

ACCESS TO JUSTICE FOR CHILDREN: ICELAND

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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?

Iceland ratified the CRC on 28 October 1992.¹ Iceland adheres to the principle of dualism - therefore ratified international treaties do not automatically assume the status of domestic law, but are only binding according to international law.² The CRC was then incorporated into national law in February 2013 and can now be directly invoked in the Icelandic courts.³

B. Does the CRC take precedence over national law?

If there is a conflict between international law and national law, national law will generally take precedence. However, national law is interpreted with reference to international law, such as the CRC. Where international and national law are mutually exclusive, the latter usually takes precedence.⁴ Now that the CRC has been incorporated into national law in Iceland it has assumed the same status as all other national laws.

C. Has the CRC been incorporated into national law?

The CRC, as well as the first and second Optional Protocols, was incorporated verbatim into Icelandic law in February 2013. The law was

¹ *Combined third and fourth periodic reports of Iceland to the UN Committee on the Rights of the Child*, CRC/C/ISL/3-4, 29 November 2010, para. 1. available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsonQwPuEj qHITAw%2b8KxrmEwg4bQ7jEt%2fqUh2xQ4bPPUu%2fVadphG29Zn1BXhRBMZMK7BfNdym1bx P2C3Ob4QynRnZnLezpsvsX2YJc%2fk9zy> and <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsonQwPuEj qHITAw%2b8KxrmEwg4bQ7jEt%2fqUh2xQ4bPPUu%2fVadphG29Zn1BXhRBMZMK7BfNdym1bx P2C3Ob4QynRnZnLezpsvsX2YJc%2fk9zy>.

² Rán Tryggvadóttir and Thordis Ingadóttir, *Researching Icelandic Law*, March 2010, para. 3.10, available at: <http://www.nyulawglobal.org/Globalex/Iceland1.htm>.

³ Law on the United Nations Convention on the Rights of the Child, Law No. 19/2013, available at: http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/95341/112201/F1524267405/ISL_95341%20Isl.pdf; Unicef, *The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries*, 2012, p. 80, available at: http://www.unicef.org.uk/Documents/Publications/UNICEFUK_2012CRC_implementationreport.pdf; Statement by Thorvardur Atli Thorsson, First Secretary of Iceland, to the General Assembly 3rd Committee on the promotion and protection of the rights of children, 17 October 2013, available at: <http://www.iceland.is/iceland-abroad/un/nyc/statements-and-news/rights-of-children---statement-of-iceland/10468/>.

⁴ Unicef, p. 80.

adopted unanimously by the Icelandic parliament.⁵

In addition, Article 76(3) of the Constitution of Iceland refers specifically to children's rights and guarantees protection and care for children which is necessary for their well-being.⁶ Following protests stemming from the financial crisis in 2008, a revision process of the Constitution of Iceland was initiated in which a Constitutional Council made up of Icelandic citizens drafted a new Constitution for the country. In the course of this process, UNICEF Iceland, the Ombudsman for Children and the City of Reykjavik launched a participation project to ensure that the opinions of children were heard and taken into account in the constitutional amendment process. The Young People's Constitution project involved two representatives from each of the 23 Youth Councils in Iceland.⁷ The bill, however, was struck down by parliament in autumn 2013 and the newly elected government did not revive the project.⁸

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

Since its incorporation into national law, the CRC can now be directly enforced in the courts in Iceland. Before February 2013 this had not been the case as Iceland adheres to the principle of dualism. Therefore, ratified international treaties do not assume the status of domestic law, but are only binding according to international law.⁹

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

Icelandic courts have not been using or applying the CRC on a regular basis. Prior to the incorporation of the CRC into national law, there were only few cases in which some district courts cited the CRC. These mostly dealt with Articles 7, 9(3) and 11 of the CRC on the interpretation of Icelandic law in cases involving family reunification. Some of these judgments were confirmed by the Icelandic Supreme Court. Research suggests that there have not been any such cases since the incorporation of the CRC into national law in February 2013.¹⁰ Research of decisions by domestic courts

⁵ Statement by Thorvaldur Atli Thorsson; Unicef, *Reply to the Lanzarote Committee Secretariat by the Icelandic National Committee for Unicef*, 2013, p. 2, available at: http://www.coe.int/t/dghl/standard_setting/children/UNICEFIceland_en.pdf.

⁶ Unicef, p. 80-81; Constitution of Iceland, Article 76(3), available at: <http://www.government.is/constitution>.

⁷ Unicef, p. 80-81.

⁸ Thorvaldur Gylfason, *Democracy on ice: a post-mortem of the Icelandic constitution*, in: Open Democracy, 19 June 2013, available at: <https://www.opendemocracy.net/can-europe-make-it/thorvaldur-gylfason/democracy-on-ice-post-mortem-of-icelandic-constitution>.

