

ACCESS TO JUSTICE FOR CHILDREN: LATVIA

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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 instrument of accession of the Republic of Latvia to the Convention was deposited with the Secretary-General on 14 April, 1992. The Treaty entered into force on 14 May 1992.¹

Under Latvian law, international instruments ratified by the Parliament are binding and take precedence over conflicting national legislation and acts.²

B. Does the CRC take precedence over national law?

Yes, the CRC takes precedence over national law. As a general matter, Section 1 of the Declaration on the Restoration of Independence recognises “the supremacy of the *fundamental principles* of international law over national law.” [emphasis added].³ Article 13 of the Law on International Treaties goes further and states that an international agreement ratified by the Latvian parliament takes precedence over conflicting Latvian legislation.⁴ International agreements have priority over both national legislation and Cabinet of Ministers’ Acts.⁵ International agreements, however, must be in compliance with the Constitution under Section 16(2) of the Constitutional Court Act, which in theory gives to the Constitution precedence over international treaties.⁶ In practice though, the Constitutional Court tends to show growing consideration towards the compliance of the country’s legislation with human rights treaties.⁷

¹ See

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.22&Lang=en.

² See <http://www.crin.org/resources/infodetail.asp?ID=29262>. See also *Second periodic report of Latvia to the UN Human Rights Committee*, CCPR/C/LVA/2002/2, 13 November 2002, General part. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLVA%2f2002%2f2&Lang=en.

³ See <http://www.humanrights.lv/doc/latlik/neatkdek.htm>.

⁴ See <http://www.crin.org/resources/infodetail.asp?ID=29262>. The full text of the Law on International Treaties is available at: <http://likumi.lv/doc.php?id=57840>.

⁵ See http://ec.europa.eu/civiljustice/legal_order/legal_order_lat_en.htm.

⁶ Law on the Constitutional Court, available at <http://likumi.lv/doc.php?id=63354>.

⁷ E.U. network of independent experts on fundamental rights, *Report on the situation of fundamental rights in Latvia in 2003*, CFR-CDF.repLV.2003, January 2004, pp. 7-8. Available at: http://cridho.uclouvain.be/documents/Download.Rep/Reports2003/R.Nationaux2003/CFR-CDF.repLatvia_2003.pdf.

C. Has the CRC been incorporated into national law?

The Children's Rights Protection Law was passed in 1998 and incorporates many of the rights set out in the CRC. Other provisions protecting children's rights also appear in the Constitution and other laws and regulations, inter alia in the laws on Education, in the Immigration law, the Youth Law, the Criminal Law, the Law on pornography restrictions, the Law on social services and social assistance etc.⁸

In its latest recommendations to Latvia, the Committee on the Rights of the Child noted however that there "is a gap between law and practice, particularly in the areas of education, health care, juvenile justice and protection from violence."⁹

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

Yes, the CRC can be directly enforced in courts because, as stated above international norms supersede national law under Section 1 of the Declaration on the Restoration of Independence, and international treaties prevail over conflicting national legislation under Article 13 of the January 1994 Law on International Treaties.¹⁰ Moreover, Section 5 of the Law on Civil Procedure states that courts will adjudicate civil matters in accordance with international agreements binding upon Latvia and the European Union, and in cases specified by law or agreement, shall apply international legal norms.¹¹

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

Yes. Civil and administrative courts, as well as the Supreme Court have quoted the CRC, for example in matters relating to social benefits, child custody and alternative care.¹²

The Constitutional Court regularly quotes the CRC in deciding on the compliance of domestic legislation with the Constitution and International law instruments.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?

Yes. Children and/or parents can bring cases in domestic courts to challenge violations of children's rights under Latvia's Children's Rights Protection Law, the CRC (which is directly enforceable in courts), or any other legislation that protects children's rights and the violations of which are being challenged.

⁸ See <http://www.crin.org/resources/infodetail.asp?ID=29262>.

⁹ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Latvia*, CRC/C/LV/CO/2, 28 June 2006, para. 8. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLVA%2fCO%2f2&Lang=en.

¹⁰ See <http://www.crin.org/resources/infodetail.asp?ID=29262>.

¹¹ Law on Civil Procedure Art. 5. Available at: <http://likumi.lv/doc.php?id=50500>.

¹² Case-law is available on the courts' websites.

¹³ See, for instance, Constitutional Court of Latvia, *Judgment in Case No. 2008-43-0106*, 3 June 2009.

Available at: http://www.satv.tiesa.gov.lv/upload/judg_2008-43-0106.htm.

Children's rights are adjudicated in Orphans' Court or in district courts, depending on the nature of the case.

