

ACCESS TO JUSTICE FOR CHILDREN: HUNGARY

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

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

The Hungarian Constitution provides for the consistency of Hungarian law with international treaties signed by Hungary. Hungary accepts general principles of international law. Other international law provisions must be ratified in order to become part of the Hungarian legal system.¹

The Hungarian legal system is dualistic, therefore ratified international agreements will have to be also adopted as part of domestic law through additional legislation in order to be effective. At present the details of the procedure related to the adoption and promulgation, enactment of international conventions is regulated in *Act No. L of 2005 on the Rules Related to International Treaties*. The CRC has been incorporated into Hungarian law as *Act No. LXIV of 1991 on the Ratification of the Convention on the Rights of the Child dated 20 November 1989, New York* (“the **CRC Act**”).

B. Does the CRC take precedence over national law?

No.

C. Has the CRC been incorporated into national law?

Yes, as mentioned in part I.A, the CRC has been incorporated by the CRC Act. Furthermore, the principles and provisions of the Convention are implemented by *Act No. XXXI of 1997 on the Protection of Children and the Administration of Guardianship* (the “**Children’s Protection Act**”), while specific rights are further ensured by specific statutes (such as, for example, *Act No. CXC of 2011 on National Public Education*).

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

As the CRC is part of Hungarian law, incorporated by the CRC Act, its provisions can be directly enforced in Hungarian courts.

E. Are there examples of domestic courts using or applying the CRC or other

¹ The Fundamental Law of Hungary, Article Q.
<http://www.kormany.hu/download/e/2a/d0000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf>

relevant international instruments?

The Constitutional Court of Hungary has referred to the CRC in a case concerning the right to a name², a case concerning the protection of children from the use and production of narcotic drugs,³ a case concerning the definition of a family and its effects,⁴ and a case concerning media law.⁵

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?

Yes. Children and their representatives may file civil claims in the courts. Civil claims stemming from criminal offences may also be filed in the frame of criminal proceedings.

Criminal proceedings may be initiated by children or their representative as well, but criminal court proceedings can only be brought in case of offences which are prosecuted by way of so-called private accusations (minor offences directed against persons, such as the less serious forms of assault, slander or libel, and less serious forms of some sexual offences, the various violations of privacy, harassment and the violation of autonomy in case of medical intervention, and offences against property if the perpetrator is related to the victim).

In cases concerning child protection and custody, the competent authority at first instance is the local authority's notary and the local guardianship office. At second instance, the metropolitan and country government offices are responsible for examining the appeals. Certain cases fall under the competence of the metropolitan and county government offices at first instance, in which case the second instance is the Minister responsible for the protection of children and the youth.⁶

Children and their representatives may challenge the second instance administrative decisions of the Guardian Authorities before the court (civil courts acting as administrative courts).

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

The legal capacity of children is regulated by *Act No. IV of 1959 on the Civil Code* (the "**Civil Code**"). The Civil Code is in force until 14 March 2014. As

² Decision 58/2001 (XII. 7.) AB available at: <https://www.crin.org/en/library/legal-database/decision-58/2001>.

³ Decision 54/2004 (XII. 13.) AB available at: <https://www.crin.org/en/library/legal-database/decision-54/2004>.

⁴ Decision 43/2012. (XII. 20.) AB and 14/2014. (V.13.).

⁵ Decision 165/2011. (XII.20.) AB.

⁶ Section 1 and 2 of Government Decree No. 331/2006 (XII.23.). informationa provided to CRIN by the Office fo the Commissioner for Fundamental Rights.

of 15 March 2014, *Act No. V of 2013 on the Civil Code* (the “**New Civil Code**”) will replace the current Civil Code, but the New Civil Code will not bring about substantial changes regarding the rules on the legal capacity of children.

