

ACCESS TO JUSTICE FOR CHILDREN: MOLDOVA

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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 Republic of Moldova is a monist jurisdiction, meaning that ratified international treaties automatically become part of its legal system and have the force of law.¹ Although Article 7 of the Constitution states that the Constitution is the supreme law of the country,² Article 8(2) ensures the supremacy of international law by stating: “The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter.”³

B. Does the CRC take precedence over national law?

The CRC takes precedence over national law. Article 4(2) of the Constitution stipulates that: “If there are contradictions between pacts and treaties to which the Republic of Moldova is a party and its domestic laws regarding fundamental human rights, international regulations will have priority.”⁴ The principle of the supremacy of international treaties has also been recognised by the Supreme Court of Justice.⁵

C. Has the CRC been incorporated into national law?

Since Moldova is a monist state, international treaties are automatically incorporated upon ratification.

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

Yes.

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

¹ Stefan Voigt, *The Interplay Between National and International Law—Its Economic Effects Drawing on Four New Indicators*, at <http://147.142.190.246/joomla/peio/files2011/papers/Voigt%2012.04.2010.pdf>.

² Constitution of the Republic of Moldova, available at <http://www.president.md/titulul1>.

³ *Id.*

⁴ *Id.*

⁵ Supreme Court of Justice, Decision No. 2, *On the Courts of Law Practice in Applying some Constitutional Provisions*, dated 30 January 1996.

The Supreme Court of Justice as well as lower courts have applied the CRC on several occasions.⁶

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 Civil Procedure Code⁷ and Criminal Procedure Code,⁸ children and their representatives are entitled to bring civil and criminal cases in Moldovan courts to challenge violations of their rights.

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?

The Civil Procedure Code sets out the guidelines for the participation of children in civil court proceedings. It provides that the rights and interests of juveniles as well as of citizens with limited capacity to exercise their rights must be defended in the court by their parents, adoptive parents, guardian or legal representative.⁹

The Criminal Procedure Code sets out guidelines for the participation of children in criminal court proceedings. In cases where the plaintiff¹⁰ is juvenile or when the damaged party is a juvenile, their rights must be exercised by a legal representative.¹¹ Legal representatives of the damaged party or civil party can be a parent, tutor for children under 14 or curator for children over the age of 14, or guardian who represents the interests of the juveniles in the proceeding.¹² There are some limitations on who can serve as a child's legal representative.¹³ In a case when the damaged party would not have a legal representative, the criminal prosecution body or the court appoint *ex officio* the trusteeship and custody body as a legal representative.¹⁴ Legal representatives may be changed by a decision of the court or the criminal prosecution body, and in any event the legal representative's

⁶ See, e.g., Supreme Court of Justice, 10 April 2013, nb. 3r-172-13 Țurcanu vs Consiliul mun. Chișinău at <http://cauta.csj.md/legy/document/view/f2b94743ed45c3fc4bf9b8593cfaa0dc>; Supreme Court of Justice, 19 June 2013, nb. 2ra-1634/13 at <http://cauta.csj.md/legy/document/view/b992bc6216a515649c6832d4c2fd180>.

⁷ Available at <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=286229&lang=2>.

⁸ Available at <http://legislationline.org/download/action/download/id/1689/file/ebc7646816aad2a3a1872057551.htm/preview>.

⁹ Article 79(1) of the Civil Procedure Code.

¹⁰ Pursuant to Article 58(1) of the Criminal Procedure Code, a plaintiff is any person or legal entity who, by a crime, was caused moral, physical or pecuniary damages.

¹¹ Article 58(0) and Article 60(4) of the Criminal Procedure Code.

¹² Article 77(1) of the Criminal Procedure Code.

¹³ Article 77(4)(1) of the Criminal Procedure Code: "The following will not be allowed as legal representatives in the criminal proceeding: For the plaintiff, the damaged party and civil party – a person under incidence of limitation for having caused a moral, physical or material damage through crime, to the damaged party, or material damage to the civil party."

¹⁴ Article 77(2) of the Criminal Procedure Code.

appointment automatically ceases when the child reaches the age of 18.¹⁵

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

In the case of infants and young children, the child's legal representatives (*i.e.*, parent or legal guardian) would typically initiate a lawsuit on behalf of the child as described above.

