

ACCESS TO JUSTICE FOR CHILDREN: CZECH REPUBLIC

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Under Article 10 of the Czech Constitution, the CRC and other international treaties that have been ratified by the Czech Republic form part of the national legal system.¹ The CRC is directly binding and takes precedence over national law.²

B. Does the CRC take precedence over national law?

International treaties ratified under Article 10 of the Constitution take precedence over ordinary statutes. This means that should a provision of the CRC conflict with a provision of a law, the CRC shall prevail.³ The CRC, as an international treaty, is equal to constitutional law, but does not take precedence over it.⁴

C. Has the CRC been incorporated into national law?

The CRC has been incorporated into national law. The CRC is directly applicable⁵ and forms part of the national legal system.⁶

The Committee on the Rights of the Child, however, has expressed concern about the Czech Republic's reservation made to Article 7(1) of the CRC regarding the right of an adopted child to know their biological parents, and has recommended that the Czech Republic withdraw this reservation.

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

The CRC's provisions can be directly enforced in courts provided that they are "self-executing".⁸ Should there be any provisions that are "non-self-executing", they

¹ Article 10 of the Czech Constitution, Act No. 1/1993 Coll., as amended.

² See also 'Review Report on Follow-up to the World Summit for Children – Czech Republic', available at: http://www.unicef.org/specialsession/how_country/edr_czechrep_en.PDF, (accessed 3 February 2014).

³ Article 10 of the Constitution.

⁴ This is a question of legal theory and interpretation of the Czech Constitution. See for example the commentary Sládeček, V.; Mikule, V.; Syllová, J.: *Ústava České republiky*, 1st edition, C. H. Beck, 2007, p. 84, or the opinion of the judge Eliška Wágnerová in the Constitutional Court Case No. Pl. ÚS 31/03 from 11 February 2004, available at: <http://kraken.slv.cz/Pl.US31/03>.

⁵ The CRC was promulgated by Act No. 104/1991 Coll. and Act No. 41/2010 Coll. Int. Tr.

⁶ Article 10 of the Constitution.

⁷ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of the Czech Republic*, CRC/C/CZE/CO/3-4, 4 August 2011, paras 8-9. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCZE%2fCO%2f3-4&Lang=en.

⁸ It is up to the court's discretion to decide whether a particular provision in question is, or is not, self-executing.

Article 95 of the Constitution.

would have to be further elaborated in the national law.⁹ In making their decisions, judges are bound by statutes and treaties including the CRC which form a part of the legal order; they are authorised to judge whether enactments other than statutes are in conformity with statutes or with such treaties.¹⁰

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

The CRC has been cited and discussed in a number of court decisions. For example, cases regarding asylum and family integrity,¹¹ parental responsibility,¹² child care and a child's contact with their parents,¹³ a child's right to know their parents,¹⁴ and child support calculations.¹⁵

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 and their representatives can bring civil, judicial review or criminal proceedings in domestic courts to challenge violations of children's rights.¹⁶ For a detailed description, see part III.A.

In addition, they can complain to the Public Defender for Human Rights,¹⁷ who protects persons from actions of public bodies and other institutions if the action is contrary to law, or does not correspond with the principles of a democratic legal state and good administration, as well as from the inactivity of the administrative bodies.¹⁸ The Public Defender for Human Rights starts investigation based on a complaint or from his/her own initiative (e.g. information learnt from the media).¹⁹ The complaint is filed free of charge.²⁰ Nevertheless, the competencies of the Public Defender for Human Rights are limited. The Public Defender for Human Rights may conduct an investigation, but may not substitute activities of public bodies or change their resolution, or revoke a legal act.

²¹ When the Public Defender for Human Rights finds out that there was an unlawful action of the public body or institution, he/she may demand that they rectify the

⁹ See for example the commentary by Molek, P. in ŠIMÍČEK, V.: *Ústava České republiky – Komentář*. 1st edition, Linde, 2010, p. 182.

¹⁰ Article 95 (1) of the Constitution.

¹¹ Supreme Administrative Court Case No. 2 Azs 126/2006 from 22 March 2007, available at: <http://kraken.slv.cz/2Azs126/2006>.

¹² Supreme Court Case No. 21 Cdo 3909/2010 from 28 June 2011, available at: <http://kraken.slv.cz/21Cdo3909/2010>.