Persons under the age of 18 are considered minors in Hungarian law - minors under the age of 14 are incapable of making legal statements, while minors between the ages of 14 and 18 have limited capacity to make such statements (the legal statements that minors above the age of 14 may make are set out by law).⁷ This means that children need a representative or the consent of their statutory representative to file a claim or make similar legal statements⁸ except for the cases where the law specifically provides for the personal statement of minors with limited capacity.⁹

Nonetheless, a minor with limited capacity (i.e. a child above 14 years of age) is permitted to take action himself in the protection of his inherent rights.¹⁰ Violations of inherent rights are the following: any breach of the principle of equal treatment; any violation of the freedom of conscience; any unlawful deprivation of personal freedom; any injury to body or health; and contempt for or insult to honor, integrity, or human dignity of private persons.

Statutory representatives are the parents or guardians of the child or the regional child’s legal representative (the latter can only initiate the proceeding of the Guardian Authority).¹¹ However, minors can notify competent authorities of violation of their rights themselves. If the statutory representative makes a legal statement in the name of the child with respect to the child’s person or property, the child’s opinion has to be taken into account.¹² If there is a conflict of interest between the child and his or her statutory representative, the Guardian Authority will appoint a so-called ad hoc guardian to represent the child.¹³

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

The children’s parents, guardian or other statutory representative (the ad hoc guardian) would be able to bring such cases.

In certain discrimination cases the public prosecutor, the Equal Treatment Authority and non-governmental organisations also have a right to file an action in court.

⁷ Sections 12/A – 12/C of the Civil Code (Section 2:11 – 2:14 of the New Civil Code).

⁸ Section 12/A (2) of the Civil Code (Section 2:12 (1) of the New Civil Code).

⁹ For example, the Family Act renders that adopted children above 14 years of age may themselves file an application to learn their parentage, while the Civil Code lists specific legal statements of children above 14 years of age which are valid without the consent of statutory representatives (such as concluding minor contract or contracts which only provide benefits for the child).

¹⁰ Section 85 (1) of the Civil Code (Section 2:54 (2) of the New Civil Code).

¹¹ Sections 86-87, 93 and 101 (1) of Act No. IV of 1952 on the Marriage, Family and Guardianship (the “**Family Act**”).

¹² Section 12/D of the Civil Code (Sections 2:12 (4) and 2:14 (3) of the New Civil Code).

¹³ Section 225 of the Civil Code (Section 4:172 of the New Civil Code).

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

Children and their representatives are eligible for out-of-court legal aid services depending on their financial situation. Regardless of their financial situation, a party who cares for a child who has been declared eligible to receive regular child welfare subsidies will also receive free legal aid.¹⁴

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 further limits on children's ability to bring court cases.

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?

Administrative proceedings can be initiated by any person or organisation noticing a violation of children's rights.¹⁵ The administrative decision can then be challenged at court by any party whose rights are affected by such decision.

Individuals may also file an action with civil courts and request compensatory damages (including for harm caused by authorities in their administrative capacity) or an injunction if appropriate. If a violation falls under the scope of criminal law, individuals or authorities may request a police investigation.

The Ombudsperson may also be notified of constitutional rights violations by public authorities.¹⁶

If the enforcement or provisions of a specific law applied in an individual case violates the Constitution, the acting court may refer the case to the Constitutional Court. Individuals may also initiate the procedure of the Constitutional Court if they have used all other legal actions available in the legal system and no further appeal is possible.¹⁷ If the enforcement or provisions of a specific law applied in an individual case violates Hungary's obligations stemming from international treaties, the Ombudsperson may

¹⁴ Section 3 and Section 5 (2) f) of Act No. LXXX of 2003 on Legal Aid.

¹⁵ Section 17 (2) of the Children's Protection Act.

¹⁶ Office of the Commissioner for Fundamental Rights, <http://www.ajbh.hu/en/web/ajbh-en/>. Act CXI of 2011 on the Commissioner for Fundamental Rights, Section 18, available at: <http://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011>.

