

FINLAND: ACCESS TO JUSTICE FOR CHILDREN

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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?

Ratified international instruments, including the Convention on the Rights of the Child, do not automatically have the force of law in Finland; they must be incorporated through implementing legislation. This is usually done by using so-called blanket statutes, which simply state that the relevant instrument is in force in Finland in the agreed upon form.¹

The status of a treaty in the domestic legal order of Finland is determined by the rank of the implementing statute. In the case of the CRC, the implementing statute is the implementing statute is an act (a blanket statute, Treaty Series 59/1991). The decree (Treaty Series 60/1991) states the date when the act came into force.

B. Does the CRC take precedence over national law?

The CRC does not automatically take precedence over national law. As noted above, the status of a treaty in the domestic legal order of Finland is determined by the rank of the implementing statute. In the case of the CRC, the implementing statute is an act, but it is not clear whether it prevails over other acts.

National law is interpreted where possible in a manner consistent with the CRC and other international human rights obligations. Section 22 of the Finnish Constitution states that public authorities shall guarantee the observance of human rights, which gives all international human rights obligations a constitutional level of protection when applied by public authorities, and this includes the observance of the CRC. Therefore, the formal rank of the CRC in the legal hierarchy does not always determine its actual impact on decisions made by the courts or other public authorities.

C. Has the CRC been incorporated into national law?

Finland adopted the CRC in 1989 and the Convention entered into force following a blanket statute in 1991 (Treaty Series 60/1991). The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was ratified and entered into force with a blanket statute in Finland in 2002 (Treaty Series 31/2002). The Optional

¹An unofficial translation of the Constitution (731/1991, as amended) is available at, <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>.

Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified and entered into force with blanket statute in 2012 (Treaty Series 41/2012).² Finland is preparing the ratification of the Optional Protocol on a communications procedure. The Parliament has approved the Optional Protocol in October 2015. The Optional Protocol will still be presented to the President of the Republic for his approval after which the ratification instrument can be deposited.

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

The CRC can be directly enforced in courts as it has been incorporated into the Finnish legal system.

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

The CRC has been cited in numerous instances in both the Finnish Supreme Court and the Finnish Supreme Administrative Court. In cases where it has been used, the legal questions have included the right of the child to be heard in a trial where it is decided which parent should be awarded custody;³ the establishment of paternity;⁴ immigration related matters such as the refusal to admit a child born in Finland into the country;⁵ and family reunion and the right of a child to family life.⁶

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children and their representatives can bring civil cases which are heard by district courts and administrative cases which are heard by administrative courts. Children, however, do not have full legal capacity. Consequently, in both civil and administrative procedures, the legal guardian, custodian or other legal representative of the child shall be entitled to represent the child and shall have the right to be heard on behalf of a child under the age of 18 years.⁷ A child over 15 years of age shall have the right to be heard independently alongside his or her legal representative.⁸

Where the public prosecutor has declined to bring a charge in relation to an alleged criminal offence, the injured party can initiate a private prosecution.⁹ Any person who has suffered a violation of his or her rights, or who has

² See UN Treaty Database. Available at:

<http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>

³ The Supreme Court, decision KKO 2012:95.

⁴ The Supreme Administrative Court, decision KKO 2012:11.

⁵ The Supreme Court, decision KKO 2003:73.

⁶ The Supreme Administrative Court, decisions KHO 2003:92 and KHO 2003:75.

⁷ Judicial Procedure Code (4/1734), Chapter 12, Section 1(1). An unofficial translation is available at:

<http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf>.

⁸ Judicial Procedure Code (4/1734, as amended), Chapter 12, Section 1(2).

⁹ The Criminal Procedure Act, Chapter 1, Section 14(1).

sustained loss through the unlawful actions of a civil servant also has a constitutional right to request that the responsible civil servant be sentenced to punishment for the offence. The responsible organisation may also be held liable for damages.¹⁰

Finland has both a Parliamentary Ombudsman and an Ombudsman for Children. The Parliamentary Ombudsman is empowered to receive complaints from anyone who alleges that the Government, a minister or the President has acted unlawfully or neglected a duty.¹¹ The Ombudsman for Children is responsible for monitoring legislation and policies affecting children and to promote the implementation of the CRC.¹²

The Parliamentary Ombudsman is also empowered to act in relation to the surveillance of the legality of detention.¹³

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?

