

## ACCESS TO JUSTICE FOR CHILDREN: UKRAINE

*This report was produced by White & Case LLP in February 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?**

Ukraine ratified the CRC on 21 February 1991.<sup>1</sup> Once international treaties have been ratified by the *Verkhovna Rada* (Supreme Council) of Ukraine, as was the case for the ratification of the CRC, they automatically become part of Ukraine's domestic legislation and have the force of law.<sup>2</sup>

#### **B. Does the CRC take precedence over national law?**

Pursuant to the International Treaties of Ukraine Act, the CRC and other international treaties take precedence over domestic law in cases of conflict between them.<sup>3</sup> In particular, Article 19 paragraph 2 of the Act provides that “[i]f an international treaty that has entered into force according to established procedure introduces rules different from those envisaged by an appropriate legislative act of Ukraine, then the rules of the international treaty shall be applied”.<sup>4</sup>

#### **C. Has the CRC been incorporated into national law?**

As described in part I.A, the CRC was automatically incorporated into national law upon ratification. In addition, Ukraine has incorporated specific provisions of the CRC into domestic legislation.<sup>5</sup>

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

As a ratified international instrument, the CRC can be taken into account by relevant authorities, including the courts. Moreover, courts are required to provide opportunities for children to enforce their rights under ratified international treaties.<sup>6</sup> Paragraph 3 of

---

<sup>1</sup> Note that the United Nations Treaty Collection website provides a different date (28 August 1991). Comments on this report provided by Maxym Kutsevych (Ph.D in Law, Kyiv State Shevchenko University, Department of Law, Criminal Law and Criminology Division, Advisor on Children in Justice to Women's Consortium of Ukraine), May 2014.

<sup>2</sup> Constitution of Ukraine, Article 9, Para. 1; see also Chernyavsky, N. & Zelenyi, O., ‘Update: a research guide to Ukrainian law’, March 2014, available at <http://www.nyulawglobal.org/globalex/Ukraine1.htm>.

<sup>3</sup> See *Initial report of Ukraine to the UN Committee on the Rights of the Child*, CRC/C/OPSC/UKR/1 9 June 2006, para. 2. Available at [http://www.unhchr.ch/tbs/doc.nsf/0/197d5ecbfeec0eccc12571f50034d81b/\\$FILE/G0642567.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/197d5ecbfeec0eccc12571f50034d81b/$FILE/G0642567.pdf).

<sup>4</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>5</sup> Ukrainian Parliament Commissioner for Human Rights, ‘State of observance and protection of the rights of the child in Ukraine’, 2010, available at <http://www.eoi.at/d/EOI%20-%20Jahresberichte/Ukraine/Special%20Report%20on%20the%20rights%20of%20the%20child%20in%20Ukraine%20-CRC%5B1%5D.pdf>.

<sup>6</sup> Civil Procedure Code of Ukraine, Article 27-1(3), available at [http://www.wipo.int/wipolex/fr/text.jsp?file\\_id=187649](http://www.wipo.int/wipolex/fr/text.jsp?file_id=187649).

Article 27-1 of the Civil Procedure Code of Ukraine states the following: “The Court shall promote creating of appropriate conditions for a minor or underage person to carry out his/her rights determined by the law and under the international treaty in force, agreed to be binding by the *Verkhovna Rada* of Ukraine”.

This regulation is even more generalised in Article 1 of the Criminal Procedure Code of Ukraine: “The rules of criminal proceedings on the territory of Ukraine are defined only by the criminal procedural law of Ukraine. It consists of relevant provisions of the Constitution of Ukraine, international treaties in force, agreed to be binding by the *Verkhovna Rada* of Ukraine, the present Code and other laws of Ukraine”.

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

In 2009, the Constitutional Court of Ukraine determined that Ukraine is obliged to provide support for orphans and children deprived of parental care, and that this duty is “in line with the provisions of international legal acts recognised by Ukraine,” such as Article 3 of the CRC.<sup>7</sup>

## 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?

According to the general rule set forth in paragraph 1 of Article 29 of the Civil Procedure Code, only “persons who have come of legal age as well as legal persons have the ability to carry out the civil procedural rights and perform their duties in court individually (civil procedural capacity)”. An exception to this provision, which usually has different interpretations in law enforcement, is the rule included in paragraph 2 of the same Article: “Minors between the ages of fourteen to eighteen years... may individually carry out the civil procedural rights and perform their duties at the court cases arising from the relationship in which they are personally involved, unless otherwise provided by law”. Another exception is established by the Family Code, which permits children over the age of 14 to directly seek a remedy in the courts for the protection of their family rights and interests.<sup>8</sup> Therefore, some limited right to bring cases in courts is given to children aged 14 to 18 years, while younger children are deprived of this right altogether.<sup>9</sup>

A child of any age may report or inform an investigator or public prosecutor about a criminal offence. Following proper review this official enters the information concerned in the Integrated Register of Pre-Trial Investigations. Thereafter the case may be considered open. The age of a child who reports or appeals to the investigator (public prosecutor) can influence the investigator’s personal perception of the gravity and significance of the reported data, thus affecting the decision whether to include this

---

<sup>7</sup> Summary of Ukrainian Constitutional Court Decision No. 3-rp/2009 dated 3 February 2009, available at <http://www.ccu.gov.ua/doccatalog/document?id=39676>.