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

The provision of legal aid is regulated by the Law on State Guaranteed Legal Aid.¹⁶ Qualified legal aid can be obtained by persons who (i) need legal aid in criminal cases, and the interests of justice require so, but who do not have sufficient means to pay for these services,¹⁷ or (ii) need legal aid in civil cases, administrative cases and cases of administrative jurisdiction, but do not have sufficient means to cover these services, when their case is complex from the legal or procedural point of view.¹⁸

Qualified legal aid must be provided in cases involving under-aged suspects, accused or defendants.¹⁹ Since 2013 qualified legal aid must also be provided to children victims of crime.²⁰

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)?

The child's parents or guardian do not have to consent to allow a child's legal representative to initiate legal proceedings. This being said, the child's parents or guardian are in fact usually the child's legal representatives.

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 Constitutional Court has jurisdiction to review the constitutionality of laws,²¹ however, the power to appeal to the Constitutional Court is limited to

¹⁵ Article 77(5) of the Criminal Procedure Code.

¹⁶ Law on State Guaranteed Legal Aid nr. 198– XVI of 26 July 2007 at <http://www.oijj.org/en/docs/general/law-on-state-guaranteed-legal-aid-of-the-republic-of-moldova-law-no-198-xvi-of-july-26->.

¹⁷ Article 19(1)(a) of the Law on State Guaranteed Legal Aid.

¹⁸ Article 19(1)(e) of the Law on State Guaranteed Legal Aid.

¹⁹ Article 19(1)(c) of the Law on State Guaranteed Legal Aid.

²⁰ Law on State Guaranteed Legal Aid, Art. 19 (1'), available at:

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325350&lang=1> (in Romanian).

²¹ Article 135 of the Constitution.

the President of the Republic of Moldova, the Government, the Minister of Justice, the Supreme Court of Justice, the Prosecutor General, Members of the Parliament, Parliamentary fractions and the Ombudsman.²²

Persons who believe that one of their legally guaranteed rights was violated by an act of a public authority are entitled to bring action in the administrative courts.²³ As a court of first instance, the Administrative Appellate Court hears actions challenging administrative acts issued by public administration authorities.²⁴

In April 2014, Moldova passed a law establishing the office of Ombudsman (called People's Advocate).²⁵ The law provides that there are two persons serving as People's Advocates, one of whom must be specialised in children's rights;²⁶ however, this post remains vacant as of February 2016.²⁷ The Ombudsman is charged with ensuring the protection of human rights and freedoms by the public authorities and all decision-making bodies. The Ombudsman for the protection of child rights must ensure the protection of children's rights and freedoms by public authorities at the national level, in accordance with the CRC.²⁸ The Ombudsman for children can provide protection and assistance to the child at their request, without seeking the parents' or legal representatives' consent²⁹ and decide complaints alleging children's rights violations.³⁰ In addition, the Ombudsman for children may initiate court proceedings in order to protect the rights and freedoms of the child.³¹

Finally, the European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.³² 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,³³ but the complaint will be admissible only if all domestic remedies have been exhausted.³⁴ Anonymous complaints are not permitted.³⁵ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a

²² Article 38 of the Law on the Code of Constitutional Jurisdiction, available at: <http://cis-legislation.com/document.fwx?rgn=3498>.

²³ Articles 1(2) and 5 of the Law on Administrative Courts (as amended by the Law no. 833-XV dated 2 July 2002), available at http://www.transparency.md/Laws/793-00_en.pdf.

²⁴ Article 8 of the Law on Administrative Courts.

²⁵ Law No. 52 from 03 April 2014 on the People's Advocate (Ombudsman), available at: http://www.apr.ch/content/files/npm/eca/Moldova_Ombudsman%20Law_May2014_ENG.pdf.

²⁶ Article 5 of the Law on the People's Advocate.

²⁷ Information provided to CRIN by Sergiu Rusanovschi, UNICEF Moldova.

²⁸ Article 1(3) of the Law on the People's Advocate.

²⁹ Article 17(1) of the Law on the People's Advocate.

³⁰ Article 17(4) of the Law on the People's Advocate.

³¹ Article 17(5) of the Law on the People's Advocate.

³² 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>.