Cases must be brought with the assistance of a representative. The Finnish system differentiates between a person's competence to be a party to a trial and a person's competence to take part in juridical proceedings of a trial. Children possess the former, but not the latter, and so can be parties to a trial but cannot usually directly exercise their right to be heard in the proceedings. As stated above, the right of a child to be heard shall be exercised by his or her guardian or other legal representative.¹⁴ This applies both to the civil procedure, which is regulated by the Judicial Procedure Code (4/1734, as amended)¹⁵ and administrative procedure, which is regulated by the Administrative Judicial Procedure Act (586/1996, as amended).¹⁶

Where the child's guardian is not capable of looking after the child's interests in judicial proceedings, the court may appoint a trustee for purposes of the judicial proceedings. Unless the court decides otherwise, the appointment of the guardian shall also be effective in superior courts, if the matter is referred there by way of appeal.¹⁷ In some matters, legislation stipulates that specific public authorities have the right to represent the child even without separate court appointment; for example, at a trial for the

¹⁰ Constitution of Finland, Section 118(3)

¹¹ The Parliamentary Ombudsman Act, (197/2002), Sections 1 and 2. Available at: <http://www.oikeusasiames.fi/Resource.phx/ea/english/lawlinks/act-ombudsman.htm/>

¹² The Law on the Ombudsman for Children (21.12.2004/1221), Section 2. Available at: http://www.lapsiasia.fi/en/overv/statutes/law_on_the_ombudsman.

¹³ *Fourth report of Finland to the UN Committee on the Rights of the Child*, CRC/C/FIN/4, 26 May 2010, para. 431

¹⁴ Pertti Välimäki (2008) *Holhustoimen pääpiirteet*, pp. 171-185 (book only available in Finnish).

¹⁵ An unofficial translation of the Procedural Code is available at, <http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf>

¹⁶ An unofficial translation of the Administrative Judicial Procedure Act is available at, <http://www.finlex.fi/fi/laki/kaannokset/1996/en19960586.pdf>,

¹⁷ Administrative Judicial Procedure Act (586/1996, as amended), Section 19a.

establishment of paternity, a municipal official titled “child welfare supervisor” is allowed to exercise this right.¹⁸

There are, however, a few exceptions to the rule that a child cannot directly take part in juridical proceedings by exercising his or her right to be heard. First, a child is entitled to exercise his or her right to be heard alone in a matter relating to such income or property that he or she has the right to manage. This would include property which is made up of “the proceeds of his or her own work.”¹⁹ Second, a minor of 15 years or more and his or her custodian or other legal representative shall both be individually entitled to exercise the right to be heard in a matter relating to the person or personal interest or right of the minor.²⁰ This would also include cases relating to the violation of children’s rights where the child is 15 years or older.²¹ Finally, when the guardian, custodian or other legal representative exercises the child’s right to be heard, the child shall also be heard if this is necessary in the interest of the child or for the purpose of clearing up the matter.²²

In criminal investigations, the court must appoint a legal guardian for a party under the age of 18 if there is no justified reason to believe that the older of parental responsibility is not able to supervise the best interests of the child.²³

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

Typically the case would be brought by the parents, or other guardian or legal representative, of the child on behalf of the child. The child would be a party to the case, and the guardian(s) would exercise the child’s right to be heard. See section II.B. above for more detail.

In child welfare cases there are explicit mechanisms in place to deal with potential conflicts of interests affecting a child. Where a child’s parent or guardian (“custodian”) is unable to supervise a child’s interests without prejudice in a case related to the welfare of the child or where it is necessary to appoint a separate person to safeguard the interests of the child, a “guardian” may be appointed to take the place of the child’s custodian in proceedings.²⁴

¹⁸ Paternity Act (700/1975, as amended), Section 24. Unofficial translation of the Act available at, <http://www.finlex.fi/en/laki/kaannokset/1975/en19750700.pdf>,

¹⁹ Guardianship Services Act (442/1999, as amended), Section 25. Unofficial translation of the Act available at, <http://www.finlex.fi/en/laki/kaannokset/1999/en19990442.pdf>,

²⁰ Administrative Judicial Procedure Act (586/1996, as amended), Sections 17 and 18.

²¹ According to information provided to CRIN by the Finnish Ministry of Justice, one example of this is the Paternity Act (Nr. 700/1975), according to which not only shall a child of 15 years or over be reserved an opportunity to be heard, but he or she has also an independent right of action in a case of establishment of paternity. Furthermore, an action cannot be pursued by the representatives against the will of the child who has attained the age of 15 years. In addition, in a case of annulment of paternity, the child’s right of action can only be exercised by the child itself. In the revised Paternity Act (Nr. 11/2015), which will enter into force 1 January 2016, the main content of these provisions has been maintained.

²² Section 19 of the Administrative Judicial Procedure Act (586/1996, as amended).

²³ Criminal Investigations Act (805/2011), Chapter 4, Section 8.

²⁴ Child Welfare Act, Section 22.