¹³ Constitutional Court Case No. ÚS 112/97 from 10 March 1998, available at: <http://kraken.slv.cz/I.%C3%9AS112/97>.

¹⁴ Constitutional Court Case No. ÚS 214/06 from 2 June 2006, available at: <http://kraken.slv.cz/I.%C3%9AS214/06>.

¹⁵ Constitutional Court Case No. ÚS 1276/10 from 20 May 2010, available at: <http://kraken.slv.cz/I.%C3%9AS1276/10> <http://kraken.slv.cz/I.%C3%9AS214/06>.

¹⁶ See Part III of the Civil Procedure Code, Act No. 99/1963 Coll., as amended.

¹⁷ See the official website of the Public Defender for Human Rights: <http://www.ochrance.cz/>.

¹⁸ Section 1 (1) of the Act on the Public Defender for Human Rights, Act No. 349/1999 Coll., as amended.

¹⁹ Ibid., Section 9.

²⁰ Ibid., Section 10.

²¹ Ibid., Section 1.

situation.²²

The Public Defender for Human Rights is an independent public body available to receive complaints from both children and adults. Note that there is no special Children's Ombudsman,²³ who would serve as an independent body for monitoring the implementation of the CRC, including the investigation of individual complaints by children in a child-sensitive manner.

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?

Children are permitted to bring a case before a court, but may be required to have an adult representative bring the case on the child's behalf. A child's parents or guardians do not have to consent to the child or their legal representative initiating legal proceedings. A person attains full legal capacity to act and can bring a case before a court in their own name once they reach the age of 18, enter into a marriage, or once a court acknowledges their full legal capacity to act.²⁴

When a child brings a case before a court, the court must first consider the child's mental maturity to bring the case before proceeding further.²⁵ If the court concludes that the child does not have sufficient capacity to bring the case, it will require the child to have a legal representative acting on the child's behalf.²⁶ In these circumstances, the child's legal representative will usually be their parents, adoptive/foster parents, or their guardian.

Having "parental responsibility" over a child grants its holder the right to pursue legal claims related to the child, and to legally represent the child and administer the child's property.²⁷ However, parents cannot represent their child when the legal acts in question could present a conflict of interest between the parents and their child, or a conflict of interest between children of the same parents. If none of the parents can represent the child, the court will appoint a guardian to represent the child in the matter.²⁸ Furthermore, the court will appoint a guardian if the parental responsibility or its performance is limited,²⁹ or if it is needed in the interest of the child for another reason or when required by law, etc.³⁰ Usually, in such cases the court appoints a public authority for social and legal child protection (an "OSPOD") as a guardian for the child.

²² Ibid., Section 18.

²³ Nevertheless, for children there is a special website - <http://deti.ochrance.cz/> - falling within the framework of activities of the Public Defender for Human Rights.

²⁴ Section 15, 24, 30 of the Civil Code, Act No. 89/2012 Coll., as amended.

²⁵ Constitutional Court's decision No. III. ÚS 125/98 from 24 September 1998, available at: <http://kraken.slv.cz/III.%C3%9AS125/98>.

²⁶ Supreme Court Case No. 33 Cdo 2289/2011 from 20 September 2012, available at: <http://kraken.slv.cz/33Cdo2289/2011>.

²⁷ "Parental responsibility covers parental rights and obligations comprising child's care, including in particular the child's health, physical, emotional, intellectual and ethical development, maintaining personal contact with the child, ensuring its upbringing and education, determining child's residence, child's representation and administration of the child's property; it arises with child's birth and ceases to exist when the child gains full legal capacity to act. The length and extent of the parental responsibility maybe changed only by court." See Section 858 of the Civil Code.

²⁸ Ibid., Section 892 (3).

²⁹ Ibid., Section 878 (3).

³⁰ Ibid., Section 943.

In certain proceedings such as those involving child care, contact with parents, and child maintenance, OSPOD³² is present. This is usually a representative of a municipal or regional authority, or the Office for International Legal Protection of Children (where an international element is involved).³³ The authority has similar procedural rights as a guardian; it has the power to bring cases before a court to protect children's rights and ensures that the matter is dealt with in the best interests of the child.³⁴

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

In the case of infants and young children, the child's legal representative (usually their parents, adoptive/foster parents, or their guardian) would typically initiate a lawsuit on behalf of the child (see II.B.).