<sup>8</sup> Family Code of Ukraine, Article 18, available at: [www.familylaw.com.ua/docs/FAMILY\\_CODE\\_OF\\_UKRAINE.doc](http://www.familylaw.com.ua/docs/FAMILY_CODE_OF_UKRAINE.doc).

<sup>9</sup> Comments on this report provided by Maxym Kutsevych, May 2014; Children under the age of 14 *must* be represented in court by their parents, legal guardians, or “other persons specified by law”: Civil Procedure Code of Ukraine, Article 39.

information in the Integrated Register of Pre-Trial Investigations.<sup>10</sup>

In addition, the Ukrainian Parliament Commissioner for Human Rights, the prosecutor, public authorities, and local governments may apply to the court for the protection of rights, freedoms, and interests of children.<sup>11</sup>

Ukrainian legislation grants Ukrainian Parliament Commissioner for Human Rights, public prosecutors and other government authorities the right to take legal action and to defend the rights and interests of underage persons in the court.

During a trial, the child has several defined procedural rights, including the right to express his or her own opinion either directly or through a representative, the right to receive information about the court session, and the right to receive the procedural guarantees to which he or she is entitled under any treaties which have been ratified by the *Verkhovna Rada* of Ukraine.<sup>12</sup>

The court is required to explain to the child his or her rights and the possible consequences of the actions of the child's representative where: (1) the child's age and health permit him or her to understand the explanation, and (2) the explanation would benefit the child.<sup>13</sup>

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?

Regardless of who brought the case to the court – either children aged 14 to 18 years by themselves or their legal representatives – a child in his or her own name shall be recognised as a plaintiff (or the party in the case). Since a child under the age of 14 years is not permitted to bring cases to the court, only the child's legal representative can be recognised as a plaintiff (or the party to the case) who shall act on his or her own behalf but in the best interests of a child, as stipulated by Article 39 of the Civil Procedure Code.<sup>14</sup>

The Civil Procedure Code includes a number of provisions that offer only partial opportunities for a child to protect his/her interests in trial. According to Article 27-1, a child can directly or through a representative or legal representative express his/her opinion and receive the assistance of the latter in expressing such an opinion; the court shall explain to the child his/her rights and possible consequences of actions of his/her representative or legal representative, if it is in the best interests of the child, and his/her age and health status permits him/her to understand their value; the court shall create appropriate conditions for a child to carry out his/her rights determined by law and under international treaties ratified by the *Verkhovna Rada* of Ukraine.<sup>15</sup>

Yet Article 27-1 establishes that children can only “get information about the court session through a representative or legal representative”, which deprives children of any

---

<sup>10</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>11</sup> Civil Procedure Code of Ukraine, Article 45.

<sup>12</sup> Ibid., Article 27-1.

<sup>13</sup> Ibid., Article 27-1.

<sup>14</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>15</sup> Ibid.

age the opportunity to directly and independently realise their procedural rights and requires the involvement of relevant legal representatives in the process. This is why paragraph 2 of Article 29 of the Civil Procedure Code states that the court may require the involvement of a legal representative of such persons, while paragraph 2 of Article 43 establishes that “if during the review of the case it is determined that a minor or underage person deprived of parental care has no legal representative, the court shall upon the submission of a guardianship authority appoint a guardian or trustee by approval and involve them in a case as legal representatives”.<sup>16</sup>

In any case, effective realisation of the rights of children in the civil process requires the involvement of legal representatives.<sup>17</sup> The representative may then act on behalf of the child in all matters related to the case.<sup>18</sup> The court may appoint or replace a legal representative upon the request of a child if doing so is in the child’s interest.<sup>19</sup>

The situation is somewhat different in criminal proceedings. According to paragraph 1 of Article 44 and paragraph 2 of Article 59 of the Criminal Procedure Code, if a victim, suspect or accused is a child, his or her legal representative shall be committed to participate in a procedural action together with the individual concerned, while according to Article 52, the participation of a defence counsel shall be mandatory in respect of a child who is suspected of or charged with the commission of a criminal offence. If a child is a witness to a crime, then according to Article 227, the participation of the legal representative, a pedagogue, psychologist and medical practitioner, if necessary, should be ensured in investigative actions. Therefore, fully independent participation of children in criminal proceedings is not possible.<sup>20</sup>

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

As described in part II.B above, children under 14 must be represented by their parents, legal guardians, or “other persons specified by law.” Therefore, cases would typically be brought by such representatives.

