

ACCESS TO JUSTICE FOR CHILDREN: RUSSIA

This report was produced by White & Case LLP in October 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.

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 Russian Federation ratified the CRC and the Optional Protocol on the Involvement of Children in Armed Conflict in August 1990 and September 2008 respectively.¹ Russia is also a signatory to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography.²

Article 15(4) of the Constitution provides that international treaties of the Russian Federation, as well as “the generally recognised principles and norms of international law”, constitute an integral part of its legal system.

B. Does the CRC take precedence over national law?

Yes. Ratified international treaties and conventions take precedence over national law.³

C. Has the CRC been incorporated into national law?

The CRC was automatically incorporated into national law upon ratification and publication by the executive branch. The Parliament has also adopted implementing legislation by enacting the Federal Law on basic guarantees of child rights in the Russian Federation,⁴ and by supplementing the family legislation with additional guarantees.

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

Yes. In addition to the provisions of Russian law duplicating the CRC’s provisions, the CRC can be directly enforced in the courts.

¹ 'Convention on the Rights of the Child', U.N.T.S., vol. 1577, p.3, available at:

http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-11&chapter=4&lang=en.

² 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography', U.N.T.S., vol. 2171, p. 227, available at:

http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-11-c&chapter=4&lang=en.

³ Constitution of the Russian Federation, 1993, Article 15(4); Supreme Court Decision No. 8 of 31 October 1995 and Decision No. 5 of 10 October.

⁴ The Federal Law of the Russian Federation “On basic guarantees of child rights in the Russian Federation” No. 124-FZ of 24 July 1998 (“Law on Child Rights”). Children’s Rights: Russian Federation, Library of Congress, available at: <http://www.loc.gov/law/help/child-rights/russia.php>.

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

There are several decisions of the Constitutional Court and Supreme Court of the Russian Federation using or applying the CRC's provisions.⁵ The references to the CRC can be also found in the decisions of the general jurisdiction lower courts but this practice is still rare.

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?

Children through their representatives may lodge a complaint in court against any action or decision of the state bodies, local governments, enterprises, institutions, public associations and officials that violates their rights and freedoms.⁶ They may launch a civil case where they have suffered injuries, seek judicial review of a law or actions or inaction of the state, report a crime to the police, or initiate a private or "private-public" prosecution in certain circumstances (see part III.A below). In certain cases, children aged 14 and over have the right to apply to court themselves (see part II.B below).⁷

When hearing cases brought by representatives of children, the court must involve the children in the court proceedings if they are aged 14-18;⁸ for children under 14, the court has the right to involve them in court proceedings.⁹ In certain cases, the court must obtain the opinion of a child aged over 10 before making a decision (e.g. to change the name of a child, to restore previously terminated parental rights, and in cases of adoption and guardianship).¹⁰

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?

⁵ See Constitutional Court decisions: No.742-O-O dated 7 June 2011, available at: <http://www.ksrf.ru/ru/Decision/Pages/default.aspx>; No.434-O dated 5 March 2013, available at: <http://www.ksrf.ru/ru/Decision/Pages/default.aspx>; Supreme Court decisions: No. ГКПИ09-371 dated 15 May 2009, available at: <http://34374.info/lawdocs/show/16d8a-Reshenie-Verhovnogo-Suda-RF-ot-15-maya-2009-g.-N-GKPI09-371-Ob-ostavlenii-bez-udovletvoreniya-zayavleniya-o-priznanii-nedeystvuyushhim-Prikaza-Minobrnauki-RF-ot-28-noyabrya-2008-g.-362-Ob-utverzhdenii-Polozheniya-o-formah-i-poryadke-provedeniya-gosudarstvennoy-itogov>; No. 4-AИП12-19 dated 28 November 2012, available at: http://www.supcourt.ru/stor_pdf.php?id=519128; decision of the Plenum of Supreme Court No. 1 dated 1 February 2011 "On application by courts of the legislation which regulates specifics of criminal liability and imposition of punishment on juveniles".

⁶ Act of the Russian Federation on Complaints to a Court against Actions or Decisions Infringing Citizens' Rights and Freedoms, 27 April 1993.

⁷ Code of Civil Procedure of the Russian Federation, Article 37, para. 4.

⁸ Ibid., Article 37, para. 3.

⁹ Ibid., Article 37, para. 5.

¹⁰ Family Code of the Russian Federation, Article 57.