³³ *Ibid.*, Article 34.

³⁴ *Ibid.*, Article 35.

³⁵ *Ibid.*

representative, however, all applicants must be represented at hearings thereafter.³⁶ After examining the case, the Court renders a judgment which is binding on the State³⁷ and also has powers to award monetary compensation to the victims of human rights abuses.³⁸ 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.

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

The Constitutional Court has the power to proclaim laws and other regulations null and void.³⁹ The damage caused to persons by the enforcement of an act found to be unconstitutional is subject to compensation.⁴⁰

Administrative courts have the power to repeal administrative acts.⁴¹ When a court uses such power, the court decides on the reparations for of material damages caused by illegal administrative acts.⁴² In administrative proceedings, it is also possible to ask for a preliminary injunction, suspending the administrative act to prevent an imminent damage.⁴³

Where he deems that a rights violation has occurred, the Ombudsman makes recommendations to the public authority concerned on the measures to be taken for the immediate restoration of the rights of the complainant.⁴⁴ The authority then has an obligation to respond to the Ombudsman within 30 days stating what measures have been taken and, if the Ombudsman finds these unsatisfactory, he may ask the superior body to instruct the authority concerned to enforce the original recommendation.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?

In order to bring legal proceedings, a specific victim must be identified, however, hearings may be held in private where necessary to protect the interests of any child.⁴⁶ The same is true for complaints to the Ombudsman.⁴⁷

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

³⁷ European Convention on Human Rights, Article 46.

³⁸ Ibid., Article 41.

³⁹ Article 140(1) of the Constitution.

⁴⁰ Article 75(2) of the Law on the Code of Constitutional Jurisdiction.

⁴¹ Article 25(1) of the Law on Administrative Courts.

⁴² Article 25(3) of the Law on Administrative Courts.

⁴³ Article 21 of the Law on Administrative Courts.

⁴⁴ Article 24(1) of the Law on the People's Advocate.

⁴⁵ Article 24(3)-(4) of the Law on the People's Advocate.

⁴⁶ Article 218(2) of the Civil Procedure Code; Article 18(2) of the Criminal Procedure Code; Article 110¹ of the Criminal Procedure Code.

⁴⁷ Article 20 of the Law on the People's Advocate.

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

It appears this may be possible as the Civil Procedure Code allows for cases to be brought in defence of the rights, freedoms and legitimate interests of others, including an indeterminate group of persons.⁴⁸

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?

No. However, non-governmental organisations may submit complaints to the Ombudsman on behalf of children.⁴⁹

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?

Civil cases are filed in district courts. The Civil Procedure Code provides an extensive guidance on how to initiate civil proceedings.⁵⁰

Claims for judicial review are filed with the Administrative Courts.

Criminal prosecutions are initiated in criminal sections of the courts by public prosecutors. Children accused of committing offences will be charged in criminal section of the courts. The Criminal Procedure Code provides an extensive guidance on the conduct of criminal proceedings.

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?

There are two types of legal aid in Moldova - qualified and primary legal aid.⁵¹

Qualified legal aid comprises the provision of legal services of counseling, representation and/or defense. It can be obtained by persons who need legal aid in civil cases, administrative cases and cases of administrative jurisdiction and do not have sufficient means to cover these services, when

⁴⁸ Article 73 of the Civil Procedure Law.

⁴⁹ Article 19(2) of the Law on the People's Advocate.

⁵⁰ Concerning the requisites of the filing a statement of claims see particularly Articles 166 and 167 of the Civil Procedure Code.

⁵¹ Article 3 of the law on State Guaranteed Legal Aid.

their case is complex from the legal or procedural point of view.⁵²

Qualified legal aid can also be obtained by persons who need legal aid in criminal cases and where the interests of justice require it, and who do not have sufficient means to pay for these services (among other conditions).⁵³

Qualified legal aid means delivery of legal services of counseling, representation and/or defense before the criminal investigation bodies, courts of law in criminal cases, civil cases or cases of administrative jurisdiction.⁵⁴

Non-governmental organisations specialising in the field of the legal aid delivery are only entitled to provide primary legal aid.⁵⁵ Primary legal aid means providing information regarding the legal system, laws, rights and obligations of subjects of law, methods of enforcing and exercising the persons' rights in judicial proceedings, delivering counseling on legal issues, delivering assistance in drafting juridical acts and delivering other forms of legal aid that do not constitute qualified legal aid.⁵⁶