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

According to the Legal Aid Act (257/2002, as amended)²⁵, legal aid is provided at the expense of the Finnish state to persons who need expert assistance in a legal matter and who are unable to meet the costs of proceedings as a result of their economic situation. Legal aid covers the provision of legal advice, the necessary measures and representation before a court of law and another authority. It also includes the waiver of certain expenses related to the consideration of the matter in question, such as processing fees charged by courts.²⁶

Other legislation may include complementary provisions on child's entitlement to legal assistance. For example, for the establishment of paternity, the services of a municipal child welfare supervisor are provided free of charge, and children are granted free legal aid in accordance with the Legal Aid Act (257/2002), notwithstanding what is otherwise provided regarding the conditions for legal aid.²⁷

The provision of legal aid is means-tested, which means the financial situation of the legal aid applicant determines whether he or she is given free legal aid, in full or in part. Family size also affects the assessment of financial means for the purpose of determining whether a person is eligible for legal aid.²⁸ For children, if the case is brought by the parents who are also his/her legal guardians, the income of his/her parents affects the granting of legal aid.²⁹

A person who is receiving legal aid will usually be entitled to select an attorney, provided that the attorney he or she has selected meets the requirements set out in the Legal Aid Act.³⁰

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)?

Normally, when the parents remain as the legal guardians of a child, parental approval is required. However, where the child's guardian is not capable of looking after the child's interests in judicial proceedings, the court may appoint a trustee for purposes of the judicial proceedings.³¹

III. How can children's rights violations be challenged before national courts?

²⁵ The Legal Aid Act (257/2002, as amended). Unofficial translation of the Act available at, <http://www.finlex.fi/fi/laki/kaannokset/2002/en20020257.pdf>.

²⁶ Legal Aid Act (257/2002, as amended), Section 1.

²⁷ Information provided to CRIN by the Finnish Ministry of Justice.

²⁸ See here: <http://www.oikeus.fi/20619.htm> for further details on partial legal aid coverage.

²⁹ For more information of legal aid in Finland, please refer to the website of the legal aid offices, <http://www.oikeus.fi/8852.htm>.

³⁰ Legal Aid Act, Section 8(3)

³¹ Administrative Judicial Procedure Act (586/1996, as amended), Section 19.

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?

Finland does not have a constitutional court, and possible conflicts of proposed legislation with the Constitution are investigated before enactment by the Constitutional Law Committee operating in the Finnish parliament. In essence the Constitutional Law Committee examines and determines whether the proposed legislation is compatible with the Constitution, and whether the proposal can – and if so, in what form – be forwarded to the legislature for a vote. Basic rights, which to a large extent correspond with Finland’s existing international human rights obligations, are also enshrined in the Constitution, and so the Constitutional Law Committee also examines the compatibility of proposed legislation with these basic rights.³²

The cases that are settled in general courts, which handle civil and criminal matters, and where matters related to the Constitution or human rights instruments are heard, are mostly criminal cases, and to a lesser extent include such civil matters as labour disputes or matters relating to freedom of speech and the right to privacy etc. (*i.e.* cases that rarely concern children directly). Human rights instruments, such as the CRC, seldom have a “horizontal effect” in the Finnish legal system, meaning that they rarely provide grounds for legal challenges between private persons that would be taken up by civil courts.

Especially in terms of children, on most occasions the cases where the CRC or other human rights instruments have relevance are brought to challenge an administrative decision made by a public authority. Anyone who is dissatisfied with an administrative decision pertaining to his or her rights or obligations may challenge the lawfulness of the decision before an administrative court. Following the Administrative Judicial Procedure Act, an appeal of this kind can be raised by a “person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision.”³³ An appeal must be lodged in writing to the administrative court which has jurisdiction, and it should indicate the specific decision challenged, the parts of the decision that are challenged and the amendments demanded to it, and the grounds on which the challenge is based.³⁴

In vast majority of cases the legal challenge would be brought by lodging a written appeal to an administrative court.

Cases concerning alleged violation of one of the rights contained in the European Convention on Human Rights could be brought to the European Court on Human Rights.³⁵ Any individual, group of individuals or an NGO who considers to be a victim of a violation of one of these rights may submit

³² Tuomas Ojanen (2009) *Johdatus perus- ja ihmisoikeusjuridikkaan*, pp. 52-56 (book only available in Finnish).

³³ Administrative Judicial Procedure Act (586/1996, as amended), Section 6

³⁴ Administrative Judicial Procedure Act (586/1996, as amended), Section 23

³⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Article 19 and 32, available at: http://www.echr.coe.int/Documents/convention_ENg.pdf.

a complaint to the Court,³⁶ but the complaint will be admissible only if all domestic remedies have been exhausted.³⁷ Anonymous complaints are not permitted.³⁸ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present application themselves or through a representative, however, all applicants be represented at hearings thereafter.³⁹ After examining the case, the Court renders judgements which are binding on the state⁴⁰ and also has powers to award monetary compensation to the victims of human rights abuses.⁴¹ 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.