Full procedural capacity in civil cases belongs to persons aged 18 and above,¹¹ or children under 18 upon marriage or emancipation.¹² Therefore, children generally cannot bring cases themselves in Russian courts. Instead, children's rights are protected in court under claims of¹³ their parents or other legal representatives (adoptive parents, guardians, custodians, foster parents, state guardian supervisory authorities).¹⁴ Additionally, a prosecutor¹⁵ and, in cases specified by the law, state bodies, local governments, organisations and third persons can bring a court action in defence of a child's rights¹⁶ (for example, custody and guardianship bodies, juvenile affairs commissions, establishments for orphan children and children deprived of parental care, and other organisations charged with child protection duties).¹⁷ The Ombudsman is also entitled to bring a court action in defence of a child's rights.¹⁸

Under the Law on Child Rights, besides parents and other legal guardians, educators, medical and social workers, psychologists and other specialists in charge of providing educational, development, health and/or social protection services for the child, or those who assist in the child's social adaptation and rehabilitation and/or other measures involving the child's participation are entitled to apply to the court on behalf of the child claiming compensation for pecuniary and non-pecuniary damages.¹⁹

Children aged between 14 and 18 can personally defend their rights and interests in civil courts in certain categories of cases. If a child's rights and legal interests are violated, including if his/her parent fails to discharge or improperly discharges his/her duties involved in the child's upbringing and education or if he/she abuses his/her parental rights, the child has the right to turn for his/her protection to the guardianship and trusteeship body, and upon reaching the age of 14 years, to the court.²⁰ Orphans and children deprived of parental care, as well as their legal guardians, guardianship and custodian bodies, and a prosecutor on their behalf, can turn to the court for the protection of their rights.²¹

According to the new Code of Administrative Procedure entering into force on 15 September 2015, administrative capacity to sue belongs to persons aged 18 and above. Children aged between 16 and 18 can, however, defend their rights independently in administrative cases arising out of disputed administrative or other public relationships, in which they are entitled to participate on their own behalf. In such cases the court would require the participation of legal guardians

¹¹ The Code of Civil Procedure, Article 37(1).

¹² Ibid, Article 37(2).

¹³ Ibid., Article 52.

¹⁴ Family Code, Article 123.

¹⁵ Ibid., Article 56; Code of Civil Procedure, Article 45.

¹⁶ Code of Civil Procedure, Article 46.

¹⁷ Family Code, Article 69.

¹⁸ Federal Constitutional Law "On Ombudsman in Russian Federation", Article 29.

¹⁹ Law on Child Rights, Article 23.

²⁰ Family Code, Article 56.

²¹ Federal Law "On additional guarantees in the social protection of orphan children and children deprived of parental care", Article 1,4.

only if necessary. In other cases the interests of children under 18 are represented in the administrative proceedings by their legal guardians.²²

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

Cases on behalf of or in the interests of infants and young children are brought by their parents or legal representatives²³ or other persons entitled by law.²⁴

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

The Constitution guarantees to every individual the right to qualified legal assistance and, in cases set forth by law, the right to free legal aid.²⁵ Furthermore, any person detained, taken into custody, or accused of committing a crime is guaranteed the right to receive legal assistance from the moment of detention, confinement in custody or facing charges accordingly.²⁶

The Law on Free Legal Assistance guarantees free legal aid to the following categories of children:²⁷

- children, if their family per capita income (or personal income in case of single living) is less than the minimum amount determined in a constituent entity of the Russian Federation;
- disabled children, orphans, or children left without parental care (and legal representatives of such children in case the questions requiring legal assistance are related to the protection of the rights and legal interests of such children); and
- children kept in state institutions or imprisoned (and legal representatives of such children in case the questions requiring legal assistance are related to the protection of the rights and legal interests of such children).

Legal aid for the above categories of persons is available for, amongst other things, administrative review of acts issued by government agencies, local self-government bodies and public officials.²⁸

Children are guaranteed a lawyer's participation in criminal proceedings under the Code of Criminal Procedure.²⁹

The right to receive free legal assistance is also established in the law "On the foundations of the system of prevention of child neglect and juvenile delinquency" for children in correctional facilities. Legal assistance is provided

²² The Code of Administrative Procedure, Article 5. Enters into force on 15 September 2015.

²³ Code of Civil Procedure, Article 37.

²⁴ Foster parents, adoptive parents, state guardian supervisory authorities; prosecutors; children's commissions; persons willing to adopt a child and the Ombudsman.

²⁵ Constitution, Article 48(1).