In civil suits, applications for protection of minors' rights⁵⁷ and allegations of protective measures by victims of domestic violence⁵⁸ are exempted from the payment of court costs. It should be noted that as a general rule, the losing party pays court costs.⁵⁹ Similarly, complaints to the Ombudsman are exempt from stamp duty.⁶⁰

In criminal proceedings, judicial expenses including amounts to be paid for the legal aid provided by publicly appointed attorney⁶¹ are covered by the convicted person or are transferred from the state budget.⁶²

- 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 organisation, or under an agreement that does not require the payment of legal fees up front?

Pro bono legal services are available for both individuals and organisations. It is possible to contact individual lawyers or law firms directly to discuss funding your case.⁶³

- 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

⁵² Article 19(1)(e) of the Law on State Guaranteed Legal Aid.

⁵³ Article 19(1)(a) of the Law on State Guaranteed Legal Aid.

⁵⁴ Article 2 of the Law on State Guaranteed Legal Aid.

⁵⁵ Article 17(1) of the Law on State Guaranteed Legal Aid.

⁵⁶ Article 2 of the Law on State Guaranteed Legal Aid.

⁵⁷ Article 85(1)(c) of the Civil Procedure Code.

⁵⁸ Article 85(1)(c1) of the Civil Procedure Code.

⁵⁹ Article 94 of the Civil Procedure Code.

⁶⁰ Article 19(4) of the Law on the People's Advocate.

⁶¹ Article 227(2)(3) of the Criminal Procedure Code.

⁶² Article 229(1) of the Criminal Procedure Code.

⁶³ See, e.g., pro-bono projects of Turcan Cazac Law Firm at <http://turcanlaw.md/reputation/corporate-social-responsibility>.

violations of their rights that occurred when they were children?

In civil proceedings, the time limit for bringing cases in Moldova depends on the type of claim brought, as set out in the Civil Code⁶⁴. In general, claims would need to be brought within three years from the violation.⁶⁵ Actions for compensation of prejudice are barred three years after the injured person knew or should have known about the existence of prejudice and person obligated to compensate for it.⁶⁶ Actions on defending personal non-patrimonial rights are not subject to any statute of limitation unless the law stipulates otherwise.⁶⁷

Except in cases of administrative acts of normative nature, persons affected by administrative acts have to petition the issuing public authority to repeal that act within 30-days of the its communication.⁶⁸ The person must then bring an action to administrative courts within 30-days from the date when she receives the answer from the public authority or when the time to answer expires.⁶⁹

As children do not have full access to the legal system, they enjoy special rights for the purposes of the statute of limitations. The statute of limitations, for claims between parents and children, is tolled until children attain the age of majority.⁷⁰ This means that the limitations period for their particular claims will not begin to run until their 18th birthday, giving them the opportunity to bring cases relating to violations of their rights during childhood as young adults.

Complaints to the Ombudsperson must be filed within one year from the time when the alleged rights violation occurred or from the time when the petitioner learned about it.⁷¹

- 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 Criminal Procedure Code sets out the type of evidence that is admissible in criminal proceedings; including statements made by the suspect, accused, defendant, damaged party, civil party, civilly accountable party, the witness, expertise report, material evidence, documents (including official documents), audio and video tapes, photographs, and technical-scientific and medical-forensic reports.⁷²

In criminal proceedings, minor children cannot be heard as witnesses if they

⁶⁴ Available at <http://www.ebrd.com/downloads/legal/core/moldova.pdf>.

⁶⁵ Article 267(1) of the Civil Code.

⁶⁶ Article 1424(1) of the Civil Code.

⁶⁷ Article 280(a) of the Civil Code.

⁶⁸ Article 14(1) of the Law on Administrative Courts.

⁶⁹ Article 17(1) of the Law on Administrative Courts.

⁷⁰ Article 275(b) of the Civil Code.

⁷¹ Article 19(1) of the Law on the People's Advocate.