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

The Constitution provides that everyone has the right to legal assistance, which is provided free of charge in cases envisaged by law.<sup>21</sup> It also guarantees everyone’s freedom to choose the defender of his or her rights.<sup>22</sup> In cases of arrest or detention, the Constitution guarantees everyone’s right to legal assistance from the moment of detention.<sup>23</sup>

All persons under the jurisdiction of Ukraine are entitled to free primary legal aid, which includes the provision of legal information, consultation and explanation of legal issues, as well as the drafting of requests, complaints and other non-procedural legal

---

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Civil Procedure Code of Ukraine, Article 44.

<sup>19</sup> Ibid., Article 43.

<sup>20</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>21</sup> Constitution of Ukraine, Article 59.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., Article 29.

documents.<sup>24</sup>

Certain categories of children, including orphaned children, children deprived of parental care, children who are or may be victims of domestic violence, homeless children, and children whose families' average monthly income is below the defined minimum subsistence level, are entitled to free secondary legal aid, which includes the drafting of procedural documents and representation in court or before other persons.<sup>25</sup>

The Law on Free Legal Aid provides for the establishment of a network of centres to provide free secondary legal aid. The centres, however, are yet to be established in Ukraine, and are due to be fully completed by January 2017.<sup>26</sup> Before such centres are established, such assistance will continue to be provided through bar associations.<sup>27</sup>

Currently only the criminal justice system provides opportunities to receive free secondary legal aid, yet it is not widely available to all child clients. According to Articles 49 and 52 of the Criminal Procedure Code, if a child is suspected or charged with the commission of a criminal offence, the investigator or public prosecutor issues a decision and the investigating judge and the court adopt a ruling assigning an appropriate body to provide legal aid at no cost to appoint a defence attorney to act as defence counsel, and to ensure his/her appearance at a time and place stated in the ruling for participation in criminal proceedings. Given the absence of the centres for free secondary legal aid, such assistance shall be provided by the defence counsel representing any bar or law association. It should be noted, however, that such legal aid is not available to underage person who is a victim or witness in criminal trial.<sup>28</sup>

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)?

A child's representative must be at least 18 years of age, and must have "civil procedural capacity."<sup>29</sup> In addition, the representative must certify their authority to represent the child by producing the child's birth certificate or a decision appointing the representative as the child's guardian.<sup>30</sup>

### **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?

Victims can initiate a civil action, or can file a civil claim as part of an existing criminal

---

<sup>24</sup> Law of Ukraine on Free Legal Aid, Articles 7 & 8.

<sup>25</sup> Ibid., Articles 13(2) & 14(2).

<sup>26</sup> Latham & Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', August 2012, p. 340, available at <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

<sup>27</sup> Final Clauses and Transitional Provisions of the Law of Ukraine on Free Legal Aid, para. 4; Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>28</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>29</sup> Civil Procedure Code of Ukraine, Article 40.

<sup>30</sup> Ibid., Articles 40 & 42.

investigation.<sup>31</sup> In cases where a civil claim is filed as part of a criminal investigation, the victim is given the status of both victim and civil plaintiff.<sup>32</sup> Filing a civil claim in criminal proceedings is generally more effective than filing a free-standing civil claim because in criminal proceedings there are more investigative resources, as well as greater opportunities to obtain monetary compensation.<sup>33</sup> In addition, criminal cases are dealt with more quickly than civil cases, and a civil claim filed as part of a criminal case is not subject to court fees.<sup>34</sup> However, a court is unable to award compensation in a criminal case unless the case results in a guilty verdict.<sup>35</sup>

Where civil claims are raised in criminal proceedings, the claims must be filed during the preliminary investigation or pre-trial proceedings; once the trial has commenced, victims are precluded from raising civil claims.<sup>36</sup> The State may opt to file civil claims in these proceedings on victims' behalf in lieu of the victims filing these claims themselves.<sup>37</sup> Ukrainian criminal procedure legislation, however, is mostly aimed at bringing offenders to justice rather than protecting victims.<sup>38</sup>

Under the Constitution, appeals to the court in defence of individual constitutional rights and freedoms directly on the grounds of the Constitution are guaranteed.<sup>39</sup> In this regard, everyone has the right to appeal for the protection of his or her rights to the Ukrainian Parliament Commissioner for Human Rights,<sup>40</sup> whose mandate includes receiving and considering complaints from children.<sup>41</sup> The Commissioner can request that the Constitutional Court of Ukraine review the constitutionality of a law or legal act.<sup>42</sup>

Furthermore, the Constitution guarantees everyone's right to challenge in court the decisions, actions or omissions of bodies of state power, bodies of local self-government, officials and officers, as well as the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.<sup>43</sup> It also provides that, after exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations

---

<sup>31</sup> Kharkiv National University for Internal Affairs Criminological Association of Ukraine, 'Analysis of the current rights of victims of human trafficking in Ukraine to obtain compensation', 2011, p. 19, available at <http://lastradainternational.org/Isidocs/Compensation%20research%20Ukraine.pdf>

<sup>32</sup> Ibid., p. 22.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid., pp. 19, 22.