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

Under the Charter of Fundamental Rights and Freedoms, everyone has the right to legal assistance in proceedings before courts, other state bodies or public administrative bodies.³⁵ Moreover, an accused has the right to be able to defend themselves with the assistance of counsel. If an accused fails to choose counsel even though the law requires them to have one, the court shall appoint a counsel for them.³⁶

Children and their representatives are entitled to receive free or subsidised legal assistance so long as that the necessary legal requirements are met. Provided that the preconditions for exemption from court fees are satisfied (see IV.B), the judge shall, upon an individual party's request, appoint them a legal representative in the proceedings. This is conditioned upon the necessary protection of the person's interests in the proceedings. The judge is obliged to inform the parties of the possibility of submitting such a request.³⁷

Administrative proceedings are similar to civil proceedings and leave it to the discretion of the judge.³⁸

A victim in criminal proceedings is entitled to legal assistance free of charge or at a reduced fee in the case of a claim of damage or non-material damage, or the surrender of unjust enrichment, provided that the victim does not have sufficient funds to meet the incurred costs. This does not apply when the legal assistance is unnecessary, considering the nature of the claimed damage or non-material damage or the amount thereof, or given the nature and extent of the unjust enrichment.³⁹

Furthermore, the Czech Bar Association ensures legal assistance to persons who cannot

³¹ Sections 434, 455, 469 of the Act on Special Legal Proceedings, Act No. 292/2013 Coll.

³² See Act on Social and Legal Child Protection, Act No. 359/1999 Coll., as amended.

³³ Ibid., Sections 3,4.

³⁴ See Chapter V of the Act on Special Legal Proceedings.

³⁵ Article 37 (2) of the Charter of Fundamental Rights and Freedoms, Resolution No. 2/1993 Coll., as amended.

³⁶ Ibid., Article 40 (3).

³⁷ Section 30 of the Civil Procedure Code.

³⁸ Sections 35 (8), 36 (3) of the Administrative Procedure Code, Act No. 150/2002 Coll., as amended.

³⁹ Section 51a (1) of the Criminal Procedure Code.

afford it for any reason. The grant of legal aid would have to be justified by the person's financial situation, and the enforcement or defence of the right concerned must not be wilful or evidently in vain.⁴⁰ The final decision on granting legal assistance is left to the Bar Association's discretion.

- 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)?

There are no other such conditions or limits under Czech law.

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?

Children and their representatives may initiate civil, judicial review or criminal proceedings to challenge violations of their rights under domestic law.

Most civil cases would be brought before district courts. However, some cases would be brought before regional courts (e.g., cases involving social security benefits).⁴¹

Judicial review proceedings may be brought before courts to challenge a decision of an administrative authority. Cases concerning actions against an administrative body decision on civil, family and labour matters are usually brought before district courts.⁴² The action may be filed by a person claiming that their rights were affected by the administrative authority decision in some way - such as having their rights or obligations established, changed, revoked, specified or rejected.⁴³ Judicial review proceedings concerning other actions against administrative body decisions, protection against inactivity of the administrative body, and protection against illegal intervention of the administrative body are brought before regional courts.⁴⁴

Regarding criminal proceedings, if the violation of a right amounts to a crime and the public prosecutor does not bring a criminal case against the suspect, the victim(s) may lodge a complaint initiating criminal proceedings. The police (under the supervision of a public prosecutor) will then investigate whether a crime was committed. If the case is unfounded, or criminal prosecution is inadmissible or useless, the public prosecutor or police may then seek to suspend the proceedings.⁴⁵

Council of Europe - ECHR

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.⁴⁶ Any

⁴⁰ Section 18 (2), (3) of the Act on Advocacy, Act No. 85/1996 Coll., as amended.

⁴¹ Section 9 of the Civil Procedure Code.

⁴² Ibid., Sections 244, 249.

⁴³ Ibid., Section 246 (1).

⁴⁴ Section 7 (1) of the Administrative Procedure Code.

⁴⁵ Section 159a of the Criminal Procedure Code.