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,⁴² which Finland has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.⁴³ The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict⁴⁴ and must have occurred after the entry into force of the Protocol on 12 February 2016.⁴⁵ Anonymous complaints are inadmissible and so are complaints not made in writing.⁴⁶ In addition, only complaints made in one of the working languages of the UN will be accepted.⁴⁷ After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.⁴⁸

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

In terms of civil matters, district courts can give judgments granting affirmative relief, which can most importantly mean awarding money damages or ordering injunctions. They can also give declaratory judgments, which confirm the existence or nonexistence of a certain legal relationship.

³⁶ European Convention on Human Rights, Article 34.

³⁷ European Convention on Human Rights, Article 35.

³⁸ *Id.*

³⁹ Rules of Court, July 2014, Rule 36, available at:
http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁴⁰ European Convention on Human Rights, Article 46.

⁴¹ European Convention on Human Rights, Article 41.

⁴² Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en.

⁴³ *Ibid.*, Article 5.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, Article 7(g).

⁴⁶ *Ibid.*

⁴⁷ Office of the United Nations High Commissioner for Human Rights, '23 FAQ about Treaty Body complaints procedures', available at:

<http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

⁴⁸ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

District courts can also give judgments that modify rights, which means that they can shape the nature of existing legal relationships, such as granting custody of child or affirming paternity.⁴⁹

In administrative cases, administrative courts can in certain cases shape the substantive content of the administrative decision that is being challenged. This, however, happens rarely, and the more usual course of action for the administrative courts is to determine that the decision made has been unlawful and that it shall be returned to the public authority for reconsideration. This leads the public authority in question to issue a new decision that is in accordance with the law and the ruling of the administrative court.

An important point to note is that administrative courts cannot award money damages based on an injury suffered by the pleading party as a consequence of an unlawful administrative decision. Thus, if it is deemed that an unlawful decision caused actual injury to that party, a separate action for damages must be raised in a general court after a favorable judgment has been received from the administrative court.⁵⁰

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

In Finland, abstract cases without specified parties cannot be brought to courts. Possible violations of children's rights or a conflict between the CRC and the Finnish legal system can be brought to the attention of the Parliamentary Ombudsman⁵¹ or the Chancellor of Justice of the Government,⁵² who act as the "supervisors of legality" in Finland. The Ombudsman and the Chancellor can investigate the matter and then issue recommendations on how the possible violation or conflicts can be resolved. Although these recommendations are not legally binding, they are nearly always followed.

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

In Finland group litigation is possible only in matters related to consumer protection. This means that collective or group litigation is generally not possible for matters relating to children's rights.⁵³ It is possible for the courts to combine cases where several suits address the same defendants or issues.⁵⁴

E. Are non-governmental organisations permitted to file challenges to potential

⁴⁹ Juha Lappalainen et. al. (2007) *Prosessioikeus*, pp. 603-604 (book only available in Finnish).

⁵⁰ Olli Mäenpää (2007) *Hallintoprosessioikeus*, pp. 485-496 (book only available in Finnish).

⁵¹ For more information, please refer to the website of the Parliamentary Ombudsman, <http://www.oikeusasiames.fi/Resource.phx/ea/english/index.htm>, last accessed on 5 July, 2013.

⁵² For more information, please refer to the website of the Chancellor of Justice, <http://www.okv.fi/en/>, last accessed on 5 July 2013.

⁵³ Unofficial translation of the Act of Class Actions (444/2007, as amended) is available at, <http://www.finlex.fi/en/laki/kaannokset/2007/en20070444.pdf>.

⁵⁴ See Judicial Procedure Code, Chapter 18

children's rights violations or to intervene in cases that have already been filed?

In Finland, procedural legislation does not permit challenges or interventions of this kind by non-governmental organisations.

However, under the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints⁵⁵, which Finland has ratified, complaints of violations of children's rights contained in the European Social Charter⁵⁶ may be submitted to the European Committee of Social Rights. Such complaints of unsatisfactory application of the Charter may be submitted by any national NGO or by an international NGO, which have participatory status with the Council of Europe.⁵⁷ 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 address a recommendation to the state.⁵⁸ The State then must provide information about the steps taken to comply with the recommendation in its next report under the Charter.⁵⁹

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

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

There is no special family court or jury which would only or primarily deal with cases involving children. As stated above in Section III. A., in the vast majority of cases the legal challenge would be brought by lodging a written appeal to an administrative court, which is the court of first instance in administrative matters. For further details regarding the contents of this appeal, please refer to Section III. A.