<sup>35</sup> Ibid., p. 23.

<sup>36</sup> Ibid., p. 19.

<sup>37</sup> Ibid., p. 37.

<sup>38</sup> Ibid., p. 24.

<sup>39</sup> Constitution of Ukraine, Article 8.

<sup>40</sup> Ibid., Article 55; see also Ukrainian Parliament Commissioner for Human Rights, 'The Ukrainian Parliament Commissioner for Human Rights – the Ukrainian Model of Ombudsman', 9 December 2011, available at

[http://www.ombudsman.gov.ua/en/index.php?option=com\\_content&view=article&id=1115&Itemid=23](http://www.ombudsman.gov.ua/en/index.php?option=com_content&view=article&id=1115&Itemid=23).

<sup>41</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ukraine*, CRC/C/UKR/CO/3-4, 21 April 2011, para. 15. Available at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fUKR%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fUKR%2fCO%2f3-4&Lang=en).

<sup>42</sup> Constitution of Ukraine, Article 150.

<sup>43</sup> Ibid.

of which Ukraine is a member or participant.<sup>44</sup>

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.<sup>45</sup> 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,<sup>46</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>47</sup> Anonymous complaints are not permitted.<sup>48</sup> 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.<sup>49</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>50</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>51</sup> 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?

Courts have the power to enforce the rights to which victims are entitled under the law,<sup>52</sup> and to award victims both material damages (e.g. loss of property, lost income, costs of medical treatment, and physical injury) and moral damages (e.g. distress, humiliation, and violations of the honour and dignity of the victim).<sup>53</sup> In the majority of cases, requests for the recovery of moral damages are added to claims in civil actions for the recovery of material damages. Claims requiring compensation for moral damages alone are less frequent.<sup>54</sup>

However, in both categories of cases the enforcement practices of calculating such damages and recognising grounds for their recovery are quite vague. The main reason for this is the lack of understanding of the nature of moral damages, which is quite new for Ukraine's legal system. As a result, they offer different methodologies for calculating moral damages, and suggest judicial approaches similar to recovery of material damages. Moreover, there exists a judicial practice that physically links moral damages to available material damages, or views the former as a certain proportion of the latter (e.g. moral damages may constitute 25 per cent of material damages). In both cases such practices contradict the nature of moral damages.<sup>55</sup>

---

<sup>44</sup> Ibid.

<sup>45</sup> 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>.

<sup>46</sup> Ibid., Article 34.

<sup>47</sup> Ibid., Article 35.

<sup>48</sup> Ibid.

<sup>49</sup> Rules of Court, July 2014, Rule 36, available at: [http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>50</sup> European Convention on Human Rights, Article 46.

<sup>51</sup> Ibid., Article 41.

<sup>52</sup> Civil Procedure Code of Ukraine, Article 27-1(3).

<sup>53</sup> Kharkiv National University for Internal Affairs Criminological Association of Ukraine, p. 19.

<sup>54</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>55</sup> Ibid.

The State is authorised to confiscate the property of an offender in order to obtain compensation for the victim.<sup>56</sup> In addition, where the offender is insolvent or cannot be found, the State itself is required to provide restitution for material damages suffered by victims<sup>57</sup> as well as any damages inflicted by mutilation, other health injury or death.<sup>58</sup> The Civil Code requires the procedure and conditions for the indemnification of damages inflicted by mutilation, other health injury or death to be established by the law.<sup>59</sup> However, as at May 2014, there is still no law regulating State indemnification of damages inflicted by such crimes.<sup>60</sup>

The Constitutional Court may deem a law or other legal act to be unconstitutional, in which case the law or other legal act loses its legal force.<sup>61</sup> The Constitution requires the State to compensate for material or moral damages inflicted on persons by the acts or actions deemed to be unconstitutional.<sup>62</sup>

Administrative Courts may impose injunctive relief in the form of suspension of the challenged decision of the governmental authority in part or in full. However, suspension cannot be imposed regarding acts of the *Verkhovna Rada*, the President, the Supreme Council of Justice and several acts of the National Bank of Ukraine.<sup>63</sup>

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?