In addition, a public prosecutor has the right to bring an action or submit an application to a civil court if there has been a violation of protected rights and interests of minors as well as other persons lacking the capacity to act.¹⁴

Children and their representatives may file an application to the Ombudsman Office if they believe a child's human rights have been violated.¹⁵

The Ombudsman of Latvia is an official elected by Parliament; his office is completely autonomous from any other State agency.¹⁶ The main functions of the Ombudsman is to protect the rights and legal interests of individuals; promote equal treatment; prevent discrimination; and promote good governance within State institutions and improve their awareness of human rights.¹⁷ If the Ombudsman decides to initiate an investigation based on an application, he will hear explanations from all involved parties, request expert conclusions, and carry out any other activity required for his investigation. The Ombudsman can hear the opinion of a child without the presence of his or her parents, guardians, employees of educational or child care and instructional institutions, if the child so wishes.¹⁸ An inspection case is terminated either by settlement of the parties or the Ombudsman's statement. Several points should be noted, however: 1) the Ombudsman's statement is not legally binding; it is considered advisory; 2) filing a complaint with the Ombudsman does not stop any other concurrent legal action by a court, government agency, or other individual legal act; 3) the Ombudsman will not investigate disputes between private individuals unless the dispute relates to human rights.¹⁹

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?

Under the Law on Civil Procedure (last amended 29 November 2012),²⁰ court matters shall be conducted for children from 15 to 18 years of age by their legal representatives, but the court is required to invite these minors to participate in the proceedings.²¹ For children not yet 15 years of age, or for children who have been recognised as not having the capacity to act, court matters are conducted by their legal representatives.²² Importantly, "in cases prescribed by law," minors are "entitled to independently exercise their civil-procedural rights."²³ In these cases,

¹⁴ Law on Civil Procedure Art. 90(2). Available at: <http://likumi.lv/doc.php?id=50500>.

¹⁵ See <http://www.tiesibsargs.lv/en/iesniegt-iesniegumu>.

¹⁶ See Bylaws of the Ombudsman's Office, available at

<http://www.tiesibsargs.lv/en/about-us/tiesibsarga-birojs/tiesibsarga-biroja-nolikums>.

¹⁷ 'The Ombudsman Strategies for the Years 2011-2013', 27 April 2011, p. 5. Available at: http://www.tiesibsargs.lv/img/content/the_ombudsman_strategies_for_the_years_2011-2013.pdf.

¹⁸ Law on the Ombudsman, art. 13(4). Available at: <http://likumi.lv/doc.php?id=133535>.

¹⁹ Law on the Ombudsman, art. 12(5).

²⁰ The full text of the Law on Civil Procedure is available at: <http://likumi.lv/doc.php?id=50500>.

²¹ Law on Civil Procedure Art. 72(2).

²² Law on Civil Procedure Art. 72(3).

²³ Law on Civil Procedure Art. 72(4).

a court has the discretion to call a legal representative to assist the child in conducting the matter.²⁴

Under the Children's Rights Protection Law and the Civil Law, a child can apply to the Orphans' Court if the parents, "in his/her own mind, have established baseless restrictions, or if other misunderstandings occur in their relationship."²⁵ Children over 16 may also exercise their rights independently in some property matters.²⁶

The Law on Administrative Procedure closely mirrors the provisions of the Law on Civil Procedure.²⁷ Procedural rights for children not yet 15 years of age, or those lacking capacity to act, are exercised by their legal representative.²⁸ Children who are 15-18 years have a legal representative but are invited to participate in the proceedings by the court.²⁹ Minors can independently exercise their procedural rights if provided by law.³⁰ In addition, in administrative courts, if the law allows a minor at least 15 years of age to apply to an institution, that minor also has the right to independently appeal an administrative act or action of an institution to a court.³¹ A court or an institution may invite a legal representative to assist the minor at its discretion.³²

In criminal matters, the duty to initiate proceedings lies with public prosecutors. Victims have the right to participate in court proceedings. A child victim is represented by a parent, a guardian, a carer or a representative of a governmental or non-governmental organisation working in child protection.³³ In cases where the victim is a child, "all the rights of a victim belong completely to his or her representative, and the victim may not independently implement such rights, except for the rights of a minor to provide testimony and express his or her view."³⁴ For children over 15, the representative shall represent the interests of the child victims together with them.³⁵ In deciding who to allow as a child victim's representative, the person presiding over the proceedings should take into account the interest and wishes of the child, in order to "truly protect the interests of the victim".³⁶

Furthermore, persons and institutions responsible for the protection of the rights of the child have a duty to assist children whenever necessary, and children have the right to seize child protection institutions if a parent, guardian, another legal representative or educator, treat them cruelly or otherwise violates their rights.³⁷

²⁴ Law on Civil Procedure Art. 72(4).

²⁵ Children's Rights Protection Law Art. 25(2). Full text available at: <http://likumi.lv/doc.php?id=49096>; Civil Law Art. 185. Full text available at: <http://likumi.lv/doc.php?id=225418>.