There are 6+1 regional administrative courts (Helsinki, Hämeenlinna, Eastern Finland, Northern Finland, Turku and Vaasa + Åland Islands) administrative courts in Finland. An appeal should be addressed to that administrative court in whose jurisdiction the public authority whose decision is being challenged operates. If this route cannot be followed, the appeal should be addressed to the administrative court in whose jurisdiction the authority whose decision is being challenged has its headquarters or, if this basis cannot be used either, to the administrative court in whose jurisdiction that decision has been made.⁶⁰ If the decision was made by an authority which operates throughout the country, the challenge must be brought in the court with jurisdiction for the territory with closest link to the

⁵⁵ Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

⁵⁶ Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

⁵⁷ Additional Protocol for a System of Collective Complaints, Article 1. See also: http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

⁵⁸ Additional Protocol for a System of Collective Complaints, Articles 8-9.

⁵⁹ Additional Protocol for a System of Collective Complaints, Article 10.

⁶⁰ Administrative Judicial Procedure Act (586/1996, as amended), Section 12(1).

decision.⁶¹ If neither of these applies, then the challenge can be brought at the Helsinki Administrative Court.⁶²

- 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?

Some of the decisions of an administrative court are subject to a charge. However, no charge is collected in matters pertaining to issues such as social welfare, taxation, public fees, elections, mental health or immigration. Likewise, no charge is collected if the matter is not admitted, if it is returned to the lower authority for a new consideration without issuing a decision on the merits, or if the administrative court alters the decision of the lower authority to the advantage of the appellant.⁶³ In other cases, administrative courts collect a processing charge of EUR 97. If the case is appealed to the Supreme Administrative Court, a processing charge of EUR 244 is collected. If the appeal is turned down by an administrative court or leave to appeal is not granted by the Supreme Administrative Court, only 50 per cent of the charge is collected.⁶⁴

In term of civil cases, district courts are the courts of first instance. Civil cases are initiated by a written application for a summons, which is delivered to the registry of a district court. The case becomes pending and its preparation begins upon the arrival of the application to the registry.⁶⁵ The application has to include the specified claim of the plaintiff, the circumstances on which the claim is based, the evidence that the plaintiff intends to present and what he or she intends to prove with each piece of evidence, the claim for the compensation of legal costs, and, if the plaintiff deems this necessary, the basis for the jurisdiction of the court, unless jurisdiction can be inferred from the application for a summons or the documents enclosed with it.⁶⁶

A claim against a natural person is considered by the district court which has jurisdiction over the location where he or she is domiciled or resides.⁶⁷ A claim against a corporation, association, foundation or other legal entity under private law or against a legal entity under public law other than the State or a municipality is considered by the district court which has jurisdiction over the location where the legal entity is registered or where the administration of the legal entity is primarily conducted. A claim against the State is considered by the district court with the jurisdiction over the location where the authority that speaks on behalf of the State is located. A claim

⁶¹ Administrative Judicial Procedure Act (586/1996, as amended), Section 12(2).

⁶² Administrative Judicial Procedure Act (586/1996, as amended), Section 12(3).

⁶³ For more information please refer to, <http://www.oikeus.fi/17683.html>.

⁶⁴ For more information please refer to, <http://www.oikeus.fi/17610.html>. It must be noted that the Finnish Parliament is currently considering a proposal to raise the fees and to scrap the 50 per cent rule. (Information provided to CRIN by the Finnish Ministry of Justice.)

⁶⁵ Procedural Code (4/1734, as amended), Chapter 5, Section 1

⁶⁶ Procedural Code (4/1734, as amended), Chapter 5, Section 2

⁶⁷ Procedural Code (4/1734, as amended), Chapter 10, Section 1

against a municipality is considered by the district court with the jurisdiction over the location where the municipality is located.⁶⁸

After the consideration of a civil matter, a district court collects a charge from the plaintiff; the amount of the charge varies depending on the nature of the matter and the court time its consideration has required. There are several fee categories, and the charges vary from EUR 86 to EUR 196.⁶⁹

If a complainant is receiving legal aid, he or she will be exempt from enforcement fees related to the judgment and any expenses payable in advance.⁷⁰

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

Mainly because of the universal nature of the legal aid system, pro bono work of this kind is extremely rare in Finland. Children's rights organisations might be contacted mainly to get the details of lawyers specialising in children's rights, and the fees of these lawyers would then be compensated through the legal aid system.