⁴⁶ 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-fundam>

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,⁴⁷ but the complaint will be admissible only if all domestic remedies have been exhausted.⁴⁸ Anonymous complaints are not permitted.⁴⁹ 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.⁵⁰ After examining the case, the Court renders a judgment which is binding on the State⁵¹ and also has powers to award monetary compensation to the victims of human rights abuses.⁵² 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.⁵³

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

In civil actions, courts may order a party to cease, abstain or carry out a particular action (e.g., to eliminate defects of a violation), award adequate satisfaction (e.g., an apology or publication of reply), or award compensation in the form of damages. With the exception of proceedings that can be initiated without a petition (e.g., cases involving a child's care, custody, or legal capacity), civil courts are bound by a demand for relief.⁵⁴ This means that courts cannot exceed the scale of the complainant's demands (e.g., they cannot award higher damages than the amount requested by the complainant).

In judicial review proceedings, courts may amend the administrative body's decision⁵⁵ or send it back to the administrative body.⁵⁶ The administrative body is then bound by the judicial decision and must issue its decision in compliance with such decision. In the case of inactivity of the administrative body, the court may order the administrative body to issue the decision or certificate in question within a certain time period.⁵⁷ In the case of illegal intervention by the administrative body, the court may order the administrative body to cease the intervention and eliminate its defects.⁵⁸

In both civil and judicial review proceedings, a preliminary measure may be ordered by the court before proceedings are initiated, if necessary, to provisionally modify the relations between parties during the proceedings, or if it is feared the enforcement of the judicial decision could be jeopardised.⁵⁹

[ental-freedoms](#).

⁴⁷ Ibid., Article 34.

⁴⁸ Ibid., Article 35.

⁴⁹ Ibid.

⁵⁰ Rules of Court, July 2014, Rule 36, available at:

http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁵¹ European Convention on Human Rights, Article 46.

⁵² Ibid., Article 41.

⁵³ See the case *D.H. and Others v. The Czech Republic on Discrimination and the Right to Education*. A summary is available here:

<https://www.crin.org/en/library/legal-database/dh-and-others-v-czech-republic>.

⁵⁴ Criminal Procedure Code, Section 153.

⁵⁵ Section 250j of the Civil Procedure Code.

⁵⁶ Section 78 of the Administrative Procedure Code.

⁵⁷ Ibid., Section 81 (2).

⁵⁸ Ibid., Section 87 (2).

⁵⁹ Section 74 (1) of the Civil Procedure Code; Ibid., Section 38 (1).

Additionally, judges are entitled to review legal regulations and their consistency with statutes and international treaties. If a judge concludes that the statute or regulation to be applied in a case conflicts with the constitutional order, the judge will submit the matter to the Constitutional Court.⁶⁰ The Constitutional Court may then annul such law or its particular provisions.⁶¹

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?

Filing a lawsuit in civil, criminal or judicial review proceedings requires identification of the individual victim (see part III.A).⁶²

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

There is no special legal regulation of group litigation. In most civil proceedings, claimants would sue the defendant together in one proceeding.⁶³ Alternatively, for the sake of economic efficiency, the court is authorised to join in common proceedings individual matters that have been initiated at that court where the facts at issue are connected with each other or involve the same parties. If the proposal for the initiation of proceedings includes matters not suitable to be joined, or if the reasons such matters were joined no longer exist, the court is authorised to exclude one of the matters subject to individual proceedings.⁶⁴

The initiation of civil proceedings prevents other proceedings concerning the same matter (i.e. the same claimant, defendant and identical claim) from being undertaken by the court.⁶⁵

Nevertheless, the initiation of certain civil proceedings also prevents other proceedings of other claimants' actions, requiring the same claim from the same proceedings or situation, from being undertaken by the court against the identical defendant.⁶⁶ In these proceedings, the verdict of the final judgment is binding not only for the participants in the proceedings, but also other persons entitled against the defendant for the same claims from the same hearing or situation.⁶⁷

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?

In theory, non-governmental organisations (NGOs) may file challenges or intervene in cases of violations of children's rights. As described in part III.A, they would have to be directly affected by the particular matter in order to initiate or participate in the legal proceedings.⁶⁸ However, such participation is very unlikely to occur.

⁶⁰ Article 95 of the Constitution.

⁶¹ Ibid., Article 87 (1) a), b).

⁶² Section 42 (4) in combination with Section 79 (1) of the Civil Procedure Code. Section 246 (1) of the Civil Procedure Code. Section 33 and following of the of the Administrative Procedure Code.