¹⁷ Sections 25-26 of Act No. CLI of 2011 on the Constitutional Court, based on Article 24 (2) points b)-d) of the Fundamental Law of Hungary.

also initiate the procedure of the Constitutional Court.¹⁸

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.¹⁹ Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,²⁰ but the complaint will be admissible only if all domestic remedies have been exhausted.²¹ Anonymous complaints are not permitted.²² 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.²³ After examining the case, the Court renders a judgment which is binding on the State²⁴ and also has powers to award monetary compensation to the victims of human rights abuses.²⁵ It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

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

In case of judicial review of administrative decisions, normally courts shall not change the decision on the merits but may only assess whether the administrative proceedings followed the rules of due process, whether the decision was adequately reasoned and the evidence rightly assessed, and whether discretionary decisions were reasonable and took into account all legally prescribed aspects.²⁶ If an administrative decision is found to be unlawful by the court, it may void said decision and, if necessary, order the administrative authority to repeat its proceedings and issue a new decision.²⁷ In certain types of cases defined by the law, the court may overrule the administrative judgment. Such types of cases include:

- decisions for the approval or refusal of adoption, or for declaring a child eligible for adoption;
- decisions ordering the placement of a child in a suitable institution for the care of children, or for the termination of such placement;

¹⁸ Section 32 of Act No. CLI of 2011 on the Constitutional Court, based on Article 24 (2) point f) of the Fundamental Law of Hungary.

¹⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”), 1950, Articles 19 and 32, available at: <https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

²⁰ Ibid., Article 34.

²¹ Ibid., Article 35.

²² Ibid.

²³ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

²⁴ European Convention on Human Rights, Article 46.

²⁵ Ibid., Article 41.

²⁶ Section 339/A and 339/B of Act No. III of 1952 on the Rules of Civil Procedure.

²⁷ Section 339 (1) of Act No. III of 1952 on the Rules of Civil Procedure.

- decisions relating to parental custody rights, and for the appointment or dismissal of a guardian or administrator, or declaring the removal of a guardian or administrator; and
- decisions on family welfare provisions and on social security benefits.²⁸

In civil actions, the claimant must substantiate his or her statements and the court must decide the case based on the assessment of the entirety of the evidence provided by the litigants. The civil court has the power to award financial damages as well as compensation for non-economic harms. The civil court may also order injunctions.

In civil actions alleging a violation of inherent rights (referred to in part II.B), claimants may ask the court to award the following remedies:

- declaration of the occurrence of the infringement;
- ordering the infringement to be discontinued and the perpetrator to refrain from further infringement;
- ordering that the perpetrator make restitution in a statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, make an appropriate public disclosure for restitution;
- ordering the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator and, furthermore, to have the effects of the infringement nullified or deprived of their injurious nature;
- transfer of the benefit gained through the violation to the claimant (*provision introduced by the New Civil Code*); and
- awarding punitive damages (under the general rules of the Civil Code).²⁹

If the Constitutional Court finds that the provisions of law applied in an individual case or individual court decision or other enforcement action are in breach of the Constitution or international treaty provisions incorporated into Hungarian law, the Constitutional Court can dismiss such legal provisions or decisions.³⁰

If an inquiry reveals that there has been a breach of the applicant's rights, the Ombudsman has the power to make a recommendation to the authority responsible, which is then obliged to respond within 30 days.³¹ The Ombudsman may also turn to the Constitutional Court to review conflicts of national provisions with international law.³²

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?

²⁸ Section 339 (2) of Act No. III of 1952 on the Rules of Civil Procedure.

²⁹ Section 84 of the Civil Code (Sections 2:51 to 2:53 of the New Civil Code).

³⁰ Sections 41-42 of Act No. CLI of 2011 on the Constitutional Court.

³¹ Section 31 of Act CXI of 2011 on the Commissioner for Fundamental Rights.

³² Section 32(2) of Act CLI of 2011 on the Constitutional Court, available at: <http://www.mkab.hu/download.php?d=64>.