- 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 terms of administrative decisions, an appeal has to be lodged within 30 days of notice of the decision that is being challenged, though there may be exceptions. When calculating this period, the day of notice is not included.⁷¹

In terms of civil cases, an action for damages must be brought within 10 years of the injured party becoming aware of his or her injury.⁷² This requirement can be quite flexible in cases involving children; the Supreme Court has ruled that victims of child molestation could bring an action for damages even after 10 years had passed from the act of molestation, as the symptoms that constituted the injury arose later.⁷³

In criminal proceedings there is no limitation period for offences for which the most severe penalty is life imprisonment. For less severe criminal offence, limitation periods vary from two years to twenty years after the date on which the offence was committed.⁷⁴ In cases of sexual abuse of children, rape and certain other sexual offences, the right to bring charges is

⁶⁸ Procedural Code (4/1734, as amended), Chapter 10, Section 2

⁶⁹ For more information please refer to, <http://www.oikeus.fi/17308.htm>, last accessed on July 9, 2013.9 July, 2013.

⁷⁰ The Legal Aid Act, Section 4(4)

⁷¹ Administrative Judicial Procedure Act (586/1996, as amended), Section 22

⁷² Section 7 of the Act on the Expiration of Debt (728/2003, as amended), not available in English.

⁷³ The Supreme Court, decision KKO 2005:54.

⁷⁴ Criminal Code, Chapter 8, Section 1.

time-barred at the earliest when the victim reaches the age of 28.⁷⁵

- 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?

Evidence can take the form of documentation and other written evidence; oral evidence presented by witnesses, parties to the trial and/or experts; and evidence given by a judicial inspection, the subject of which are objects other than written documents.⁷⁶ These classes apply both to administrative and civil proceedings.

There are special provisions that apply when children are either victims or suspects in criminal trials. As a rule, when interrogating a person under the age of 15 years the child's legal guardian, trustee or other legal representative is entitled to be present. Nevertheless, the investigator shall have the right to deny the legal guardian's presence in the interrogation if he or she is suspected of a crime against the child or if his or her presence would hamper the investigation.⁷⁷ The hearing of a child victim must be recorded by video if the recording is intended to be used in court as evidence.⁷⁸

For children under the age of 15, video evidence recorded during a criminal investigation may be submitted to the court provided that the defendant is given the opportunity to present questions to the person being heard.⁷⁹ Children under the age of 15 may not give evidence under oath nor may a person who "lacks a proper understanding of the significance of the oath because of mental illness, mental retardation or other mental disorder".⁸⁰

Children are able to give evidence as witnesses where the court "deems this appropriate" and if hearing the child personally is of central significance to the clarification of a matter and hearing the child would probably not cause the child suffering or other harm that could injure his or her development.⁸¹ The court can also designate a support person for a child who is being heard and may carry out questioning itself rather than through the parties to the proceedings.⁸²

If the suspect of a crime is the child's parent or other guardian, the court must appoint a trustee to the child.⁸³ A trustee may also be needed, when the child's guardian has a close relationship with the suspect, such as the spouse or partner.

⁷⁵ Criminal Code, Chapter 8, Section 1.

⁷⁶ Procedural Code (4/1734, as amended), Chapter 17.

⁷⁷ Criminal Investigations Act (805/2011), Chapter 7, Section 14.

⁷⁸ Criminal Investigations Act (805/2011), Chapter 9, Section 4.

⁷⁹ Code of Judicial Procedure, Chapter 17, Section 11(2).

⁸⁰ Code of Judicial Procedure, Chapter 17, Section 30(1).

⁸¹ Code of Judicial Procedure, Chapter 17, Section 21

⁸² Code of Judicial Procedure, Chapter 17, section 21(2) and (3)

⁸³ Section 22 of the Child Protection Act (417/2007, as amended).

Courts have discretion to exclude the public from the hearing where a person under the age of 18 is accused of a crime, or where a person below the age of 15 or a person with limited legal capacity is heard.⁸⁴

In general, children may give evidence administrative proceedings only with their consent and, in any case, children who testify may not be given such information that could seriously endanger their health or development.⁸⁵ However, if the child is under 12 years of age, they may be heard in person if that is necessary for settling the case and it is estimated that a hearing would not cause the child significant harm.⁸⁶

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

In terms of administrative case, the average time for processing an appeal in administrative courts was 8 months in 2014, whereas the appeals to the decisions of administrative courts to the Supreme Administrative Court took an average of 11.2 months to process.⁸⁷

In terms of civil cases, in 2012 the average processing time for cases that were resolved with a summary judgment based wholly on written evidence was 2.2 months, whereas for cases involving full trial with oral hearing the average processing time was 11.4 months.⁸⁸ In courts of appeal, which are courts of second instance in civil matters, the average processing time for appeals concerning the decisions of district courts was 5.9 months.⁸⁹ In the Supreme Court, which hears the appeals on the decisions of appeal courts, the average processing time of an appeal was 6.3 months in 2011.⁹⁰

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

The decisions of the administrative courts can be appealed in the Supreme Administrative Court, though in some cases leave to appeal may be required. An appeal has to be lodged within 30 days of notice of the decision of an administrative court. When calculating this period, the day of notice is not included.⁹¹

The decision of a district court can be appealed in a court of appeal. The decisions of the courts of appeal, then, can be appealed in the Supreme Court, provided that the Supreme Court grants leave to appeal. A party who wishes to appeal a decision of a district court has to declare his or her intent

⁸⁴ Act on Publicity of Court Proceedings in General Courts (370/2007), Section 15.