The Parliament Commissioner for Human Rights, the President, or at least 45 People's Deputies may challenge the constitutionality of a law on its face.<sup>64</sup> Where the Constitutional Court deems a law unconstitutional, the law loses its legal force.<sup>65</sup>

All other cases envisage the identification of a victim and his/her participation in proceedings.<sup>66</sup>

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

An action may be brought by "several plaintiffs in common" if: 1) the subject of the dispute is the common rights or responsibilities of several plaintiffs or defendants; 2) the rights and responsibilities of several plaintiffs or defendants arise from the same common ground; and 3) the subject of the dispute is the rights and responsibilities of the

---

<sup>56</sup> Criminal Procedure Code of Ukraine, Article 568, available at <http://www.en.pravo.org.ua/files/Criminal%20justice/CPC.pdf>; see also Kharkiv National University for Internal Affairs Criminological Association of Ukraine, p. 19.

<sup>57</sup> Civil Code of Ukraine, Article 1177.

<sup>58</sup> Ibid., para. 1 of Article 1207.

<sup>59</sup> Ibid., para. 2 of Article 1207.

<sup>60</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>61</sup> Constitution of Ukraine, Article 152.

<sup>62</sup> Ibid.

<sup>63</sup> Baker & McKenzie, 'Dispute resolution around the world: Ukraine', 2011, p. 10, available at [http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw\\_ukraine\\_2011.pdf](http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw_ukraine_2011.pdf).

<sup>64</sup> Constitution of Ukraine, Article 150.

<sup>65</sup> Ibid., Article 152.

<sup>66</sup> Comments on this report provided by Maxym Kutsevych, May 2014.



same kind.<sup>67</sup> Each of the plaintiffs or defendants shall act in a civil process on one's own behalf, while representation of interests may be delegated to one of the plaintiffs or defendants.<sup>68</sup> Therefore, collective action or group litigation is possible, but there is no special collective plaintiff, because every participant of the group of plaintiffs acts independently to protect his or her own interests. At the same time, each individual plaintiff who joins the plaintiff party in the trial has to be identified in order to become an applicant.<sup>69</sup>

In efforts to protect their rights, victims may seek assistance from duly authorised bodies or citizen associations registered as legal entities with the right to go to court in order to hold an offender liable. Each individual victim can then use this court decision, obtained as a result of participation of the relevant State authority, in all subsequent lawsuits that he or she may initiate. Simultaneous group or collective actions (e.g. by consumers) is also possible.<sup>70</sup>

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?

According to paragraph 1, Article 35 of the Civil Procedure Code, third parties may join a case if a decision on the case can affect their rights or obligations. However, neither civil nor criminal law envisages the participation of a non-governmental organisation in a case as a representative or defence counsel for a child.<sup>71</sup>

**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?

In order to have his or her rights protected, an individual can file both civil and administrative actions. A civil case is filed by submitting a statement of claim in writing to the court of primary jurisdiction.<sup>72</sup> The statement of claim must include, amongst other things, the names of the plaintiff, defendant and plaintiff's representative, and their place of residence, and must be signed by the plaintiff or their representative.<sup>73</sup> If a statement of claim is filed by a person who acts to protect the rights, freedoms and interests of another person, the statement shall contain the grounds for such appeal.<sup>74</sup> The Civil Procedure Code provides additional guidance concerning the proper form, content, and manner of submission of the statement of claim.<sup>75</sup> Administrative actions are also commenced by filing a statement of claim, the requirements of which are similar to those of statements of claim in civil proceedings.<sup>76</sup>

---

<sup>67</sup> Civil Procedure Code of Ukraine, Article 32.

<sup>68</sup> Ibid.

<sup>69</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Civil Procedure Code of Ukraine, Article 118.

<sup>73</sup> Ibid., Article 119.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., Articles 118 to 120.

<sup>76</sup> Code of Administrative Legal Procedure of Ukraine, Article 106.

Alternatively, a civil action may be initiated in conjunction with criminal proceedings.<sup>77</sup> The matter and manner of a statement of claim shall conform to the requirements provided for actions entered in civil procedure.<sup>78</sup> The Criminal Procedure Code provides guidance concerning the filing of such actions.<sup>79</sup>

According to the general rule, a victim of a criminal offence shall appeal, report or inform an investigator or public prosecutor about such offence.<sup>80</sup> These officials shall initiate criminal proceedings in the case, including pre-trial investigation. After its completion the case shall be submitted to the court, where the appropriate government authority prosecutes the crime committed against the victim. The current Criminal Procedure Code (2012) does not permit a victim of a crime to personally press charges directly in the court, whereas the currently void Criminal Procedure Code (1960) provided such opportunities in the form of private prosecution. Criminal proceedings in the form of private prosecution, regulated by Article 36 of the current Criminal Procedure Code, limit this procedure to filing the statement of offence only to an investigator or public prosecutor.<sup>81</sup>

- 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?

See part II.D above.

There are no court fees for civil claims filed during criminal proceedings.<sup>82</sup> For identical claims filed in civil<sup>83</sup> proceedings, children or their representatives would be expected to cover court fees.