²⁶ Ibid., Article 48(2).

²⁷ Federal Law of the Russian Federation "On free legal assistance in the Russian Federation" No. 324-FZ dated 21 November 2011, Article 20.

²⁸

<http://www.pilnet.org/public-interest-law-programs/legal-aid-reform/dimas-blog/137-russian-legal-aid-bill-si-gned-into-law.html>.

²⁹ Code of Criminal Procedure, art. 51

upon the request of the child and a reference issued by the institution. However, there is no effective mechanism that guarantees the realisation of this right. In many cases children do not have access to the contact information of the free legal service providers or the telephone or postal service. There is no guarantee that their request will be registered and fulfilled by the authorities in a timely manner.

Children undergoing mental health treatment (in case the questions requiring legal assistance are related to the protection of the rights and legal interests of such children) are entitled to free legal aid provided other conditions are met (e.g. low family income).³⁰

Free legal services may be provided either by state legal institutions or non-state legal institutions, at the individual's choosing (see part IV.C below). Free legal aid within the state system is provided by the state legal offices or lawyers participating in the state system of free legal aid.³¹ The list of the participating offices is established by the normative acts of the constituent territories.³²

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

Provided the case is filed by a proper applicant (see part II.B above), no prior approval is required of the child or his/her representative to bring a case to protect the child's rights.³³

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?

There is a range of options available to challenge a potential violation of children's rights.

A child through their representative (or the child by themselves, in certain cases) may bring a civil claim for the protection of his/her rights in a court of general jurisdiction.³⁴

Any individual citizen or group of citizens may petition the Constitutional Court about a violation of their constitutional rights and freedoms as a result of a law

³⁰ Law of the Russian Federation "On Psychiatric Assistance and on Guarantees for Citizens' Rights at Rendering Such" No. 3185-I dated 2 July 1992, Article 7(3); see also

³¹ Law "On free legal assistance in Russian Federation", Article 20.

³² See for example the list of offices providing free legal aid in Astrakhanskaya oblast': <http://www.minsocstrud.astrobl.ru/content/perechen-uchrezhdenii-okazyvayushchikh-besplatnyuyu-yuridiches-kuyu-pomoshch>.

³³ Code of Civil Procedure, Article 46(1).

³⁴ Civil Code of the Russian Federation, Article 4(1).

that has been applied in a specific case.³⁵ The complaint will be admissible if the law: (1) infringes on the constitutional rights and freedoms of citizens; and (2) was applied in a specific case whose consideration has been completed in court.³⁶

Under constitutional provisions, decisions, actions or inaction of bodies of state authority and local self-government, public associations and officials may be appealed against in court.³⁷ Any injury inflicted on an individual as a result of unlawful actions or inaction of state and local self-government bodies or officials is subject to redress at the expense of the state.³⁸

A criminal case can be opened based on a statement about a crime, a communication about an imminent or actual crime, and a prosecutor's order of referral of the case materials to the competent bodies to make a decision about criminal prosecution.³⁹ Criminal prosecution on behalf of the state is conducted, as a general rule, by the prosecutor, as well as investigators and the inquiry officers.⁴⁰ In certain cases (crimes of private and public-private prosecution) a criminal case can be opened only upon receiving a statement from the victim or his/her legal representative (for example, battery, libel, purposeful infliction of minor damage to health).⁴¹ Nevertheless, a criminal case on such crimes can be opened even without a statement of a victim, if for some reason he/she is not able to defend his/her rights independently.⁴²

Legal representatives of children may also apply to the Ombudsman where they have already challenged a decision, action or inaction of state or local authorities (including a violation of children's rights) in court and are not satisfied with the court's decision. The Ombudsman has the power to investigate complaints, file a human rights complaint with a court, request a court to review a court decision, and request a criminal investigation against the responsible official.⁴³ The Ombudsman for children's rights, however, cannot apply to court or appeal against court decisions; instead, it may conduct a field check in cases arising from child rights violations and submit its conclusions on the measures needed to restore violated rights, as well as join court proceedings to support the claims filed in court to protect children's rights.

With regard to regional mechanisms, the European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.⁴⁴ Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a

³⁵ Federal Constitutional Law of the Constitutional Court of the Russian Federation, Article 36, available at: <http://www.ksrf.ru/en/Info/LegalBases/FCL/Pages/default.aspx>.

³⁶ Ibid., Article 97.

³⁷ Constitution, Article 46(2).

³⁸ Civil Code, Article 1069; Ibid., Article 53.