⁶³ See Section 91 and following of the Civil Procedure Code.

⁶⁴ Ibid., Section 112.

⁶⁵ Ibid., Section 83.

⁶⁶ Ibid., Section 83 (2).

⁶⁷ Ibid., Section 159a (2).

⁶⁸ See also Section 34 of the Administrative Procedure Code.

In civil proceedings, NGOs could theoretically also take part in the proceedings as a subsidiary party, provided that they have a legal interest in the result of the case. Then they would have the same rights and obligations as a party in the proceedings.⁶⁹

In criminal proceedings, an NGO could file a criminal notice to the police or state prosecutor suggesting that a crime was committed.⁷⁰

European Social Charter - European Committee of Social Rights

The Czech Republic has ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints,⁷¹ meaning that complaints of violations of children's rights contained in the European Social Charter⁷² can be made to the European Committee of Social Rights. Such complaints of unsatisfactory application of the Charter may only be submitted by international NGOs that have participatory status with the Council of Europe.⁷³ The Committee reviews the information provided by both sides and writes a report with its conclusions, which is sent to the Committee of Ministers of the Council of Europe that adopts a resolution and makes a recommendation to the State.⁷⁴ The State then must provide information about the steps taken to comply with the recommendation in its next report under the Charter.⁷⁵

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?

As described in III.A., civil cases are usually filed with district courts. However, there are some exceptions, such as cases involving social security benefits, that are filed with regional courts.⁷⁶ The Civil Procedure Code provides extensive guidance on how to initiate civil proceedings.⁷⁷

Judicial review cases, as described in III.A., are filed either with district courts (cases governed by Part V of the Civil Procedure Code)⁷⁸ or regional courts (cases governed by the Administrative Procedure Code).⁷⁹ Guidance on the initiation of proceedings is to be found in Part V of the Civil Procedure Code⁸⁰ and Administrative Procedure Code.⁸¹

The initial filing with the court in civil and judicial review proceedings usually entails

⁶⁹ Section 93 of the Civil Procedure Code.

⁷⁰ Section 59 (4) of the Criminal Procedure Code.

⁷¹ Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

⁷² Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

⁷³ Additional Protocol for a System of Collective Complaints, Article 1. See also:

http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

⁷⁴ Additional Protocol for a System of Collective Complaints, Articles 8-9.

⁷⁵ Additional Protocol for a System of Collective Complaints, Article 10.

⁷⁶ Section 9 of the Civil Procedure Code.

⁷⁷ Ibid., Sections 42, 79 and following.

⁷⁸ Ibid., Section 249.

⁷⁹ Section 7 (1) of the Administrative Procedure Code.

⁸⁰ Sections 42, 246 of the Civil Procedure Code.

⁸¹ Section 37 of the Administrative Procedure Code.

the payment of court fees, unless an exemption applies.⁸²

Generally, criminal cases are initiated in district juvenile courts.⁸³ Depending on the nature and seriousness of the offence, the proceedings may be commenced with regional juvenile courts.⁸⁴

- 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?

As discussed in II.D., child complainants and their representatives may qualify for free or subsidised legal aid. Nevertheless, there is not a centralised place where child complainants or their representatives can request legal aid. In order to request and receive legal aid,⁸⁵ a person may contact individual NGOs (see part IV.C) or the Czech Bar Association.

Child complainants and their representatives are ordinarily expected to pay court fees and cover the costs of the proceedings and acts of the court.⁸⁶ However, the Act on Court Fees provides a wide range of exemptions. Exemptions apply, for example,⁸⁷ in civil proceedings involving custody, social security benefits, and child maintenance.