⁸⁵ Section 86 of the Child Welfare Act. Information provided by Kirsi Pollari, Senior Advisor at Central Union for Child Welfare (<http://www.lskl.fi/en>).

⁸⁶ Section 86 of the Child Welfare Act. Information provided by Kirsi Pollari, Senior Advisor at Central Union for Child Welfare (<http://www.lskl.fi/en>).

⁸⁷ Information provided to CRIN by the Finnish Ministry of Justice.

⁸⁸ http://tilastokeskus.fi/til/koikrs/2012/koikrs_2012_2013-04-02_tie_001_fi.html, last accessed on July 9, 2013.

⁸⁹ https://www.tilastokeskus.fi/til/hovoikr/2012/hovoikr_2012_2013-06-28_tie_001_fi.html.

⁹⁰ https://www.tilastokeskus.fi/til/koikr/2011/koikr_2011_2012-11-26_tie_001_fi.html, last accessed on 9 July 9, 2013.

⁹¹ Administrative Judicial Procedure Act (586/1996, as amended), Section 22.

to appeal, under threat of forfeiting his or her right to be heard. A declaration of intent to appeal has to be filed, at the latest, on the seventh day after the day when the decision of a district court was handed down or made available to the parties.⁹² The deadline date for the lodging of the actual appeal is 30 days from the day when the decision of the district court was handed down or made available to the parties.⁹³ The deadline for requesting leave to appeal and lodging the appeal in the Supreme Court is 60 days from the date on which the decision of a court of appeal was made available to the parties.⁹⁴

Appealing to the Supreme Court and Supreme Administrative Court is sometimes limited by the requirement to receive leave to appeal. Leave to appeal may be granted only if it is necessary to bring the case before the Supreme Court or the Supreme Administrative Court in order to receive a decision that acts as a precedent for the application of law in identical or similar cases or for the consistency of case law. Second, leave to appeal may be granted if an error in procedure or other error has taken place in the case, which by virtue of law requires that the decision is to be reversed or annulled. Finally, leave to appeal may be granted if there are other weighty reasons for granting leave to appeal.⁹⁵

However, most types of cases handled by the Supreme Administrative Court are not subject to the requirement for leave of appeal described above and the Court may also issue a decision on the merits of the case.⁹⁶ Furthermore, leave to appeal is not required in child welfare cases.⁹⁷

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?

Under the Finnish legal system, judicial precedent is not binding. Courts of appeal and even district courts and administrative courts may depart from earlier decisions made by the Supreme Court or the Supreme Administrative court, for example when the social circumstances have considerably changed after the precedent has been created. In practice, however, precedents of the Supreme Court and Supreme Administrative Court are followed in cases arising after the precedent has been created and involving a similar point of law. The objective is that courts throughout the country interpret the law in a uniform manner and apply legal principles by means of consistent assessment and deliberation.⁹⁸ A negative decision could set a precedent that courts would feel compelled to follow in cases arising after the precedent.

⁹² Procedural Code (4/1734, as amended), Chapter 25, Section 5.

⁹³ Procedural Code (4/1734, as amended), Chapter 25, Section 12.

⁹⁴ Procedural Code (4/1734, as amended), Chapter 30, Section 5.

⁹⁵ Procedural Code (4/1734, as amended), Chapter 30, Section 3, Administrative Judicial Procedure Act (586/1996, as amended), Section 13.

⁹⁶ <http://www.kho.fi/en/>.

⁹⁷ Comment provided by Kirsi Pollari, Senior Advisor at Central Union for Child Welfare (<http://www.lskl.fi/en>).

⁹⁸ <http://www.kko.fi/29537.htm>.

The possibility of negative political backlash or repercussions from a positive decision seem highly unlikely. If a decision indicates a clear conflict between Finland's domestic legislation and its human rights obligations, the most probable course of action for the authorities and the government would be to seek to resolve the conflict by amending domestic legislation.