³⁹ Code of Criminal Procedure, Article 141.

⁴⁰ Ibid., Article 21(1).

⁴¹ Ibid., Article 20.

⁴² Ibid.

⁴³ Law on Ombudsman, Article 29.

⁴⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), 1950, Articles 19 and 32, available at: http://www.echr.coe.int/Documents/convention_ENg.pdf.

complaint to the Court,⁴⁵ but the complaint will be admissible only if all domestic remedies have been exhausted.⁴⁶ Anonymous complaints are not permitted.⁴⁷ 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.⁴⁸ After examining the case, the Court renders a judgment which is binding on the State⁴⁹ and also has powers to award monetary compensation to the victims of human rights abuses.⁵⁰ 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?

Depending on the nature of the violation, a court of general jurisdiction may make an order to: recognise a right; restore the situation which existed before the right was violated; stop the violation; invalidate or not apply an illegal act of a state or local self-government body; and award compensation (including for moral damages for physical and moral suffering).⁵¹

The Constitutional Court, upon complaints about violations of constitutional rights and freedoms of citizens, has the power to review the constitutionality of a law applied or subject to be applied in an individual case.⁵² Following its review, the Court can invalidate laws or legal provisions recognised as incompatible with the Constitution.⁵³

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?

A civil lawsuit must contain the name and address of the plaintiff, even when it is brought on behalf of the plaintiff by a representative.⁵⁴ A statement about a crime must be signed by the informant. If a statement is oral, the information must be placed on record, which should contain informant data.⁵⁵ Anonymous statements about a crime are not admissible as a ground for opening a criminal case.⁵⁶ Constitutional complaints must also contain information on all the appellants (full name and address).⁵⁷ Therefore, it does not appear possible to challenge a law or action without naming a specific victim.

⁴⁵ Ibid., Article 34.

⁴⁶ Ibid., Article 35.

⁴⁷ Ibid.

⁴⁸ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁴⁹ European Convention on Human Rights, Article 46.

⁵⁰ Ibid., Article 41.

⁵¹ Civil Code, Article 12.

⁵² Constitution, Article 125(4).

⁵³ Ibid., Article 125(6).

⁵⁴ Code of Civil Procedure, Article 131.

⁵⁵ Code of Criminal Procedure, Article 141.

⁵⁶ Ibid.

⁵⁷ Law "On the Constitutional Court", Article 37.

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

Civil procedure legislation provides for group litigation. Under Russian legislation, several plaintiffs may file a joint action if: (i) the subject of the lawsuit encompasses the common rights or obligations of such plaintiffs; (ii) the rights and obligations of such plaintiffs have one legal ground; and (iii) the subject of the lawsuit encompasses similar rights and duties. Each plaintiff in such proceedings acts independently or co-plaintiffs may empower one or several plaintiffs to act on their behalf in the court proceedings.⁵⁸

A group of citizens may file a collective complaint with the Constitutional Court about a violation of their constitutional rights and freedoms as a result of a law that has been applied in a specific case.⁵⁹

Furthermore, organisations or citizens may apply to court for the protection of the rights, freedoms and legitimate interests of an indefinite class of persons in cases specified by law. However, as at the date of this report, such collective lawsuits are used for the protection of investors' and consumers' rights, and there are not yet specialised laws for class actions protecting children's rights or human rights.

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?

Organisations have the right to apply to court for the protection of the rights, freedoms and legitimate interests of a child or an indefinite group of persons in the situations set forth by law.⁶⁰ They can also join court proceedings as third persons without independent claims.⁶¹

More specifically, the Law on Child Rights empowers non-governmental organisations (NGOs) to file a case challenging actions of officials of state authorities, organisations, or citizens, including parents (or legal guardians), educators, medical or social workers, if such actions violate rights of children in difficult life circumstances.⁶²

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

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

There are federal courts, constitutional (statutory) courts and justices of the peace acting in the territory of the Russian Federation. Federal courts include

⁵⁸ Code of Civil Procedure, Article 40.

⁵⁹ Federal Constitutional Law of the Constitutional Court, Article 96.

⁶⁰ Code of Civil Procedure, Article 40.

⁶¹ Ibid, Article 43.

⁶² Law on Child Rights, Article 15. The Law on Child Rights sets out in Article 1 an extensive definition of children in difficult life circumstances.