²⁶ Civil Law Art. 195, 260.

²⁷ The full text of Law on Administrative Procedure is available at: <http://likumi.lv/doc.php?id=55567>.

²⁸ Law on Administrative Procedure Art. 21(2).

²⁹ Law on Administrative Procedure Art. 21(3).

³⁰ Law on Administrative Procedure Art. 21(4).

³¹ Law on Administrative Procedure Art. 21(4).

³² Law on Administrative Procedure Art. 21(4).

³³ Law on Criminal Procedure, Art. 104(2). Available at: <http://likumi.lv/doc.php?id=107820>.

³⁴ Law on Criminal Procedure, Art. 104(4)

³⁵ Law on Criminal Procedure, Art. 107(2)

³⁶ Law on Criminal Procedure, Art. 104(9)

³⁷ Children's Rights Protection Law Art. 70.

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

The Children's Rights Protection Law states that "the parents are the child's legal representatives" and that "their obligation is to safe-guard the child's rights and interests protected by law."³⁸ Therefore, in the case of infants and young children, a case would typically be brought by the child's parents or legal guardian.

As detailed below (section II.D), cases may also be brought by the Ombudsman in limited situations on behalf of children of any age, as well as by a State prosecutor.

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

Children are eligible for State ensured legal assistance, under the conditions described in section IV.B below.

There are several organisations that provide free legal assistance to individuals whose human rights have been violated. The Latvian Centre for Human Rights provides legal assistance to anyone who submits an oral or written complaint.³⁹ This assistance includes providing information on rights guaranteed by law, recommending which state or municipal organisation a person could apply to for assistance in the case; providing a legal opinion; helping to achieve a settlement between the parties; and in special cases, assisting in composing legal documents or representing an individual in civil or administrative court.⁴⁰

Children and their representatives may submit an application to the Ombudsman Office, if they believe a child's human rights have been violated.⁴¹ Investigation of complaints by the Ombudsman Office (as described in section II.A) is free of charge.⁴² However, the Ombudsman will not investigate disputes between private individuals unless a person has been discriminated against or has received unequal treatment. In those cases, the Ombudsman may prepare an application on behalf of the person and represent the person in court.⁴³ The Ombudsman does not appear to provide personal representation in court in any other circumstances.

Latvian Save the Children has lawyers in their central offices in Riga that offer consultations to children and their representatives.⁴⁴

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)?

³⁸ Children's Rights Protection Law Art. 24(3).

³⁹ See <http://cilvektiesibas.org.lv/en/legal-assistance>.

⁴⁰ Ibid.

⁴¹ <http://www.tiesibsargs.lv/en/iesniegt-iesniegumu>.

⁴² Ibid.

⁴³ See <http://www.tiesibsargs.lv/en/iesniegt-iesniegumu>.

⁴⁴ See Children's Report to the United Nations on Implementation of the UN Convention on the Rights of the Child in Latvia (2006) available at www.crin.org/docs/ber_zin_EN_ist.pdf

Research has not located any additional conditions or limitations.

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?

A legal challenge against another private party may be brought in a district court following the Law on Civil Procedure. A district court judgment may be appealed in regional court, and a regional court judgment may be appealed to the Senate of the Supreme Court.

A legal challenge against a State institution or official must be brought in the form of an application to the State institution or a higher official according to the Law on Administrative Procedure. An individual has the right to appeal an administrative decision to a district administrative court.⁴⁵

Orphans' Courts have authority over some cases relating to children, including matters of guardianship, custody, adoption, as well as over disagreements between children and their parents.⁴⁶ The route of appeals follows the one detailed in the Law on Administrative Procedure.⁴⁷

A legal challenge may also be brought in Latvia's Constitutional Court, which has existed since 1996.⁴⁸ However, a complaint to the Constitutional Court is the ultimate remedy for protection of human rights. The legal avenues described above must be exhausted first, unless the Constitutional Court considers that the matter is of public interest, or that other avenues cannot prevent harm to the complainant.⁴⁹ If an individual has taken his or her case through the district, regional, and Supreme courts, is unsatisfied with the outcome, and considers the root of the problem to lie in the unconstitutionality of an act, he or she may petition the Constitutional Court. An individual may not appeal a district, regional, or Supreme Court judgment to the Constitutional Court.⁵⁰ Lower courts, in adjudicating a civil, criminal or administrative case, can also seize the Constitutional Court, if they consider that the law relevant to the matter is in contradiction with a law of a higher legal force, the Constitution or international treaties ratified by Latvia.⁵¹

In addition, in cases provided for by law, State or local government institutions or persons may submit an application to the district, regional, and Supreme courts to protect the rights and interests of another person.⁵² A public prosecutor also has

⁴⁵ See <http://www.satv.tiesa.gov.lv/?lang=2&mid=17>.