Additionally, court costs shall not be paid in several other categories of civil cases pertaining to protection of children's rights, including the following: on granting a child full civil capacity; on indemnification of damages inflicted by an illegal decision, action or inaction of a State authority, authority of the Autonomous Republic of Crimea or local self-government, its official representatives or employees, and similarly illegal decision, action or inaction of investigative and search agencies, bodies responsible for pre-trial investigation, public prosecution bodies and courts; on the protection of the rights of children in cases where representation of their interests in court is pursuant to the law of Ukraine or international treaty in force, agreed to be binding by the *Verkhovna Rada* of Ukraine, and/or guardianship and care authorities or services for children; and on cases concerning recovery of alimony.<sup>84</sup>

---

<sup>77</sup> Criminal Procedure Code of Ukraine, Article 128, available at <http://www.en.pravo.org.ua/files/Criminal%20justice/CPC.pdf>.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid., Articles 128-130.

<sup>80</sup> Ibid., Article 214.

<sup>81</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>82</sup> Kharkiv National University for Internal Affairs Criminological Association of Ukraine, p. 19.

<sup>83</sup> Ibid.

<sup>84</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

- 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 assistance may be obtained from practising lawyers or through children's rights organisations. However, there is no established tradition among lawyers of regularly providing pro bono services.<sup>85</sup>

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

For civil cases, the standard limitation period is three years, which starts running when an injured party learns or should have learned of the offence.<sup>86</sup> Where the court concludes that the claimant's failure to file within the limitations period is justified, the court may prolong the statute of limitations.<sup>87</sup>

For criminal cases, the limitation periods are as follows:

- Two years for minor offences for which the punishment would be less severe than the restraint of liberty;
- Three years for minor offences for which the prescribed punishment is the restraint of liberty;
- Five years for "an offence of medium gravity";
- 10 years for a "grave offence"; and
- 15 years for "a special grave offence."<sup>88</sup>

Where a person has evaded investigation of trial, the statute of limitations stops and does not begin to run again until the date of the person's apprehension. A person is discharged from liability, however, once 15 years have elapsed since the commission of the offence.<sup>89</sup>

Unlike several other European countries, the legislation of Ukraine lacks the procedure for terminating the course of the statute of limitations for claims related to the minority status of a person whose rights were violated in their childhood. Article 33 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) states that "each Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences... shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question". This Convention

---

<sup>85</sup> Latham & Watkins, p. 340.

<sup>86</sup> Global Legal Group, 'The international comparative legal guide to: litigation and dispute resolution 2010', Chapter 43, Ukraine, available at <http://www.cms-cmck.com/Hubbard.FileSystem/files/Publication/b186fbfc-9e68-4754-b312-039d6c52c4c0/Presentation/PublicationAttachment/3ec16c88-7f21-468f-856a-03bb82a1682d/IGLG%202010%20Article%20only1.pdf>.

<sup>87</sup> Ibid.

<sup>88</sup> Criminal Code, Article 49. The limitation period runs from the date of the criminal offence to the effective date of the judgment.

<sup>89</sup> Ibid.

was ratified by Ukraine on 20 June 2012 so it is part of national law, but this particular provision is not enforced. This is due to a traditionally narrow interpretation of Article 92 of the Constitution of Ukraine, which establishes that “acts that are crimes and liability for them are determined exclusively by the laws of Ukraine”. Since the statute of limitations for criminal liability are determined by the Criminal Code of Ukraine, it is necessary to amend it in order to introduce provisions on termination of the course of the statute of limitations, because unlike the Criminal Procedure Code, the Criminal Code (Paragraph 1, Article 3) is the only legislation regarding criminal liability.<sup>90</sup>

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?

General requirements regarding evidence are similar in all processes (civil, administrative and criminal).<sup>91</sup> Evidence may consist of the explanations of the parties, witness testimony, expert statements, and physical evidence, including written evidence and sound and video recordings.<sup>92</sup> Written evidence is usually submitted in the original. Where a copy of written evidence is submitted, the court, upon the request of the persons involved in the case, may require the submission of the original.<sup>93</sup>

A child may not be subpoenaed as a witness, but this does not prevent a child from voluntarily participating in the proceedings and providing testimony of his or her own accord.<sup>94</sup> The examination of child witnesses must be conducted in the presence of a parent, adoptive parent, guardian, trustee, representative of the guardianship institution, teacher, or close relative.<sup>95</sup> For witnesses aged under 16, the judge must explain the duty to give truthful testimony, though an oath is not required.<sup>96</sup> Witnesses aged under 16 must leave the courtroom after giving their testimony, except when the court deems their presence in court necessary.<sup>97</sup> In exceptional cases when it is necessary to objectively determine the circumstances of the case, during the examination of child witnesses under 18 the court may require that a person involved in the case be removed from the courtroom.<sup>98</sup> As with other witnesses, a child’s testimony is not considered evidence if the child cannot name the source of his or her awareness of certain circumstances.<sup>99</sup>

In addition to the abovementioned persons who should be present at the interrogation of a child in civil proceedings, the presence of a pedagogue or psychologist and a medical practitioner (if necessary) are mandatory in criminal proceedings.<sup>100</sup>

---

<sup>90</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>91</sup> Ibid.