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

In terms of civil cases, enforcing a positive judgment is relatively straightforward. In situations where, for example, compensation for damages is awarded, if the judgment is not heeded voluntarily, it is carried out compulsorily by enforcement authorities employed by the Finnish state. These enforcement authorities are also charged with carrying out court orders on child custody and rights of access.⁹⁹

In terms of administrative cases, courts rarely shape the substantive content of the administrative decisions that are being challenged. In most cases they return those decisions that are deemed unlawful to the public authorities that originally made them for reconsideration. This then usually leads the public authority in question to give a fresh decision that is in accordance with the law and the ruling of the administrative court. Thus, even after a positive decision by the administrative court, it is left to the discretion of the public authority in question to renew the original administrative decision. A situation where the public authority goes against the decision of an administrative court is relatively unheard of.

A similar situation occurs when a court finds that Finnish domestic legislation in force is in conflict with its human rights obligations. Courts cannot amend legislation, which remains in force until the government seeks to resolve the conflict by amending or repealing the conflicting domestic statute.

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

The primacy of the best interest of a child is the central principle in all legislation concerning children in Finland. The legislation that principally concerns the rights of the child in Finland is briefly described below:¹⁰⁰

- a) Constitution of Finland (731/1999, as amended)

The fundamental rights and freedoms declared in the Finnish Constitution concern children as well as adults. According to Section 6 of the Constitution, children are to be treated equally and as individuals and they shall be allowed to influence matters pertaining to them to a degree corresponding to their level of development. Equality is to be guaranteed both among children and between

⁹⁹ <http://www.oikeus.fi/8851.htm>.

¹⁰⁰ http://www.lapsiasia.fi/en/childrens_matters/legislation_and_children.

children and adults.

According to Section 19 of the Constitution, the public authorities must support families and others responsible for providing for children so that they have the opportunity to ensure children's well-being and personal development. The Constitution also provides that the state shall provide adequate social and health services, housing, security of income, free basic education for children and financial support for families with children.

b) The Act on Child Custody and Right of Access (361/1983, as amended)¹⁰¹

The aim of child custody is to guarantee the balanced development and welfare of children in accordance with their individual needs and wishes. The purpose of the custody of a child is to ensure positive and close relationships particularly between children and their parents.

Children are to be guaranteed a good level of tending and upbringing as well as sufficient care and supervision in respect of their age and level of development. There must be an aim to give a secure and stimulating growing environment and education corresponding to the child's aptitude and wishes. Children are to be brought up in such a manner that they receive understanding, security and affection. Children must not be subjugated, physically punished or otherwise treated injuriously. Children's independence and their becoming responsible adults is to be supported and promoted.

In the processes of applying the Act on Child Custody and Right of Access it is required that matters be resolved taking into account the interests of the child. The opinions and wishes of the child are also taken into consideration according to the age and stage of development of the child.

c) Child Welfare Act (417/2007, as amended)¹⁰²

The Child Welfare Act states that children have the right to a safe and stimulating growing environment as well as balanced and varied development with priority given to their welfare. In the application of the Act, primary attention should be placed on the best interests of the child.

The Child Welfare Act requires that municipal social welfare boards and other authorities must follow and develop the conditions in which children and young people grow up, and remove and prevent the development of any disadvantages. Particular attention shall be given to the development of services that help to support caretakers in bringing up children according to their needs and wishes.

d) Youth Act (72/2006, as amended)¹⁰³

The purpose of the Youth Act is to support young people's growth and independence, promote their active citizenship, strengthen the socialisation of

¹⁰¹ Unofficial translation available at: <http://www.finlex.fi/en/laki/kaannokset/1983/en19830361.pdf>.

¹⁰² An unofficial translation of the Child Welfare Act (417/2007, as amended) is available at, <http://www.finlex.fi/en/laki/kaannokset/2007/en20070417.pdf>.

¹⁰³ Available in Finnish at, <http://www.finlex.fi/fi/laki/ajantasa/2006/20060072>.

young people and improve the conditions in which they live and are brought up. There are also provisions in the Act concerning the participation of young people in public matters and their right to be heard in such matters. The term “youth” in the Act means persons below the age of 29 years.

The Youth Act provides for a youth policy development programme to be adopted by the Government every four years (the duration of the government term). Each four-year development program determines the aims of national youth policy and the guidelines of municipal and provincial youth policy program work.

e) Basic Education Act (628/1998, as amended)¹⁰⁴

The Basic Education Act provides for basic education and compulsory schooling and establishes norms and standards for quality of education and minimal requirements. According to the Basic Education Act, the purpose of primary education is to support pupils’ growth into humane and ethically responsible members of the society, and to equip them with knowledge and skills needed in life. Primary education is to promote culture and equality in the society and the preconditions for pupils to take part in education and otherwise develop themselves during their lives. The aim of morning and afternoon activities is to support home and school up-bringing and the development of children’s emotional life and ethical growth.

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

¹⁰⁴ An unofficial translation of the Basic Education Act is available at, <http://www.finlex.fi/en/laki/kaannokset/1998/en19980628.pdf>.