⁴⁶ Full text of the Orphan's Court Law is available at: <http://likumi.lv/doc.php?id=139369>.

⁴⁷ Law on Orphan's Court Art. 49.

⁴⁸ The full text of the Constitutional Court Law is available at: <http://likumi.lv/doc.php?id=63354>.

⁴⁹ Constitutional Court Law Art.19².

⁵⁰ See <http://www.satv.tiesa.gov.lv/?lang=2&mid=17>.

⁵¹ Constitutional Court Law Art.19¹.

⁵² Law on Civil Procedure Art. 88(1).

the right to bring an action if there has been a violation of protected rights and interests of minors as well as other persons lacking the capacity to act.⁵³

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights. Any 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, but the complaint will be admissible only if all domestic remedies have been exhausted. Anonymous complaints are not permitted. 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. After examining the case, the Court renders a judgment which is binding on the State and also has powers to award monetary compensation to the victims of human rights abuses. 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.⁵⁴

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

Because international treaties such as the CRC are self-executing and take precedence over national law, violations of the CRC may be reviewed by both district courts and administrative law courts. Furthermore, the Children's Rights Protection Law is domestic legislation that incorporates most of the provisions of the CRC and, like any other domestic legislation, is enforceable in court. The Constitutional Court has the power to review cases regarding compliance of laws with the Constitution, compliance with the Constitution of international agreements ratified by Latvia, compliance of national legal norms with international agreements ratified by Latvia that are not incompatible with the Constitution, and compliance with the Constitution of other regulatory enactments and executive acts.⁵⁵

Under the Law on Civil Procedure, the remedies available in domestic courts are monetary damages, recovery of property (in kind or in value), and imposition of a duty to perform a certain action.⁵⁶ In an administrative action, the court may order the compulsory execution of an administrative act designed to cause or prohibit certain actions.⁵⁷ If the administrative act is not carried out, the court may impose a pecuniary penalty on the institution or the responsible official, and this penalty may be imposed repeatedly until the administrative act is carried out.⁵⁸

Victims of certain criminal offences are eligible to State compensation.⁵⁹

⁵³ Law on Civil Procedure Art. 90(2).

⁵⁴ See for instance European Court of Human Rights, *Liġere v Latvia*, application n°17/02, for an example of a case brought in a child's name.

⁵⁵ Constitutional Court Law Art. 16.

⁵⁶ Law on Civil Procedure Arts. 195-197.

⁵⁷ Law on Administrative Procedure Art. 368.

⁵⁸ Law on Administrative Procedure Art. 382(2).

⁵⁹ The full text of the law on State Compensation for Victim is available at: <http://likumi.lv/doc.php?id=136683>.

Should the Constitutional Court decide that the law or treaty is incompatible with the Constitution, that law becomes invalid either as of the day of publication of the decision, or on a date specified by the court.⁶⁰

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?

Research has not confirmed whether a specific victim must be named.

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

The Law on Civil Procedure allows for an action to be brought by several plaintiffs against one defendant or several defendants,⁶¹ and for the claims of several plaintiffs against one defendant to be joined together “provided such joinder favors quicker and a more correct adjudication of the matters, and the parties do not object.”⁶² However, class actions and collective claims are not common in Latvia, and thus many legislative norms have not yet been applied in practice.⁶³

In an administrative proceeding, a submission to an institution may be submitted by several submitters, each of whom participates in proceedings independently, or assigns the conducting of the proceedings to one submitter from amongst them or to one joint representative.⁶⁴ Each co-submitter may exercise his or her procedural rights independently of other co-submitters.⁶⁵

Research has not confirmed whether a specific victim must be named.

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

There is no separate regulation of public interest litigation. While class actions are uncommon in Latvia, a public organization or foundation may bring a case on behalf of its members.⁶⁶ The Law on Civil Procedure provides that any person in whose interest a matter has been initiated shall still participate in the matter as a plaintiff.⁶⁷

As for intervention, the Law on Civil Procedure allows for both natural and legal persons to participate as third parties in a case if their rights or duties in relation to

⁶⁰ Constitutional Court law, Arts. 31(11), 32(3).

⁶¹ Law on Civil Procedure Art. 75.

⁶² Law on Civil Procedure Art. 134.

⁶³ Klavins & Slaidins law firm, ‘European Commission Report on Latvia’s Law on Civil Procedure’, p. 2. Available at: http://ec.europa.eu/competition/antitrust/actionsdamages/national_reports/latvia_en.pdf.

⁶⁴ Law on Administrative Procedure Art. 26.

⁶⁵ Law on Administrative Procedure Art. 26(4).