<sup>92</sup> Civil Procedure Code of Ukraine, Article 57.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid., Article 94(4).

<sup>95</sup> Ibid., Article 182(1); see also *Second periodic report of Ukraine to the UN Committee on the Rights of the Child*, CRC/C/70/Add.11, 18 May 2001, para. 99. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f70%2fAdd.11&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f70%2fAdd.11&Lang=en).

<sup>96</sup> Civil Procedure Code of Ukraine, Article 182(2).

<sup>97</sup> Ibid., Article 182(5).

<sup>98</sup> Ibid., Article 182(4).

<sup>99</sup> Ibid., Article 63.

<sup>100</sup> Criminal Procedure Code, Article 226.

The practice of closed trials involving children in civil and criminal proceedings is widespread. This type of trial is envisaged by Article 6 of the Civil Procedure Code and Article 27 of Criminal Procedure Code, pursuant to Article 40(2)(vii) of the CRC, which requires that the child's privacy be fully respected at all stages of the proceedings. Relevant decisions on closed trials aimed at preserving the privacy and personal life of the parties involved are traditionally made in the majority of court proceedings.<sup>101</sup>

In accordance with Article 35 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) – “interviews with the child take place, where necessary, in premises designed or adapted for this purpose” – law enforcement agencies have set up so-called “green rooms” in order to: minimise the adverse effects of investigative actions on the mental health of the child participants of such actions; ensure social and legal protection of adolescents; carry out psychological prevention work and correct deviant behaviours; and identify and address causes and circumstances that encourage unlawful actions amongst children.<sup>102</sup>

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

The court must resolve most types of civil cases within two months after opening proceedings.<sup>103</sup> For a case involving the recovery of alimony, the court must resolve the case within one month.<sup>104</sup> In exceptional cases,<sup>105</sup> the court may extend the consideration of the case, but for no more than a month.

In practice, however, it is virtually impossible to obtain a court decision within these terms, and they should be viewed as exceptions to the rule. In reality, minimum terms for receiving a court decision or ruling in a civil case start at six months. Reasons for such delays may include breaks in court sessions, the duration of which is determined according to the circumstances of the case consideration that caused it,<sup>106</sup> and delays or suspensions of case consideration.<sup>107</sup> As a result, actual consideration of a case may take several years, but formally the term of its consideration by the court may not be violated.<sup>108</sup>

The situation in criminal proceedings is different. All issues concerning protection of a victim of crime shall be conclusively resolved by a court verdict on the criminal case, including issues concerning upholding or dismissing civil claims within the framework of the said criminal case. Here it is very difficult to determine the period of time from filing the statement of offence to the law enforcement agency until issuance of the final verdict by the court concerning this fact, with proper determination of the inflicted material and/or moral damages. The entire criminal proceedings include pre-trial investigation and consideration of the case in court, while the duration of these procedures is only partially limited by the law.<sup>109</sup>

---

<sup>101</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>102</sup> Ibid.

<sup>103</sup> Civil Procedure Code of Ukraine, Article 157.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid., para. 3, Article 159.

<sup>107</sup> Ibid., Article 191.

<sup>108</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>109</sup> Ibid.

For example, according to Article 219 of the Criminal Procedure Code, pre-trial investigation has to be completed within one month from the date the person concerned is notified of a suspected criminal misdemeanour, while time limits for pre-trial investigation may be extended in certain cases, and the total duration can reach: 1) two months from the date the person concerned is notified of a suspected criminal misdemeanor; 2) six months from the date the person concerned is notified of a suspected crime of small or medium gravity; 3) twelve months from the date the person concerned is notified of a suspected grave crime or a crime of special gravity.<sup>110</sup> Pre-trial investigation may be initiated long before notification of the person concerned about a suspected criminal offence – namely on the date of entry in the Integrated Register of Pre-Trial Investigations. This period (until notification of a person of a suspected offence) is not limited by any regulations. Therefore, the pre-trial investigation can continue for very extended periods of time even without its official termination (the latter is possible in case of concealment of the offender from the law).<sup>111</sup>

After completion of pre-trial investigation, consideration of a criminal case in the court begins. According to paragraph 1, Article 318 of the Criminal Procedure Code, “the trial shall be held and completed within a reasonable period of time”. In other words, it is not limited to several months and may last for a very long time. Even paragraph 4, Article 28, which provides that “criminal proceedings in respect... of an underage person shall be conducted without any delay and considered in court as a matter of priority”, cannot limit the duration of the proceedings.<sup>112</sup>