Constitutional and Supreme Courts of Russia, supreme republican courts, territory (krai), regional (oblast') and federal cities courts, the courts of autonomous regions and autonomous territories, district courts, as well as military and specialised courts. Together with the courts included in the system of federal arbitration courts, they form a system of federal courts of general jurisdiction. The courts of federal subjects of the Russian Federation include their constitutional (statutory) courts and justices of the peace which act as judges of the general jurisdiction.⁶³ There are no special juvenile courts in the Russian Federation.

Courts of general jurisdiction handle civil cases for the protection of violated or disputed rights, freedoms and legal interests.⁶⁴ The court opens a civil case based on a claim of a person defending his/her own rights or the rights of a third person.⁶⁵ For example, a prosecutor can file a lawsuit in defence of rights, freedoms and legal interests of third persons in the matters of family, motherhood, fatherhood and childhood independently of the capacity of the victim to refer to a court on his/her own.⁶⁶

A civil claim for the protection of rights, freedoms and lawful interests (including disputes concerning deprivation or restriction of parental rights, adoption or other cases concerning child rights) is initiated by submitting a written statement of action to a court of general jurisdiction at the place of residence or at the location of the respondent.⁶⁷ The statement of action must contain, amongst other things: the name of the plaintiff, his/her place of residence or, if the plaintiff is an organisation, its place of location, as well as the name of the representative and his/her address, if the application is filed by the representative; a description of the violation or threat of violation of the rights, freedoms and lawful interests of the plaintiff, and his/her claims; the facts on which the plaintiff bases his/her claims, and the proof confirming these facts; and the amount of the claim.⁶⁸

A constitutional petition must be communicated to the Constitutional Court in writing and must indicate, amongst other things: the full name and address of the petitioner; details of the petitioner's representative; details of the challenged law; and the specific grounds of the petition.⁶⁹

Criminal cases are generally initiated by prosecutors or following a complaint to the police. Opening a criminal case is followed by a preliminary investigation, after which the case is sent for trial in the first instance to the court of general jurisdiction according to its subject matter jurisdiction.⁷⁰

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

⁶³ Federal Constitutional Law N 1 of 31 Dec 1996 "On the judicial system of Russian Federation", art. 4

⁶⁴ Code of Civil Procedure, Article 22.

⁶⁵ Ibid, Article 4.

⁶⁶ Ibid, Article 45(1).

⁶⁷ Code of Civil Procedure, Article 28.

⁶⁸ Code of Civil Procedure, Article 131.

⁶⁹ See Federal Constitutional Law of the Constitutional Court of the Russian Federation, Article 37.

⁷⁰ See Code of Criminal Procedure, Article 31.

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?

See part II.D above.

Under the general rule of Russian procedural legislation,⁷¹ a winning party may demand all costs from the losing party to the court proceedings. The winning party may collect reasonable costs of the legal representative from the defeated party by filing a written pleading to the court.⁷²

Actions for the purpose of protecting children's rights and lawful interests are free from state duties in courts.⁷³ Courts may reduce or discharge other court costs if a person cannot afford them due to his/her financial situation.⁷⁴ If both parties are exempted from the court costs, they are compensated by the state.⁷⁵

In constitutional challenges, if a law or legal provision is found by the Constitutional Court to be inconsistent with the Constitution, the following costs borne by the petitioners will be reimbursed by the state: charged state fee; fees paid for the services of representatives; travel and lodging expenses of petitioners and their representatives related to their appearance in court; postal expenses related to consideration of a case; and compensation in lieu of actual time lost.⁷⁶

In criminal proceedings, the costs are enforced on the convicted persons or compensated from the federal budget funds.⁷⁷ If a crime is committed by a person under 18 years, the court can impose the duty to pay expenses on his/her legal representative.⁷⁸

- 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?

Free legal assistance within the non-state system can be provided by legal clinics and non-state centres of free legal aid.⁷⁹ Legal clinics can provide legal assistance in the form of oral and written legal advice or drafting of legal documents.⁸⁰ Non-state centres of legal assistance⁸¹ can be established by NGOs, lawyers and bar associations, notaries and notary associations.⁸² They provide

⁷¹ Ibid., Article 98.

⁷² Ibid., Article 100.

⁷³ Tax Code of the Russian Federation (Part One No. 146-FZ dated 31 July 1998, Part Two No. 117-FZ dated 5 August 2000), Article 333.36 and 333.37.

⁷⁴ Code of Civil Procedure, Article 96(3).

⁷⁵ Ibid, Article 103(4).

⁷⁶ Federal Constitutional Law of the Constitutional Court of the Russian Federation, Article 100.