⁶⁶ Klavins & Slaidins law firm, ‘European Commission Report on Latvia’s Law on Civil Procedure’, p. 2.

⁶⁷ Law on Civil Procedure Art. 76. (A matter may be initiated on behalf of a person by a public prosecutor, State or local government institution or person, or “a person to whom has been conferred the right to defend rights and interests protected by law shall participate in the matter as a plaintiff”).

one of the parties may be affected by the judgment.⁶⁸ Third parties may join the matter before its adjudication has been completed in the court of first instance, and may also be invited to participate by a petition from a public prosecutor or the parties.⁶⁹

In administrative proceeding and in cases provided for by law, public legal entities or public law legal persons may submit an application to an institution or to a court in order to defend the rights and legal interests of private persons.⁷⁰ However, it is questionable whether damages would be awarded in a public interest case because under Latvian principles of compensation, damages must be substantially proven.⁷¹

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?

Legal matters that do not come under the authority of orphan's courts (see above in section III.A) are brought to regular Civil, Criminal or Administrative Courts depending on the nature of the case. The Child protection law provides that "the Ministry of Justice shall organise training of judges with respect to issues regarding the rights of the child."⁷²

A case can be filed in district court, which is the court of first instance for most civil and criminal matters.⁷³ The regional courts handle appeals from district courts, and are the courts of first instance for certain legislatively defined criminal and civil matters, including sexual offences committed against children.⁷⁴

⁶⁸ Law on Civil Procedure Art. 78(1).

⁶⁹ Law on Civil Procedure Art. 78(3).

⁷⁰ Law on Administrative Procedure Art. 29(1).

⁷¹ Klavins & Slaidins law firm, 'European Commission Report on Latvia's Law on Civil Procedure', pp. 3, 8-9. ("According to the Latvian legal theory, the following facts must be proved in order to satisfy a damages claim: 1) illegal act of any person (act or failure to act); 2) fault of this person; 3) existence of damages and their specific amount; 4) causative relation between the illegal act and damages. Article 1776 of the Civil Law provides for another precondition which theoretically could be considered as the fifth precondition for a right to claim damages, namely, that a victim may not claim damages if he or she could have, through the exercise of due diligence, prevented the loss. The exception to this rule can be made only in the case of a bad faith infringement on rights.") (citations omitted).

⁷² Children's Rights Protection Law Art. 64¹(1)

⁷³ See https://e-justice.europa.eu/content_ordinary_courts-18-lv-en.do. Full text of the law on judicial power available at: <http://likumi.lv/doc.php?id=62847>.

⁷⁴ See https://e-justice.europa.eu/content_ordinary_courts-18-lv-en.do. Law on Criminal Procedure Art. 442(2): Regional courts have first-instance jurisdiction in criminal cases involving crimes against humanity and peace; war crimes and genocide; crimes against the state; certain cases involving grave and extremely grave crimes under criminal law; all cases where special procedural measures are taken to protect witnesses; all cases involving criminal offences against morality and sexual offences if committed against children or juveniles. Law on Civil Procedure Art. 25(2): Regional courts have first-instance jurisdiction in disputes involving immovable property; certain contract law cases; cases concerning protection of patent rights and trademarks; and cases concerning insolvency and liquidation of credit institutions.

An action is brought in civil court by submitting a written statement of claim.⁷⁵ Requirements for what should be included in the statement of claim are contained in Section 128(2) of the Law on Civil Procedure. Upon receiving a statement of claim, a judge is required to make a decision within three days to accept the claim and initiate the matter, refuse the claim, or leave the claim “not proceeded with.”⁷⁶ The latter may occur if the plaintiff has not included all the necessary information in the statement of claim, or failed to append additionally required documents.⁷⁷ In that case, the judge will set a time-limit for the plaintiff to correct the deficiencies and resubmit the statement of claim.⁷⁸

In administrative courts, submissions may be submitted orally or in writing, and shall specify the name, residence, claim, and signature of the submitter.⁷⁹

A child who has committed a violation after reaching 16 years of age is subject to administrative liability, but a minor who has committed a criminal offence after reaching 14 years of age is subject to criminal liability.⁸⁰

A proceeding or part thereof may be closed upon a reasoned request by a participant in the matter or at the discretion of the court if it is necessary to protect the private life of persons involved, if it is in the interest of minors, or if it is necessary to examine a person not yet 15 years of age.⁸¹

Administrative proceedings may also take place in a closed session if the court decides that facts regarding participants’ private lives should not be disclosed.⁸²

B. Legal aid / Court costs. Under what conditions would free or subsidised 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?

Latvia’s legal aid administration guarantees legal aid to qualifying individuals under the State Ensured Legal Aid Law.⁸³ Legal aid is available in civil cases,⁸⁴ administrative cases dealing with asylum or immigration issues,⁸⁵ and criminal cases,⁸⁶ although legal aid procedures in criminal cases are governed by the Law

⁷⁵ Law on Civil Procedure Art. 128(1). See also Art. 130 (“Submission of a Statement of Claim to the Court”).