Actions without naming individual victims are only possible in certain cases prescribed by law. For example, *Act No. CXXV of 2003 on Non-Discrimination and Equal Opportunities* allows the public prosecutor, the Equal Treatment Authority and civil (non-governmental) organisations to file actions if discrimination occurred based on a substantial feature of personality and the discrimination may affect a larger group of people where individuals cannot be determined.³³

The review of the Constitutional Court may be initiated without naming specific victims, except where said review is related to an individual case.

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

Group litigation is possible if:

- (i) the court ruling would affect all plaintiffs even without participating in the court procedure;
- (ii) the claims of the plaintiffs originate from the same legal relationship; or
- (iii) the claims are based on the same cause of action and legal basis, and the court has competence to act in the cases of all the involved defendants.

This kind of group litigation inherently means that individual victims must be named.³⁴ Collective actions without naming individual victims are only possible if such actions are allowed by specific laws as explained in part III.C.

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?

Since filing a civil action is only possible if the claimant can substantiate his or her legal interest, non-governmental organisations can only file civil actions if specific laws allow that or if they are entitled to represent claimants under *Act No. III of 1952 on the Code of Civil Procedure* (the “**Civil Procedure Act**”) (if the subject of the litigation can be interpreted as forming part of the aims of the non-governmental organisation).³⁵

Non-governmental organisations can (and in fact, must) notify authorities (such as the Guardian Authority) to initiate ex-officio administrative proceedings in cases of children’s rights violations.³⁶ Non-governmental organisations can also request that the police initiate the investigation of alleged criminal violations.

³³ Section 20 (1) of Act No. CXXV of 2003 on Non-Discrimination and Equal Opportunities.

³⁴ Section 51 of Act No. III of 1952 on the Rules of Civil Procedure.

³⁵ Section 67 (1) point g) of the Civil Procedure Act.

³⁶ Section 17 (2) of the Children’s Protection Act.

In court proceedings, non-governmental organisations can intervene under the general procedural rules if they can demonstrate a legitimate interest for such intervention with respect to the final outcome of the proceedings.³⁷

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?

Whether a case should be filed with an administrative authority or at court depends on the nature of the violation.

Administrative proceedings

Decisions of the administrative authorities may be challenged at court.³⁸ Interested parties can ask for the judicial review of administrative decisions in writing, by filing an action with the competent court. Costs will be advanced by the State.

In case of discrimination cases investigated under *Act No. CXXV of 2003 on Non-Discrimination and Equal Opportunities*, the procedure will be launched either by the Equal treatment Authority or by the competent administrative authority depending on the choice of the claimant.³⁹

Civil proceedings

Civil actions can also be brought in case of damages or other harm or in case of the violations of inherent rights. The jurisdiction of the court will usually be determined by the domicile or seat of the defendant, except if special provisions of the law can be applied.⁴⁰ Actions for the placement of a child and actions for the termination of adoption can be filed at the court whose jurisdiction is determined by the home address of the affected child.⁴¹

Civil proceedings may be initiated in writing by filing an action to the competent court. The Civil Procedure Act includes the detailed rules with respect to the content and form of the statement of claims.⁴²

Criminal proceedings

Criminal proceedings may be initiated at any police station or with the public prosecutor in writing or by way of oral proceedings.⁴³ The jurisdiction of the criminal court will be determined by the place where the offence was committed or by the domicile of the accused person.⁴⁴ Private proceedings (in case of offences which are prosecuted by way of private proceedings)

³⁷ Section 54 of the Civil Procedure Act.

³⁸ Section 326 (1) of the Civil Procedure Act.

³⁹ Section 15 (1) of Act No. CXXV of 2003 on Non-Discrimination and Equal Opportunities.

⁴⁰ Section 29 (1) of the Civil Procedure Act.

⁴¹ Sections 34 (2) and (3) of the Civil Procedure Act.

⁴² Section 121 of the Civil Procedure Act.

⁴³ Section 172 of Act No. XIX of 1998 on the Criminal Procedure Act (the “**Criminal Procedure Act**”).

