procedure Code (§60 StPO).

4.5 months, civil cases in regional court took an average of 8.1 months, family court proceedings took an average of eight months, and criminal court proceedings took four months in district courts, 6.3 months in regional courts and 13.6 months higher regional courts. Administrative proceedings are usually completed within one year, but this can again vary from federal state to federal state.⁷⁷

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

Decisions by district courts (Amtsgerichte) can be appealed to the regional courts (Landgerichte)⁷⁸ and decisions by regional courts can be appealed to the higher regional courts (Oberlandesgerichte). Regardless of whether the court hearing the appeal is a regional court or a higher regional court, a second appeal of such decision is possible to the Federal Court of Justice (Bundesgerichtshof).⁷⁹ Administrative disputes are filed in the competent administrative court (Verwaltungsgericht). Decision by administrative courts can be appealed to higher administrative courts (Oberverwaltungsgericht) and then to the federal administrative court (Bundesverwaltungsgericht).⁸⁰

If a claimant asserts a violation of their civil rights guaranteed by the German Basic Law by way of a statute, a court decision or other official action, they may appeal to the federal constitutional court. However, a claimant must first exhaust all other possibilities for relief. A primary appeal to the federal constitution court is admissible only in a very limited number of cases.⁸¹

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?

Even though the German legal system, as a civil law system, is based mostly on codified laws, precedents still play an important role. Although courts are neither bound by their own nor by any higher courts' decisions, judges are very likely to follow precedents. Hence, decisions have a direct short-term impact and can also lead to long-term legislative initiatives in parliament which can then codify case law into statutory law.

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

The enforcement of a positive decision, e.g. damages, is governed by the civil, administrative and criminal procedure laws which all follow a set of strict rules to enforce any court decision.⁸²

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.

⁷⁷ German Lawyers Association (Deutscher Anwaltsverein), <http://www.anwaltverein.de/downloads/Anwaltstag/DAT-2010/Anlage-PM-2.pdf>

⁷⁸ Sec. 74 of the German Judicature Act (§74 GVG).

⁷⁹ Sec. 133 of the German Judicature Act (§133 GVG).

⁸⁰ Sec. 45 of the German Administrative Procedure Code (§34 VwGO).

⁸¹ Sec. 90 of the German Federal Constitutional Court Code (§ 90 BVerfGG).

⁸² See, for example, Sec. 704 and following of the German Civil Procedure Code (§§ 704 ff. ZPO).

There is a public debate whether and how children's rights should be explicitly included in the German Basic Law. However, such implementation would only be of a declaratory nature as the protection of fundamental rights granted by the Basic Law applies to children already and implicitly covers children's rights. Such codification of children's rights would have meaning only if the currently prevailing children rights are extended.

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