Furthermore, in civil proceedings, a person may ask the judge for a full or partial exemption from court fees. The exemption would have to be justified by the person's financial situation, and enforcement or defence of the right concerned must not be wilful or evidently in vain. A person may be granted a full exemption from court fees only if there are particularly serious reasons for such a decision, and the decision must be substantiated. Unless otherwise decided by the judge, the exemption shall apply to the entire proceedings and have retroactive effect. However, fees paid before the decision on the exemption was adopted shall not be reimbursed. If a representative has been appointed for a person exempted from court fees, the exemption shall also apply to the cash expenses of the representative and the representation reimbursement, to the extent to which it has been granted. The judge may withdraw the granted exemption at any time during the proceedings, even with retroactive effect, if it is revealed that the person's situation does not or did not give any reason to exempt them.⁸⁸

In civil proceedings, the costs of a wholly successful party in a matter are reimbursed by the unsuccessful party in the matter. If a party has achieved only some success, the court will fairly divide the reimbursement of costs, or pronounce that none of the parties are entitled to reimbursement. Even if a party has achieved only some success in the matter, the court is authorised to provide them with full reimbursement of the costs of the proceedings if the party's failure is proportionally relatively negligible or if the decision on the performance has been based on the expert opinion or is at the discretion of the

⁸² For further information see Act on Court Fees, Act No. 549/1991 Coll., as amended.

⁸³ Section 16 of the Criminal Procedure Code.

⁸⁴ *Ibid.*, Section 17.

⁸⁵ See <http://www.cak.cz/scripts/detail.php?id=2617>

⁸⁶ See schedules of charges attached to the Act on Court Fees, Act No. 549/1991 Coll., as amended.

⁸⁷ Section 11 of the Act on Court Fees.

⁸⁸ Section 138 of the Civil Procedure Code.

court.⁸⁹

None of the parties have the right to the reimbursement of costs of proceedings based on the results thereof if the proceedings: a) could be initiated even without a petition (e.g., cases involving a child's care, custody, or legal capacity), unless the circumstances justify the recognition of the reimbursement of the costs of the proceedings; b) have been ended by settlement, unless something else has been arranged regarding the reimbursement of costs; or c) have been stopped. If the proceedings had to be stopped because of any of the parties, such party is obliged to bear the costs thereof. However, if a reasonably filed petition has been withdrawn due to the behaviour of a party in the proceedings, the party is obliged to meet the costs.⁹⁰

Further, the court is authorised to order a party or their representative to meet the costs of proceedings that would otherwise not be incurred if caused by the fault of the party or their representative or if such costs have been incurred through an accident that has occurred to the party or their representative.⁹¹ Additionally based on the results of the proceedings, the state is entitled to be reimbursed for the costs of the proceedings met by the state from the parties if such costs are not expected to be exempted from the court fees.⁹²

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Pro bono legal services are available either from practising lawyers (who volunteer to provide such services), the Czech Bar Association (see II.D.), or from a range of NGOs.

Legal aid in general is provided by many NGOs, from which child complainants or their representatives may seek help on an individual basis. Examples of such NGOs include:

- [Pro Bono Alliance](#)
- [Human Rights League](#)
- [Czech Helsinki Committee](#)
- [Iuridicum Remedium](#)
- [Association of civic advisory centres](#)
- [In IUSTITIA](#)
- [Legal civic advisory centre DIALOG](#)

There are also some NGOs that specialise in child protection, including:

- [Our Child Foundation](#)
- [Defence for Children International](#)
- [In the interest of the child](#)

In addition, agreements with attorneys-at-law that do not require payments up front are also possible. Such conditional fee arrangements are permitted, but the remuneration for the attorney-at-law has to be reasonable, i.e. usually the share should not be higher than

⁸⁹ Ibid., Section 142.

⁹⁰ Ibid., Section 146.

⁹¹ Ibid., Section 147 (1).

⁹² Ibid., Section 148 (1).

25%.⁹³ Nevertheless, it is worth mentioning that the person seeking such services will still have to pay court fees and costs of the proceedings, unless provided otherwise (see IV.B.).

- 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?

In civil proceedings in general, all property rights⁹⁴ become unenforceable after three years from the first day when it was possible to enforce them.⁹⁵ However, there are some exceptions; for example, the right to compensation for damage becomes unenforceable at the latest 10 years from the day when the event that caused the damage occurred. If the damage was caused intentionally, it is 15 years.⁹⁶

In judicial review proceedings, the suit must be filed within two months from delivery of the administrative body decision.⁹⁷

In criminal proceedings, there is a special provision regarding child victims of crime. The time period during which a victim of human trafficking or any sexual criminal offence was under 18 does not count towards the period of limitation.⁹⁸

- 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?