⁷² Article 93 of the Criminal Procedure Code.

are not able to properly understand the circumstances relating to the case and to give accurate statements about them.⁷³

There are special protections provided to children participating in criminal proceedings. The press or the public can be excluded from the courtroom during a whole or part of a proceeding when the interests of the juvenile require it.⁷⁴ Minors under 16 cannot be present in public sessions.⁷⁵

The Civil Procedure Code sets out the kinds of evidence that are admissible in civil proceedings; including factual data set by explanations of the parties and other interested parties in the outcome of the case, testimonies of witnesses, written and physical evidence, recordings and videos, expert opinions.⁷⁶

Persons who because of their young age, physical or mental disability are not able to perceive facts and provide an accurate testimony about them cannot be heard as witnesses.⁷⁷ When a witness is under 16, the presiding judge clarifies to them the duty to testify truthfully; however, such witnesses are not warned, like other witnesses,⁷⁸ about their responsibility for refusing to testify and perjury.⁷⁹

A specialist teacher is called during the interrogation of a minor witness under the age of 14, and at the discretion of the court during the examination of witnesses from 14 to 16.⁸⁰ If necessary, parents are also called.⁸¹ The above persons, as well as participants in the process, with the permission of the presiding judge, may ask the witness questions and express their opinions about the identity of the witness and content of the witness testimony.⁸² In exceptional cases where it is necessary under the circumstances, the court may hear juveniles in closed chambers, without the presence of the parties or other participants in the process.⁸³ After the return of the judge in the courtroom trial participants are given a report about the minor witness's testimony.⁸⁴ A witness who has not attained the age of 16 has to leave the courtroom after the end of his interrogation unless the court considers his presence necessary.⁸⁵

- 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 Civil Procedure Code, civil cases are heard in the first

⁷³ Article 90(3) of the Criminal Procedure Code.

⁷⁴ Article 18(2) of the Criminal Procedure Code.

⁷⁵ Article 316(1) of the Criminal Procedure Code.

⁷⁶ Article 117(2) of the Civil Procedure Code.

⁷⁷ Article 133(a) of the Civil Procedure Code.

⁷⁸ Article 215(2) of the Civil Procedure Code.

⁷⁹ Article 215(1) of the Civil Procedure Code.

⁸⁰ Article 218(1) of the Civil Procedure Code.

⁸¹ Article 218(1) of the Civil Procedure Code.

⁸² Article 218(1) of the Civil Procedure Code.

⁸³ Article 218(2) of the Civil Procedure Code; Article 110¹ Criminal Procedure Code.

⁸⁴ Article 218(2) of the Civil Procedure Code.

⁸⁵ Article 218(3) of the Civil Procedure Code.

instance within a reasonable period of time; criteria for determining a “reasonable period” include: the complexity of the case, the behavior of participants in the process, the behavior of the court and the relevant authorities, as well as the importance of the process to persons concerned.⁸⁶ Actions to protect the rights and interests of minors, challenging regulations, decisions, acts or omissions of public authorities and other agencies and organisations, officials and civil servants are considered urgent and priorities.⁸⁷

In Moldova, a challenge for the court system is the substantial backlog of undecided cases.⁸⁸ Court proceedings are often delayed by adjournments and judicial reluctance to strictly enforce procedural deadlines.⁸⁹

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

District court decisions are reviewed by one of the four Courts of Appeal (in Chisinau, Balti, Cahul, and Comrat).⁹⁰ The deadline for appeal is 30 days from the date of announcement of the operative part of the decision.⁹¹ First instance decisions may be appealed to an appropriate appellate court, which on the basis of the submissions verifies the correctness of establishing the facts, the correct application and interpretation of the substantive law and compliance with procedural rules in the first instance.⁹²

The Supreme Court of Justice carries out “cassation review” of Courts of Appeal decisions.⁹³

The administrative court’s judgment on the merits may be appealed to the Administrative Appellate Court within 15-days of the date on which the decision was communicated or delivered.⁹⁴ Decisions delivered in the first instance by the Appellate Court are considered on appeal by the Supreme Court of Justice.⁹⁵

Criminal appeals are governed by the Criminal Procedure Code. Sentences may be challenged for a new consideration of the facts and law⁹⁶ by the prosecutor, defendant, damaged party and civil party.⁹⁷ They must be appealed within 15 days of the reading or integral delivery of the sentence.⁹⁸ The appeal instance verifies the legality and well-founding of the challenged

⁸⁶ Article 192(1) of the Civil Procedure Code.