⁷⁷ Code of Criminal Procedure, Article 132(1).

⁷⁸ Ibid, Article 132(8).

⁷⁹ Law "On free legal assistance", art. 22(2)

⁸⁰ Ibid, art. 23(4)

⁸¹ <http://minjust.ru/ru/spisok-negosudarstvennyh-centrov-besplatnoy-yuridicheskoy-pomoshchi>.

⁸² Ibid, art. 24(1)

legal aid in the form of advising and drafting legal documents and can determine independently the categories of cases in which assistance is provided and the categories of persons they work with.⁸³

There are several NGOs helping certain categories of children. For example, legal assistance is provided by the Center of Curative Pedagogics,⁸⁴ Osoboe Detstvo (for children with autism),⁸⁵ and Otkazniki (Refusenik).⁸⁶ More than 140 law clinics have been set up across the country, providing free legal assistance to people in need.⁸⁷ A list of non-state legal institutions is published on the official website of the Ministry of Justice:

<http://minjust.ru/ru/besplatnaya-yuridicheskaya-pomoshch-5>.

Recently, however, there have been increasing restrictions placed on NGOs receiving foreign funding (see part V).

- 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?

Russian law operates a three-year general limitation period on actions.⁸⁸ However, the Civil Code provides that claims for the protection of violated rights shall be accepted by the court for consideration regardless of the expiry of the term of the limitation of actions.⁸⁹

Complaints about violations of constitutional rights and freedoms must be lodged with the Constitutional Court within one year after consideration of the case in court.⁹⁰

With respect to crimes, the Criminal Code provides that a person will be released from criminal responsibility if the following time limits have expired since the date of the commission of a crime:

- a) two years after the commission of a crime of light gravity;
- b) six years after the commission of a crime of average gravity
- c) 10 years after the commission of a grave crime; and
- d) 15 years after the commission of an especially grave crime.⁹¹

Limitation periods do not apply to certain crimes (e.g. terrorist attacks and other crimes related to terrorist activities, crimes against peace and humanity, genocide, ecocide, and planning, preparing, unleashing or waging an aggressive war).⁹²

⁸³ Ibid, art. 24(4,5)

⁸⁴ <http://www.ccp.org.ru/>

⁸⁵ <http://www.osoboedetstvo.ru/>.

⁸⁶ <http://otkazniki.ru/index.php?id=21>

⁸⁷ <http://codolc.com/clinics/>.

⁸⁸ Civil Code, Article 196.

⁸⁹ Ibid., Article 199.

⁹⁰ Federal Constitutional Law of the Constitutional Court of the Russian Federation, Article 97(2).

⁹¹ Criminal Code, Article 83.

⁹² Ibid.

- 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?

Types and the procedure for reviewing evidence in the civil court proceedings are set out in the Code of Civil Procedure. Among the types of admissible evidence are: explanations of parties and third parties, testimonies, written and material evidence, audio and video recordings and expert reports.⁹³

Special rules for the interrogation of an underage witness are set forth by the law. A child witness aged under 14 has to be interrogated in the presence of an educator. A child aged 14 to 16 may also be interrogated in the presence of an educator at the court's discretion. If it is necessary, parents, adoptive parents, guardians and custodians may be summoned to appear in court for the child's interrogation.⁹⁴ Educators and legal guardians can pose questions to the child and share their opinion on the personality of the witness and the content of the testimony.⁹⁵ A child witness under 16 is required to leave the courtroom after the interrogation is completed unless the judge considers his or her presence to be necessary.⁹⁶

In addition, courts are entitled to arrange closed trials and hear witnesses in closed court hearings in cases which concern state secrets, adoption, and in other cases provided by law.⁹⁷ A party to the court case may also plead for a closed trial when the court case concerns commercial secrets, private life or other circumstances, when an open trial may hinder the hearing of the case or disclose the said secrets, or violate a person's rights and interests.

In criminal cases, testimonies of suspects, accused persons, victims and witnesses can be admitted as evidence, as well as written and material evidence, expert and specialist reports, records of court and investigative actions and other documents.⁹⁸ In all criminal cases involving a minor as a suspect, accused person or defendant, the following must be determined, among other circumstances: the exact age of the accused, their personal traits and health condition, living and upbringing conditions and the presence or absence of adult instigators or other perpetrators.⁹⁹ Interrogation of a suspected minor cannot last for more than two consecutive hours or four hours a day in total and must be conducted in a presence of a lawyer. Interrogation of a person under 16, or above 16 but suffering from a mental disorder or mental development problems, must be conducted in the presence of an educator or a psychologist.¹⁰⁰ Legal guardians are allowed to participate upon consent of the investigator.¹⁰¹

⁹³ Code of Civil Procedure, Article 55.