In civil proceedings, all kinds of evidence are admissible, provided that they may be used to ascertain the state of the matter. This includes the interrogation of witnesses, expert opinions, reports and expressions of bodies, natural persons and legal entities, notarial or executor reports and other documents, examinations, and the interrogation of participants. If the means of taking evidence are not specified, it will be determined by the court.⁹⁹

Furthermore, there are special rules for dealing with children. Children capable of expressing their opinions are heard by the civil courts. Nevertheless, in exceptional cases, the court may also learn their opinion through their representative, expert opinion, or OSPOD (see part II.B). The court is authorised to hear a child with no other person present should the court expect that the presence of another person could influence the child by preventing them from expressing their real opinion. The presence of a child's confidant, who is not the child's legal guardian and whose presence at the hearing is requested by the child, may only be excluded by the court if their presence defeats the purpose of the hearing. The opinion of the child must be considered by the court.¹⁰⁰

In judicial review proceedings, generally the admissibility of evidence is left to the

⁹³ Section 10 (5) of the Ethical Codex, Resolution of the Czech Bar Association Board of Directors No. 1/1997 of the Bulletin, as amended.

⁹⁴ With several exceptions, see Sections 611, 613, 614 of the Civil Code.

⁹⁵ Ibid., Section 619 in connection with Section 629 (1).

⁹⁶ Ibid., Section 636.

⁹⁷ Section 247 (1) of the Civil Procedure Code.

⁹⁸ Section 34 (3) c) of the Criminal Procedure Code.

⁹⁹ Section 125 of the Civil Procedure Code.

¹⁰⁰ Ibid., Section 100 (3).

court's discretion.¹⁰¹

In criminal proceedings, the procedural rules of child interrogation have regard for their personality, moral and intellectual development. The interrogation is performed in such a way that it usually does not have to be repeated. During the interrogation, a suitable person experienced with child upbringing and/or psychology is present. The presence of the child's parents might also be desirable, provided that it would contribute to the appropriate performance of the interrogation.¹⁰² Children involved in criminal proceedings are protected from publication of their identity.¹⁰³

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

Proceedings before Czech courts tend to be lengthy; it is one of the major weaknesses of the Czech judiciary system. Due to understaffing, many courts are overloaded, and it can take months or years to resolve cases (especially when they go to appeal).

The average length of proceedings before district courts from filing to conclusion is about 280 days for civil cases, 190 days for criminal cases, and 170 days for proceedings involving children. In comparison, before regional courts, it takes about 560 days for civil cases and 690 days for criminal cases.¹⁰⁴ Moreover, there might be significant differences between the lengths of proceedings amongst courts in various regions.

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

Proceedings may commence at a district or regional court, depending on the particular circumstances. First instance decisions of district courts are reviewed by regional courts as appellate courts. First instance decisions of regional courts are reviewed by the high courts as appellate courts (there is one for Bohemia and one for Moravia and Silesia).¹⁰⁵

In order to successfully appeal, the appellant in civil proceedings has to fulfil several formal and material requirements,¹⁰⁶ and file the appeal within 15 days from the delivery day of the first instance decision. The decision in question has to include guidance on how, where and when to appeal, provided that the appeal is admissible. Appeals are generally allowed and no previous approval from any court is required to file the appeal. Similarly in criminal proceedings, the appellant also needs to fulfil certain requirements,¹⁰⁷ but has to file the appeal within only 8 days from the delivery of the decision.

Appellate reviews are decided by the Supreme Court (civil and criminal law cases)¹⁰⁸

¹⁰¹ Section 52 of the Administrative Procedure Code.

¹⁰² Section 102 of the Criminal Procedure Code. Section 55 and following of the Act on Juvenile Judicature, Act No. 218/2003 Coll., as amended.

¹⁰³ Sections 52, 53 of the Act on Juvenile Judicature; supplemented by the subsidiary Sections 8a, 8b of the Criminal Procedure Code.

¹⁰⁴ Statistics for 2011 from the Statistic yearbook for the Czech Republic in 2012, presented by the Czech Statistical Office. Available under No. 27-2.:

http://www.czso.cz/csu/2012edicniplan.nsf/kapitola/0001-12-r_2012-2700.

¹⁰⁵ For more information, including contact details of all Czech courts, see: <http://portal.justice.cz/Justice2/Uvod/Soudy.aspx>.

¹⁰⁶ See Section 201 and following of the Civil Procedure Code.