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

The parties to a civil case, as well as persons who did not participate in the case but whose rights or responsibilities were affected by the court’s decision, have the right to appeal decisions made by courts of first jurisdiction.<sup>113</sup> The right to appeal against the decision of the court of first instance also exists in administrative proceedings<sup>114</sup> and criminal proceedings.<sup>115</sup> Likewise, the right to lodge an appeal is granted to parties of the process and their representatives, as well as other persons who did not participate in the trial but whose rights and responsibilities may be affected by the court decision.<sup>116</sup>

All types of legal proceedings include the procedure for lodging a cassation complaint against the decision of the court of appeal – it is granted to parties of the process and their representatives, as well as other persons who did not participate in the trial but whose rights and responsibilities may be affected by the court decision.<sup>117</sup> All types of legal proceedings also offer a procedure for reviewing previous court decisions by the Supreme Court of Ukraine on the grounds of newly identified circumstances.<sup>118</sup>

---

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid., Article 291.

<sup>114</sup> Code of Administrative Legal Procedure of Ukraine, Article 185.

<sup>115</sup> Criminal Procedure Code of Ukraine, Article 393.

<sup>116</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>117</sup> Civil Procedure Code of Ukraine, Article 324; Code of Administrative Legal Procedure of Ukraine, Article 211; and Criminal Procedure Code of Ukraine, Article 425.

<sup>118</sup> Civil Procedure Code of Ukraine, Article 3; Code of Administrative Legal Procedure of Ukraine, Article

An application for a revision judgment in a criminal case must be filed with the Supreme Court within three months of the judgment.<sup>119</sup> The required procedures for such an application are detailed in the Criminal Procedure Code of Ukraine.<sup>120</sup>

- 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?

Historically, Ukraine has not recognised the precedential value of judicial decisions. In 2010, however, Ukraine passed judicial reforms which provide that Supreme Court decisions which resolve divergent applications of law in lower courts are binding on all State authorities and in lower courts.<sup>121</sup> For example, the Law of Ukraine on the Judiciary and the Status of Judges (2010) mandates the Supreme Court of Ukraine with the development of unified approaches to application of the law by the courts of lower instances, thus determining relevant practices of law enforcement agencies.<sup>122</sup>

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

A favourable court decision does not itself guarantee compensation, as most types of court verdicts must be executed through separate enforcement proceedings.<sup>123</sup> This is the case for victim's claims in civil, administrative and criminal proceedings. The problem is that execution of such decisions is the responsibility of a separate system of government bodies, regulated by the procedural legislation and by the Law of Ukraine on Execution Proceedings. Therefore the issue of execution of court decisions is complicated by the procedure itself, by financial solvency of guilty persons, and by many other issues.<sup>124</sup>

For certain decisions relating to child custody or child support, however, the Ukrainian Code of Civil Procedure allows a court to enforce the immediate satisfaction of its decisions.<sup>125</sup>

- 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.

In Ukraine, one of the primary challenges to enforcing human rights is that many of the laws, including many of the provisions in the Ukrainian Constitution, are simply declarative in nature, and have not yet been observed or enforced by Ukrainian courts. For instance, although Ukraine's Constitution provides for the right to a jury trial in certain cases, the country does not have a jury trial system, and in fact, has never held a

---

3; and Criminal Procedure Code of Ukraine, Article 33.

<sup>119</sup> Criminal Procedure Code of Ukraine, Article 447.

<sup>120</sup> Ibid., Articles 444-449.

<sup>121</sup> Petorv, Y. & Demyanenko, O., 'How to enforce foreign arbitral awards in Ukraine', available at [http://www.asterslaw.com/news\\_media/publications/2306](http://www.asterslaw.com/news_media/publications/2306).

<sup>122</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>123</sup> Civil Procedure Code of Ukraine, Articles 367 et al.; see also Kharkiv National University for Internal Affairs Criminological Association of Ukraine, p. 23.

<sup>124</sup> Comments on this report provided by Maxym Kutsevych, May 2014.

<sup>125</sup> Civil Procedure Code of Ukraine, Articles 367 et al.; see also Kharkiv National University for Internal Affairs Criminological Association of Ukraine, p. 23.

jury trial.<sup>126</sup>

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*<sup>127</sup>

---

<sup>126</sup> Futey, B., 'Law on the judiciary and the status of judges of Ukraine', 2010, p. 8, available at <http://www.usukraine.org/pdf/Comments-on-2010-Ukraine-Law-on-Judiciary.pdf>

<sup>127</sup> Materials used in the compilation of this report include reports produced by Women's Consortium of Ukraine within the program for the protection of children's rights with financial support of Save the Children International.