⁴⁴ Section 17 (1) of the Criminal Procedure Act.

must be made by the victim of such offences.⁴⁵

Please also refer to part III. A and B.

- 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 mentioned in part II.B, legal aid is granted according to the financial situation of the applicant, but may also be automatic in relation to children in receipt of state child welfare subsidies. The legal questions raised or the likelihood of success of the proceedings do not play a role in the allocation of legal aid.

The application for legal aid is free of charge and the judicial review of the decision on granting legal aid can also be challenged free of charge.

The initiation of most of the administrative proceedings related to children's rights are free (no procedural fees must be paid). The procedural fee for the initiation of the judicial review of administrative decisions is advanced by the State and such fee must only be paid if the claimant loses the case. The procedural fee of the filing of a damages claim against administrative authorities claiming damages caused in their administrative capacity is also advanced by the State.

Detailed rules of procedural fees are regulated by *Act No. XCIII of 1990 on Duties*. The remittal or advancement of legal costs are regulated by government and ministerial decrees.⁴⁶ Parties have the right to advancement of legal costs by the State for certain procedures involving children (such as proceedings for the placement of children and proceedings related to the termination or restitution of parental rights).

- 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?

Lawyers can determine their legal fee freely and so they can take up cases free of charge. In practice, children's right organisations may help children and their representatives to find lawyers taking up pro bono cases, for

⁴⁵ Section 173 of the Criminal Procedure Act.

⁴⁶ Government Decree No. 180/2005 (IX.9.) on the conditions of the remittal of legal costs in administrative proceedings. Joint Decree of the Minister of Justice, the Minister of Finance and the Minister of Interior Affairs No.9/2003 (V.6.) on the conditions of the remittal of legal costs in criminal proceedings. Decree of the Minister of Justice No. 6/1986 (VI.26.) on the conditions of the remittal of legal costs in court proceedings.

example, through PILNET⁴⁷ which is also active in Hungary. Otherwise there are no national networks for collecting and distributing pro bono legal assignments.

However, claimants may ask for free of charge help when writing their statements of claim at the court (in so-called complaint offices where basic help is provided for parties having no legal representatives).

- 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?

There are no time limitation to challenging violations of inherent rights in the civil courts. Most civil and criminal proceedings usually carry statutes of limitations (the general limitation for civil actions is 5 years⁴⁸ and it varies for criminal actions but is at minimum 5 years⁴⁹). Young adults may bring cases for violations of which they were victims as minors within the period of limitation.

Act No. C of 2012 on the Criminal Code (the “**Criminal Code**”) provides for special statutes of limitations in case of certain offences conducted against minors (voluntary homicide, intentional serious battery, kidnapping, trafficking of human beings, violation of personal freedom and sexual offences). According to these special rules, if the limitation lapsed before the victim (being a minor at the time of the conduct of the offence) turned 23, the limitation would be extended to the 23rd birthday of the victim or the date when the victim would have turned 23.⁵⁰

According to civil law, if the obligee is unable to enforce a claim for an excusable reason, the claim shall remain enforceable within one year of the time when said reason is eliminated even if the period of limitation has already lapsed or there is less than one year remaining therein.⁵¹

- 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?

Administrative, civil and criminal procedural rules set out what evidence can be used in such proceedings. These include witness statements, documents, expert opinions, other physical evidence, and in administrative and civil proceedings, field inspection reports.⁵²

Procedural laws include special provisions for hearing minors as witnesses.⁵³

⁴⁷ Public Interest Law Network (www.pilnet.org).

⁴⁸ Section 324 (1) of the Civil Code (Section 6:22 of the New Civil Code).

⁴⁹ Section 26 (1) of the Criminal Code.

⁵⁰ Section 26 (2) of the Criminal Code.

⁵¹ Section 326 (2) of the Civil Code (Section 6:24 of the New Civil Code).

⁵² Section 76 of the Criminal Procedure Act; Section 166 of the Civil Procedure Act; Section 50 (4) of Act No. CXL of 2004 on the Rules of Administrative Procedures.