⁷⁶ Law on Civil Procedure Art. 131. See also Art. 132 (“Reasons for Non-acceptance of a Statement of Claim”).

⁷⁷ Law on Civil Procedure Art. 133.

⁷⁸ Law on Civil Procedure Art. 133.

⁷⁹ Law on Administrative Procedure Art. 56.

⁸⁰ Children’s Rights Protection Law Art. 57.

⁸¹ Law on Civil Procedure Art. 11(3).

⁸² Law on Administrative Procedure Art. 108.

⁸³ State Ensured Legal Aid Law, Art. 7, full text available at: <http://likumi.lv/doc.php?id=104831>.

⁸⁴ State Ensured Legal Aid Law Art. 10.

⁸⁵ State Ensured Legal Aid Law Art. 15.

⁸⁶ State Ensured Legal Aid Law Art. 17.

on Criminal Procedure and not the State Ensured Legal Aid Law.⁸⁷ In civil and administrative matters, recipients of legal aid are ensured legal consultations, representation in court, and having procedural documents drafted for them.⁸⁸ The law also provides for legal aid in extrajudicial matters when the matter relates to children's rights.⁸⁹

Children and their representatives have the right to request legal aid if they 1) have obtained the status of a low-income or needy person, 2) find themselves in a situation which prevents them from ensuring the protection of their rights, e.g. due to some circumstance beyond their control, or 3) are on full support of the State or local government.⁹⁰ For matters affecting the rights of children, the legal aid administration will make a decision regarding granting or refusing legal aid 14 days from the date of submission of a request for legal aid.⁹¹

In criminal matters, a judge can decide during the pretrial stage to pay the defence counsel's fees from State funds. This can occur when a defendant's financial situation prevents him or her from securing the assistance of a counsel. Similarly, defendants for whom the assistance of a defence counsel is mandatory (which is the case for minors⁹²) and did not wish to be assisted by a counsel can be exempt from paying counsel's fees.⁹³

The cabinet of Ministers determines the types and amount of legal aid, and the amount of payment and reimbursable expense related to the provision of legal aid.⁹⁴ The State will not cover legal costs (including State fees and other fees related to legal proceedings) that are payable in accordance with regulatory enactments or a court adjudication.⁹⁵ However, the Law on Civil Procedure provides for exemptions from the general provisions regarding court costs.⁹⁶ The law lists certain categories of plaintiffs and defendants that are exempt, but also allows for fee waivers in other cases provided for by law, or if a court or judge exempts a person partly or fully based on his or her material situation.⁹⁷ Under article 104(5) of the Law on Criminal Procedure, child victims are entitled to a court-appointed lawyer, if this is necessary to guarantee the child's rights.

Latvia experiences a shortage of lawyers, and according to the United Nations' Committee against Torture, "lawyers providing "State-ensured legal aid" are

⁸⁷ State Ensured Legal Aid Law Art. 19. See also A. Batalauskis, 'National Report on Latvia', prepared for the International Legal Aid Group v of June 12-14, 2013, p.3. Available at: http://216.92.68.58/jscripits/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Latvia_National_Report.pdf.

⁸⁸ State Ensured Legal Aid Law Arts. 11, 16.

⁸⁹ State Ensured Legal Aid Law Art. 9.

⁹⁰ State Ensured Legal Aid Law Art. 3(2).

⁹¹ State Ensured Legal Aid Law Art. 23(1).

⁹² Law on Criminal Procedure Art. 83(1.1).

⁹³ Law on Criminal Procedure Art. 85.

⁹⁴ State Ensured Legal Aid Law Art. 5(5).

⁹⁵ State Ensured Legal Aid Law Art. 5(7).

⁹⁶ Law on Civil Procedure Art. 43. There is no exemption for simply being a child complainant, but minors may fall into exempted categories such as plaintiffs bringing personal injury claims that caused mutilation, other damage to health, or death, and plaintiffs bringing seeking compensation for financial loss and moral injury resulting from criminal offences. Art. 43(1).

⁹⁷ Law on Civil Procedure Art. 43(3)-(4).

reluctant to do so for lack of appropriate remuneration”.⁹⁸

- 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 practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Pro bono legal services are available from non-governmental organisations such as the Latvian Centre for Human Rights and state organs such as the Ombudsman's Office and the State Inspectorate for the Protection of Children's Rights.

Some private law firms also provide pro bono legal services for NGOs. The Pro Bono Legal Support Center gathers legal firms offering such services.⁹⁹

Latvia does not prohibit contingency fee arrangements.¹⁰⁰

- 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?