⁹⁴ Ibid., Article 179.

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid., Article 10.

⁹⁸ Code of Criminal Procedure, Article 74.

⁹⁹ Ibid, Article 421.

¹⁰⁰ Ibid, Article 425.

¹⁰¹ Ibid, Article 426.

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

According to Russian legislation civil cases shall be considered and resolved by the court in two months as from the day of registering the application with the court, or one month by the justice of the peace.¹⁰² In practice, however, this time limit is almost never met and may extend to years in the most difficult cases since it is possible to postpone court proceedings¹⁰³ and extend the time limit.¹⁰⁴ The main reason for this is the considerable workload of courts. At the same time the Code of Civil Procedure requires that court proceedings must be carried out in a reasonable time.¹⁰⁵ The legal and factual complexity of the case, behaviour of the participants in civil proceedings, and sufficiency and effectiveness of court actions should be taken into account in order to determine a reasonable time in every particular case.¹⁰⁶

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

Russian law provides that judicial rulings of the court acting as the court of first instance that have not yet entered into force may be appealed to a higher court. Judicial rulings that entered into force may be challenged in cassation proceedings by means of cassation complaint or prosecutor plea to review the case. Additionally, it is possible to review the ruling in exercise of supervision and on the basis of new or newly discovered circumstances.

Appeal

Decisions of lower courts may be appealed to a higher court by the parties and other persons participating in the case or those who have not participated in the case but whose rights and duties have been pronounced by the court in the ruling. A prosecutor participating in the case is entitled to present an appeal plea. Appeals must be filed with the court that rendered a decision within one month of the date of the final decision in civil cases¹⁰⁷ and 10 days in criminal cases¹⁰⁸ and is handled by the upper court according to its territorial and subject matter jurisdiction.

Cassation

Judicial rulings can be challenged in cassation by the parties and other persons whose rights and interests were infringed by the ruling within six months of the date of its entering into force for civil cases and at any time for criminal cases. A cassation complaint or plea is filed in the court of the cassation instance according to the rules of territorial and subject matter jurisdiction.

Supervision

¹⁰² Code of Civil Procedure, Article 154.

¹⁰³ Ibid., Article 169.

¹⁰⁴ Ibid., Article 111.

¹⁰⁵ Ibid., Article 6.1.

¹⁰⁶ Ibid.

¹⁰⁷ Court decisions come into force after one month from the delivery.

¹⁰⁸ Code of Criminal Procedure, Article 389(4).

Review of judicial decisions by way of supervision is an extraordinary stage. At this stage judicial decisions may be reviewed by the Presidium of the Supreme Court on the basis of appeals from parties to the trial and other persons, whose rights and interests were violated by the decisions concerned.¹⁰⁹ The Presidium of the Supreme Court cancels or alters the decision if it finds that the court decision violates the following: (1) civil and human rights and freedoms guaranteed by the Constitution of the Russian Federation, the universally recognised principles and rules of international law and international treaties concluded by the Russian Federation; (b) the rights and legitimate interests of an indefinite group of persons or other public interests; (3) uniformity of interpretation and application of law by courts. In case the Presidium establishes the above violations it may either refer the case for new trial to the initial court or deliver its own ruling. The ruling of the Presidium of the Supreme Court comes into force on the date of its delivery and may not be appealed.

Review on the basis of newly discovered facts

A final judicial decision may be reviewed on the basis of newly discovered or new facts. It should be noted that decisions of the European Court of Human Rights which have found violations of the European Convention on Human Rights are treated as newly discovered circumstances for the purposes of review.

- 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?

Judicial rulings that have entered into force are binding on all territory of the Russian Federation for all state bodies, local governments, organisations, officials and individual citizens. Failure to comply with a judicial decision may result in administrative or criminal responsibility set forth by the law. However, actual compliance with the court rulings relies to a considerable degree on the actions of the executive bodies (court enforcement officers service) charged with the enforcement of judicial rulings.¹¹⁰

Court decisions can rule normative acts that infringe rights and freedoms as partly or totally invalid, or an action/inaction of a state body, local government or an official as illegal. However, the court does not have the power to control the execution of its rulings and does not have enforcement mechanisms at its disposal.¹¹¹

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

The means of enforcement are set forth by the law.¹¹² As a general rule, in cases involving challenging decisions and actions of the state bodies and officials,

¹⁰⁹ Code of Criminal Procedure, Article 391.1.