¹⁰⁷ See Section 245 and following of the Criminal Procedure Code.

¹⁰⁸ For more information see:

or Supreme Administrative Courts (judicial review proceedings).¹⁰⁹ The Constitutional Court,¹¹⁰ which is outside the general judicial hierarchy, hears a very limited number of cases. The Constitutional Court protects the constitutional order, and it is the only court that is entitled to annul laws or their individual provisions, should they conflict with the constitutional order.¹¹¹ Before filing with the Constitutional Court,¹¹² there is a precondition that all other available legal remedies have been exhausted.

If a person exhausts all possibilities within the Czech judicial system, they may choose to appeal to the European Court of Human Rights.¹¹³ Among other requirements, cases must be filed within six months of the final decision, relate to at least one of the rights under the European Convention on Human Rights,¹¹⁴ and demonstrate that the applicant is a personal,¹¹⁵ direct victim of a violation, and has suffered a “significant disadvantage” as a result.

- 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?

Although there is no precedent system in the Czech Republic, decisions of higher courts are respected and tend to be followed by lower courts. Higher courts customarily decide cases in a manner that is consistent with the lower courts’ decisions. Nevertheless, higher courts sometimes disregard previous decisions to a certain extent, if they conclude that the case in question is dissimilar in important aspects. Court decisions could potentially have a long-term impact, however, they are not legally binding on future cases.

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

The enforcement of decisions is relatively straightforward and is governed by the Civil Procedure Code¹¹⁶ and the Code of Execution,¹¹⁷ as decisions may be enforced by courts or by private execution. The enforcement of judicial review proceedings often does not provide directly enforceable remedies. As explained in part III.B, the public body is obliged to follow the court’s decision and act accordingly.

- 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.

As of 1 January 2014, a major recodification of the civil law became effective. The recodification introduced a large number of new legal acts including, most importantly, a new Civil Code,¹¹⁸ which presented new legal terminology, new legal institutes and

http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf?openDatabase&lng=EN.

¹⁰⁹ For more information see: <http://www.nssoud.cz/Uvod/art/1>.

¹¹⁰ For more information see: <http://www.usoud.cz/en/>.

¹¹¹ Article 83, 87 (1) (a) and (b) of the Constitution.

¹¹² Section 75 of the Act on Constitutional Court, Act No. 182/1993 Coll., as amended.

¹¹³ For more information see: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

¹¹⁴ See http://www.echr.coe.int/Documents/Convention_ENG.pdf.

¹¹⁵ For more guidance see:

http://www.echr.coe.int/Pages/home.aspx?p=applicants&c=#n1365511865464_pointer.

¹¹⁶ Section 251 and following of the Civil Procedure Code.

¹¹⁷ The Code of Execution, Act No. 120/2001 Coll., as amended.

¹¹⁸ Civil Code.

significantly changed the previous legal regulation. The new Civil Code also includes in-depth legal regulations that were until now covered by the Family Act.

These changes had to be reflected in procedural law. Therefore, the Act on Special Legal Proceedings was introduced and became effective as of 1 January 2014.¹¹⁹ Moreover, it was followed by significant changes in the Civil Procedure Code (also effective as of 1 January 2014). As a result, the Civil Procedure Code now only covers litigious civil proceedings. Therefore the remaining proceedings (e.g. proceedings in family matters, on legal capacity, custody, a child's care, and adoption) are further governed by the Act on Special Legal Proceedings. Nevertheless, the standards of protection of children's rights were preserved.¹²⁰

Further, apart from an OSPOD (as described in part II.B) the prosecution is another authority that may enter certain proceedings involving children. The prosecution may enter the initiated proceedings in matters regarding, among other things: determining whether the consent of a child's parents is needed for adoption; imposing an educational measure; ordering institutional education and the extension thereof; and suspension, restriction or relief from parental responsibility. Moreover, when imposing an educational measure, ordering institutional education and the extension thereof, or suspension, restriction or relief from parental responsibility, the prosecution may file, in the public interest, a proposal to initiate proceedings, unless initiated by another complainant.¹²¹

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

¹¹⁹ Act on Special Legal Proceedings.

¹²⁰ See in particular Chapters II and III of the Civil Code, and Chapter V of Act on Special Legal Proceedings.

¹²¹ Section 8 of Act on Special Legal Proceedings.