Statutes of limitation are found in substantive laws. An application to an administrative court regarding an “actual action of an institution” may be submitted within one year of the applicant learning about the actual action, if a restriction regarding the time period is not provided for in other laws or Cabinet regulations.¹⁰¹ When no time period is set out in the administrative act, applicants can submit an application within one year of the day the act comes into effect.¹⁰²

The criminal liability period ranges from two years for minor offences to 20 years for serious crimes, including sexual offences against children. For most serious offences carrying a life imprisonment sentence, a court shall decide on the statute of limitation that applies, if more than thirty years have passed since the offence.

¹⁰³

An application to the Constitutional Court may be submitted within six months of the last institution's decision on the issue.¹⁰⁴

- 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?

⁹⁸ UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Concluding observations on the combined third to fifth periodic reports of Latvia*, CAT/C/LVA/CO/3-5, 23 December 2013, para. 8. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssRXaFc41uHZE7uGIMk79dAGEHs%2fyOc%2f%2b9zkS%2bbQeIVS1lymcQmZdSBCKDTwV87rk%2bT9TfpJ6HeOchi%2fmQHBEfwn7PI2ek1V4hl3z6CrePEX>.

⁹⁹ Further information is available at: <http://probono.lv/en>.

¹⁰⁰ Klavins & Slaidins law firm, ‘European Commission Report on Latvia’s Law on Civil Procedure’, p.14.

¹⁰¹ Law on Administrative Procedure Art. 188(4).

¹⁰² Law on Administrative Procedure Art. 188(3).

¹⁰³ Criminal Law Art 56.

¹⁰⁴ Law on the Constitutional Court Art. 19.2(2).

The Law on Civil Procedure allows for evidence in the form of witness and expert testimony,¹⁰⁵ documentary evidence,¹⁰⁶ real evidence,¹⁰⁷ and the opinion of a state or local government authority.¹⁰⁸ The same is true for proceedings in administrative courts.¹⁰⁹

The Children's Rights Protection Law provides a child with the opportunity to be heard in any court or administrative procedure connected with the child, directly or through his or her own legal representative or institution.¹¹⁰

In civil and administrative courts, minors may not be summoned or examined as witnesses regarding facts against their parents, grandparents, brothers or sisters, and children under the age of seven may not be summoned or examined as witnesses.¹¹¹ Examination of minors occurs at the discretion of the court, and must occur in the presence of a lawful representative or teacher.¹¹² In administrative courts, examination must be in the presence of a lawful representative, a specialist in children's rights, a psychologist or a teacher.¹¹³

The court may order any participant in the matter, or anyone present in the courtroom, to leave the courtroom for the duration of the minor's testimony.¹¹⁴ Furthermore, witnesses under the age of 15 are sent out of the courtroom after their examination except where the court considers it necessary for them to remain in the courtroom.¹¹⁵

The law on criminal procedure includes specific provisions on the interrogation of a minor during a criminal investigation, whether they are heard as witnesses, victims or suspects. A minor's interrogation cannot exceed 6 hours, including breaks, within the same 24 hours without the minor's agreement. If possible, the interviewer should be the same person throughout the interview. Child victims should be heard as soon as possible.¹¹⁶

The interview shall be conducted someone who has received a training on children and criminal procedures, or, if the interviewer thinks it is necessary, in the presence of a child psychologist. A legal guardian, a relative or other trustworthy person can be present if they are not themselves connected to the criminal investigation, and if the child agrees to their presence.¹¹⁷

Minors under the age of 14 shall not be warned about the provisions on refusal to testify and false testimony, but shall be examined by a psychologist, who should explain to them the investigation process in a child-friendly manner. Minors over the age of 14 shall be examined by a psychologist who shall explain to them the

¹⁰⁵ Law on Civil Procedure Art. 105.

¹⁰⁶ Law on Civil Procedure Art. 110 and Art. 121.

¹⁰⁷ Law on Civil Procedure Art. 115.

¹⁰⁸ Law on Civil Procedure Art. 126.

¹⁰⁹ Law on Administrative Procedure Chapter 20.

¹¹⁰ Children's Rights Protection Law Art. 20(3).

¹¹¹ Law on Civil Procedure Art. 106; Law on Administrative Procedure Art. 163.

¹¹² Law on Civil Procedure Art. 172.

¹¹³ Law on Administrative Procedure Art. 230.

¹¹⁴ Law on Civil Procedure Art. 172(2).

¹¹⁵ Law on Civil Procedure Art. 172(3).

¹¹⁶ Law on Criminal Procedure Art. 152(1).