⁵³ Section 86 of the Criminal Procedure Act; Section 167/A of the Civil Procedure Act.

In criminal and civil proceedings, a child under the age of 14 can only be heard as a witness if the evidence expected of the child's testimony cannot be obtained otherwise.

In criminal proceedings, a minor child can be heard as a witness if it is reasonable to assume that he or she can present a valid testimony. If a minor between 14 and 18 years of age cannot properly understand the significance of a refusal to testify, they can only be heard as a witness if they wishes to testify with the consent of their statutory representative.

The statutory representative of the minor can be present during the testimony. The testimony may be closed to the public if it is deemed reasonably necessary for the best interests of the child.

The Civil Procedure Act contains special provisions for the case when minors are heard as interested parties by the court in proceedings related to parental rights or the placement of the minor.⁵⁴ In such cases, children can ask to be heard.⁵⁵ The circumstances of such hearings are regulated in detail by the law, *inter alia*, the law sets out that the hearing should be held in the appropriate atmosphere, questions and instructions must be formulated in a manner for the child to understand such questions and instructions.⁵⁶

In criminal proceedings, there are also special rules for defendants between the ages of 12 and 18 (child defendants).⁵⁷ It is obligatory to collect a study of the child's environment as evidence. The court can hold a closed hearing or can keep out the public from the entire court proceeding if it is necessary to protect the interests of the child defendant.⁵⁸

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

Act No. XIX of 1998 on the Criminal Procedure (the "**Criminal Procedure Act**") sets out that criminal procedures in cases of serious offences (offences against life, body and health, sexual offences, offences violating the interests of children and offences against the family) involving child victims must be conducted with priority. Also, procedures in cases of other offences directed against persons must be conducted with priority if the child's interest so requires (for example, if the perpetrator is the child's attendant or otherwise lives with the child).⁵⁹

The Civil Procedure Act also sets out that (i) administrative court procedures brought by minors and (ii) certain administrative court procedures reviewing the decisions of the Guardian Authority involving children's rights and

⁵⁴ Section 65/A of the Civil Procedure Act.

⁵⁵ Section 74 of the Family Act.

⁵⁶ Section 65/B of the Civil Procedure Act.

⁵⁷ The Criminal Code (Section 16) decreased the age limit of criminal liability from 14 years to 12 years (effective as of 1st July, 2013) in case of certain offences (homicide, voluntary homicide, battery, robbery and plundering).

⁵⁸ Sections 446 to 468 of the Criminal Procedure Act.

⁵⁹ Section 64/A of the Criminal Procedure Act.

family status must be conducted with priority.⁶⁰ The law provides that the court shall hold the first hearing within 30 days of the arrival of the statement of claims (unless other procedural measures are necessary). The court shall decide upon review of the administrative decision within 30 days whether it is competent to overrule or amend the decision. The judgment must be put into written form within 8 days and within a further 8 days the written judgment must be delivered to the parties.

According to court statistics, administrative and civil court procedures at first instance take roughly 1 to 2 years (almost 90% of administrative court proceedings end within 1 year, while about 80% of civil court proceedings end within 1 year), and procedures at second instance at average take another 6 to 18 months.⁶¹ These statistics do not unfortunately indicate the involvement of minors in litigation.

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

The judgment of the administrative courts cannot be challenged by ordinary appeals (the administrative procedure has two instances and the ordinary judicial review procedure is a single-instance procedure).⁶² Nonetheless, such administrative court judgments can be challenged by way of extra-ordinary appeals, such as (i) motions for retrial or (ii) request for judicial review at the Curia (the supreme court in Hungary).