¹¹⁰ Federal Law No. 229 of 2 Oct 2007 “On enforcement procedure”, Article 5.

¹¹¹ See Law “On judicial system”.

¹¹² Law “On enforcement procedure”, chapter 7.

enforcement procedures will be limited to sending an enforcement order indicating the way and order of its execution. If a respondent fails to comply with the requirements of an enforcement order in the time established for voluntarily execution, the enforcement officer establishes a new deadline for execution and issues a ruling on charging an enforcement fee. In case of repeated failure to comply, the enforcement officer can record an administrative offence and establish a new deadline for order of execution.¹¹³ There is also a possibility to challenge the actions/inaction of the enforcement officer.¹¹⁴

It appears that these measures are not satisfactory to guarantee the effective execution of court rulings, especially if timeliness in execution is a significant factor in a given situation. There still exist unresolved issues in the work of enforcement services that impede effective execution of judicial rulings.¹¹⁵ Decisions awarding monetary compensation or determining the place of residence of children¹¹⁶ may be difficult to enforce even with the help of a special execution service. Additionally it is reported that the judiciary lacks independence from the executive branch in the process of decision-making.¹¹⁷

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.

Juvenile justice system

A major point of complaint for the UN Committee on the Rights of the Child regarding Russia is the weak protection of children in conflict with the law within the criminal justice system. In particular, the Committee has expressed its concern about the “lengthy delays in the adoption of laws establishing juvenile courts with specialised staff” and the “[f]requent unlawful detention of children by law enforcement agencies in circumstances where there is no apparent illicit behaviour on the children’s part”.¹¹⁸ The prolonged placement of children in institutions after they commit crimes is an ever growing problem, as well as the lack of rehabilitation and reintegration programmes for children after their release from institutions.¹¹⁹ Recent attempts to move these children into family homes have been blocked.¹²⁰

Torture and ill-treatment

¹¹³ Ibid, Article 105.

¹¹⁴ Ibid, Articles 123-127.

¹¹⁵ See for more information: <http://spb5.ru/aktualnye-problemy-ispolnitelnogo-proizvodstva-zaklyuchenie/>.

¹¹⁶ There is a considerable number of cases where parents (often fathers) ignored court decisions which established places of residence of children of the divorced parents.

¹¹⁷ Freedom House, ‘Freedom in the world: Russia’, 2014, available at:

<http://www.freedomhouse.org/report/freedom-world/2014/russia-0#.VEaBMvnx0>

¹¹⁸ Committee on the Rights of the Child, *Concluding observations on the fourth and fifth periodic report of Russia*, CRC/C/RUS/CO/4-5, 25 February 2014, paras 69-70. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fRUS%2fCO%2f4-5&Lang=en.

¹¹⁹ Ibid.

¹²⁰ Tim Whewell, *Russia: Are efforts to help thousands of 'abandoned' children being resisted?*, BBC News, available at: <http://www.bbc.co.uk/news/world-europe-21994332>.

While acknowledging the establishment of an Investigation Committee to identify, investigate, prosecute and sanction acts of torture, violence and inhumane or degrading treatment against children, the Committee on the Rights of the Child noted the lack of mechanisms for children themselves to file complaints on acts of ill-treatment. It also expressed particular concern about the lack of investigations by the law enforcement authorities into reports of violence against children in police detention or during pre-trial proceedings, Roma children, and children of other national minorities including migrant children, which reinforces the feeling of impunity.¹²¹

Restrictions on foreign-funded NGOs

The Committee on the Rights of the Child is deeply concerned about the increasing restrictions placed on foreign-funded NGOs working in the area of human rights and child rights. The 2012 Federal Act regarding the regulation of activities of non-commercial organisations performing the function of foreign agents requires that organisations receiving financial support from sources outside Russia register and identify themselves publicly as “foreign agents”. Moreover, recent amendments to the Criminal Code expanded the definition of the crime of state treason to include “providing financial, technical, advisory or other assistance to a foreign State or international organisation... directed at harming Russia’s security”, which are used against organisations working on child rights.¹²²

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

¹²¹ Committee on the Rights of the Child, *Concluding observations on the fourth and fifth periodic report of Russia*, paras 30-31.

¹²² *Ibid.*, paras 18-19.