¹¹⁷ Law on Criminal Procedure Art. 152(2).

investigation process, criminal liability and duties in a child-friendly manner.¹¹⁸ For minors under 14 years of age and certain categories of child victims, the psychologist can notify the interviewer if they think that repeated direct interrogation may cause psychological harm to the child. In that case, the interrogation can only go forward if the investigative magistrate authorises it, or after a court order is issued if the child is scheduled to be heard in a courtroom.¹¹⁹ If necessary, interviews can be conducted through a psychologist: the child would sit together with the psychologist in a child-friendly room, and their conversation monitored by the interviewer, who can only speak to the psychologist and not to the child directly.¹²⁰

Interviews with minors are recorded in writing, sound or video following the same rules as for adults' interrogations.¹²¹ However, children under 14 cannot be asked to sign minutes of their interrogations.¹²²

Orphan Courts, as well as the Ombudsman can conduct interviews with children without the presence of anyone else.¹²³

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

Some decisions may be issued within a month, while other proceedings last years before they are resolved.¹²⁴ On average, cases that are not appealed last up to six months.¹²⁵

However, a number of inefficiencies exist within the Latvian civil justice system, such as lengthy proceedings and backlogs of cases. In addition, many cases do not get settled at the first instance, which creates delays in the courts of second instance and the Supreme Court. Some amendments to the civil, administrative and criminal procedural laws have been made to improve the efficiency of the court system, but it is still unclear whether these efforts will have a substantial and lasting impact.¹²⁶

Under the Children's Rights Protection Law, any "motions or complaints connected with children's rights protection shall be reviewed immediately."¹²⁷

¹¹⁸ Law on Criminal Procedure Art. 152(3), 153.

¹¹⁹ Law on Criminal Procedure Art. 152(4).

¹²⁰ Law on Criminal Procedure Art. 152(4).

¹²¹ See Law on Criminal Procedure Art. 141-143.

¹²² Law on Criminal Procedure Art. 153(4).

¹²³ Law on Orphan Courts Art 16(6).

¹²⁴ Gencs Valters Law Firm, 'Litigation in Latvia' available at:

<http://www.attorneys-at-law.eu/news/index/161>

¹²⁵ Id.

¹²⁶ Council of the European Union, *Recommendation for a Council Recommendation on Latvia's 2013 national reform programme*, Note No. 10642/1/13, 19 June 2013. Available at:

<http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2010642%202013%20REV%201>; European Commission, *Assessment of the 2013 national reform programme and convergence programme for Latvia*, 29 May 2013. Available at:

http://ec.europa.eu/europe2020/pdf/nd/swd2013_latvia_en.pdf.

¹²⁷ Children's Rights Protection Law Art. 20(2).

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

The Law on Civil Procedure details the process of submitting an appellate complaint.¹²⁸ An appellate complaint regarding a judgment of a court of first instance may be submitted within 20 days from the date of that judgment.¹²⁹ The subject-matter may not be amended to include new claims that were not raised in the court of first instance.¹³⁰ Once a judge has determined that the appellate complaint satisfies all the legislative requirements, he shall send it without delay to the appellate instance court.¹³¹

In criminal matters, while appellants have the right to withdraw their appeal until the appellate court has retired to reach a decision, this appeal withdrawal request is not binding upon the court if it was filed by a child appellant, a child appellant's representative or counsel.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?

Research did not locate any material discussing the impacts of a negative decision or whether a positive decision would spur political backlash or other repercussions.

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

Research did not locate any material discussing challenges to enforcing a positive decision.

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.

The State Inspectorate for the Protection of Children's Rights maintains a hotline that provides psychological help to children and teenagers while maintaining their anonymity. If a child provides information on possible violence or other unlawful activities against the child, that information is forwarded to the State Inspectorate, which will inspect the matter and conduct any other necessary activity in cooperation with the State Police, the Orphans' Court, and other services to prevent any continued or future violation of children's rights.¹³³ The State

¹²⁸ Law on Civil Procedure Ch. 52 (Submission of Appellate Complaints).

¹²⁹ Law on Civil Procedure Art. 415(1).

¹³⁰ Law on Civil Procedure Art. 418(1).

¹³¹ Law on Civil Procedure Art. 422(2).

¹³² Law on Criminal Procedure Art. 556(5.1)

¹³³ *Report of Latvia to the UN Human Rights Council Working Group on the Universal Periodic Review*, A/HRC/WG.6/11/LVA/1, 14 February 2011. Available at:

Inspectorate notably does not have the power to file a claim on behalf of a child. Its powers are limited to drawing up administrative violation reports, or in specified cases, to prepare materials to the competent investigatory institution that may hold the offender liable.¹³⁴

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

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/LVSession11.aspx> ; see also State Inspectorate for Protection of Children's Rights website, available at http://www.bti.gov.lv/eng/vbta_inspekcija/uzticibas_talrunis/.

¹³⁴ By-law of the State Inspectorate for the Protection of Children's Rights Art. 5.3, 6.2.