Motions for retrial are possible if:

- a) any of the parties involved presents any facts or evidence, or any binding court order or other official decision that the court did not take into consideration during the hearing, provided that prior consideration would have been to the appellant's benefit;
- b) any of the parties involved lost the suit because of a criminal offense carried out by one of the judges involved in the trial or by the defendant or any other person, contrary to the law;
- c) a final judgment has previously been adopted relating to the same claim; or
- d) the statement of claim or any other document was delivered to the party by way of public notification in violation of the provisions

⁶⁰ According to Section 333 (1) of the Civil Procedure Act, decisions which must be reviewed by the administrative court with priority are the ones which

a) place the child at the separated other parent, at another relative or any other qualified person, or at foster parents - or failing these -, in a children's home or other similar institution providing room and board;

b) establish the recovery of parental custody rights;

c) decide concerning the termination or revision of placement applied by another body on a temporary basis;

d) take the child into temporary custody and appoints a guardian (professional guardian) at the same time;

e) take the child into permanent custody and appoints a guardian (professional guardian) at the same time;

f) decide concerning the visitation rights of a child in temporary or permanent custody; or

g) decide concerning the termination of temporary or permanent custody.

⁶¹ Statistics are available at

<http://www.birosag.hu/kozerdeku-informaciok/statisztikai-adatok/statisztikai-evkonyvek> (in Hungarian language only).

⁶² Section 340 (1) of the Civil Procedure Act.

on service of process by public notification.⁶³

Motions for retrial must be requested within 6 months of the publication of the judgment.⁶⁴

Judicial review by the Curia can be requested if a party considers that the first or second instance judgment is unlawful.⁶⁵ The request for judicial review must be filed within 60 days of the publication of the challenged judgment.⁶⁶ No judicial review is allowed of the following judgments involving children's rights or status:

- a) any judgment to rebut the presumption of fatherhood (in the part that is rebutting the presumption of fatherhood), if fatherhood is assumed by any person subject to the father's full-fledged consent after the presumption of fatherhood has been rebutted, or if fatherhood was established by final court decision, or if the child's mother is married subsequently and the mother's spouse is to be recognised as the child's father;⁶⁷ and
- b) in cases of the placement of a child, of making any change in placement, and in cases relating to visitation rights if the second instance court upheld the judgment of the first instance court.⁶⁸

In civil and criminal cases, first instance judgments can be appealed at second instance courts.⁶⁹ In criminal cases, second instance judgments can also be appealed at third instance courts in cases where the second instance court convicted a defendant who was not convicted by the first instance court or the second instance court convicted a defendant for an offence which the first instance court did not judge.⁷⁰ Motions for retrial and judicial review by the Curia are possible in cases listed by the relevant laws.⁷¹

A judicial review of civil court judgments by the Curia is not possible (i) in case of binding first instance judgments or (ii) if the second instance judgment becomes binding by the party who did not challenge the first instance judgment.⁷²

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?

In Hungary, court judgments are not considered a source of law and therefore decisions of higher courts are not binding on other courts in terms

⁶³ Section 260 of the Civil Procedure Act.

⁶⁴ Sections 261 (1) and (3) of the Civil Procedure Act.

⁶⁵ Section 270 (2) of the Civil Procedure Act.

⁶⁶ Section 272 (1) of the Civil Procedure Act.

⁶⁷ Section 271 (1) g) of the Civil Procedure Act.

⁶⁸ Section 271 (3) c) of the Civil Procedure Act.

⁶⁹ Section 233 (1) of the Civil Procedure Act and Section 346 (1) of the Criminal Procedure Act, respectively.

⁷⁰ Section 386 (1) of the Criminal Procedure Act.

⁷¹ Sections 260 and 270 of the Civil Procedure Act, and Sections 408 and 416 of the Criminal Procedure Act.

⁷² Sections 271 (1) a) and b) of the Civil Procedure Act.

of their future decisions. Judgments of the Curia may have more far-reaching effect but those may also be changed by further Curia judgments.

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

Enforcement of court judgments are regulated by the procedural laws governing the civil and criminal court proceedings, respectively.⁷³

- 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.

There are no further relevant laws or practices.

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

⁷³ Act No. LIII of 1994 on Judicial Enforcement. Section 588 to 596/A of the Criminal Procedure Act.