⁸⁷ Article 192(2) of the Civil Procedure Code.

⁸⁸ EBRD, *Commercial laws of Moldova* 4 (2011), at <http://www.ebrd.com/downloads/sector/legal/moldova.pdf>.

⁸⁹ *Id.*

⁹⁰ American Bar Association, *Judicial Reform Index for Moldova* 8-9 (2009), at <http://crjm.org/files/reports/aba.roli.reforma.justitie.2009.eng.pdf>.

⁹¹ Article 362(1) of the Civil Procedure Code.

⁹² Article 357 of the Civil Procedure Code.

⁹³ Article 431(1) of the Civil Procedure Code.

⁹⁴ Article 30 of the Law on Administrative Courts.

⁹⁵ Article 10(3) of the Law on Administrative Courts.

⁹⁶ Article 400(1) of the Criminal Procedure Code.

⁹⁷ Article 401(1) of the Criminal Procedure Code.

⁹⁸ Article 402(1) of the Criminal Procedure Code.

judgment based on the evidence examined by the first instance according to the materials of the file and any new evidence presented to the appeal instance.⁹⁹ Decisions rendered by the courts of appeals may be challenged in recourse¹⁰⁰ to the Criminal Chamber of the Supreme Court of Justice.¹⁰¹ The grounds for recourse include, among others, (i) the constituent elements of crime were not met, (ii) the committed perpetration received a wrong legal qualification, and (iii) an international court found a violation of human rights and fundamental freedoms at the domestic level, in a judgment delivered on a different case, which may be impaired in this case as well.¹⁰²

Finally, although it is not technically an appeal, further review may be sought at the European Court of Human Rights once a claimant exhausted all avenues for a remedy in the country's courts. Among other requirements, cases must be filed within six months of the final decision and must relate to one or more rights protected under the European Convention on Human Rights.¹⁰³

- 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?

Courts are bound by their own and higher courts' decisions, which means that the negative effects of a bad decision can be felt for many years. However, Parliament could take action to change the judicial practice in contentious cases through enacting legislation on the matter concerned.

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

Decisions concerning human rights violations often remain unenforced. The law allows citizens to seek damages in civil courts for human rights violations. The government is liable under the constitution in case authorities violate individual rights by administrative means. However, the "[j]udgments awarded in such cases were often small and not enforced."¹⁰⁴ The rate of execution of judgment was under 50% in 2009.¹⁰⁵ By the end of 2008, the ECHR issued 46 judgments against Moldova related to the failure or substantial delay in executing final court judgments by state administrative bodies.¹⁰⁶

Concerning the judgment enforcement issue, the Ombudsman has often successfully intervened in connection to the enforcement of judgments

⁹⁹ Article 414 of the Criminal Procedure Code.

¹⁰⁰ Article 420(1) of the Criminal Procedure Code.

¹⁰¹ Article 428 of the Criminal Procedure Code.

¹⁰² Article 427 of the Criminal Procedure Code.

¹⁰³ For more details on admissibility criteria see

http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf.

¹⁰⁴ Moldova 2012 Human Rights Report, at

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dldid=204315#wrapper>.

¹⁰⁵ American Bar Association, *Judicial Reform Index for Moldova* 35 (2009).

¹⁰⁶ *Id.*

against state bodies.¹⁰⁷ The Ombudsman follow up on complaints with the respective state body, seeking an explanation for the delay and then forwarding a recommendation to the Ministry of Justice for review.¹⁰⁸ The process resulted in the successful execution of numerous judgments.¹⁰⁹

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 Moldovan judicial system is tainted with corruption.¹¹⁰ According to Transparency International, nearly half of the surveyed households report that informal payments are often necessary in order to solve problems in the courts.¹¹¹

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

¹⁰⁷ *Id.* at 30.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ US State Department, *Moldova 2012 Human Rights Report*, *supra*.

¹¹¹ Transparency International Moldova, *Corruption in Republic of Moldova: Perceptions vs. Personal Experiences of Households and Business People* (2012), <http://www.transparency.md/content/view/195/lang.en/>.