⁹ Rán Tryggvadóttir and Thordis Ingadóttir, para. 3.10.

¹⁰ Héraðsdóms Reykjavíkur, 15 May 2012, í máli nr. E-3003/2011, available at: <http://www.domstolar.is/domaleit/nanar/?ID=E201103003&Domur=2&type=1&Serial=1>; 8 December 2011, í máli nr. E-2683/2011, available at: <http://www.domstolar.is/domaleit/nanar/?ID=E201102683&Domur=2&type=1&Serial=1>; 24 June 2011, í máli nr. E-4832/2010, available at: <http://www.domstolar.is/domaleit/nanar/?ID=E201004832&Domur=2&type=1&Serial=1>; 29 December 2009, í málinu nr. E-5225/2009, available at:

using or applying the CRC in Iceland overall is hindered by the fact that both the legal database for decisions by district courts, as well as the one for decisions by the Supreme Court, are published in Icelandic only.¹¹

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 cases in domestic courts as well as in front of child protection committees in Iceland. Cases on behalf of children must generally be brought by their legal representative,¹² who is normally the child's custodial parent.¹³ In cases of conflict of interest between the child and the parent, Article 53 of the Act on Legal Competence No. 71/1997 allows for the appointment of a guardian for a specific purpose.¹⁴

Following ratification of the CRC, Iceland enacted two major statutes: the Child Protection Act, No. 80/2002 (Protection Act) and the Children's Act, No. 76/2003 (Children's Act). Under the Protection Act, children are guaranteed the right to protection and care in accordance with their age and maturity and a child protection committee is appointed by each local government to monitor conditions and apply remedies where appropriate.¹⁵

<http://www.domstolar.is/domaleit/nanar/?ID=E200905225&Domur=2&type=1&Serial=1>; 1 December 2009, í máli nr. E-10758/2008, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200810758&Domur=2&type=1&Serial=1>; 4 March 2009, í máli nr. E-3669/2007, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200703669&Domur=2&type=1&Serial=1>; 3 June 2008, í máli nr. E-8327/2007, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200708327&Domur=2&type=1&Serial=1>; 7 May 2007, í máli nr. E-7818/2006, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200607818&Domur=2&type=2&Serial=1>; 18 April 2007, í máli nr. E-3000/2006, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200603000&Domur=2&type=1&Serial=1>; 26 April 2006, í máli nr. E-4904/2005, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200504904&Domur=2&type=1&Serial=1>; 19 April 2006, í máli nr. E-4906/2005, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200504906&Domur=2&type=1&Serial=1>; 20 March 2006, í máli nr. E-6553/2005, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200506553&Domur=2&type=2&Serial=1>; Héraðsdóms Austurlands, 8 July 2011, í máli nr. A-2/2011, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=A201100002&Domur=5&type=2&Serial=1>; 7 February 2011, í máli nr. A-18/2010, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=A201000018&Domur=5&type=2&Serial=2>; Héraðsdóms Vestfjarða, 6 July 2006, í máli nr. E-267/2004, available at:
<http://www.domstolar.is/domaleit/nanar/?ID=E200400267&Domur=8&type=1&Serial=1>.

¹¹ District court case law search engine, available at: <http://www.domstolar.is/domaleit>; Supreme Court case law search engine, available at: <http://www.haestirettur.is/control/index?pid=330>.

¹² Act of Civil Procedure No. 91/1991, Article 17. Information provided by CRIN by the Office of the Ombudsman for Children in Iceland.

¹³ Children's Act, Article 18. Information provided by CRIN by the Office of the Ombudsman for Children in Iceland.

¹⁴ Information provided by CRIN by the Office of the Ombudsman for Children in Iceland.

¹⁵ Child Protection Act, Section III.

The Protection Act criminalises a number of offences against children, including mental, physical, and sexual abuse.¹⁶ In 2011, the Protection Act was amended by Act No. 80/2011, which guaranteed children further rights to express themselves before child protection committees and courts of law based on their age and maturity.¹⁷ The Children's Act establishes children's right to know both of their parents and provided rules on the custody of children in cases of separation or divorce.¹⁸

- 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 aged 15 years and older are regarded as legal parties in child protection cases and can appeal decisions by the child protection committee to a district court judge.¹⁹ A child who becomes party to a case shall be granted legal proceedings without cost to themselves in district courts and in the Supreme Court.²⁰ They shall be given the opportunity of expressing their views in cases affecting them, in accordance with the child's age and maturity, and the child's view shall be fairly taken into account in resolution of the case.²¹ In such a case, the parents are obligated to support their children in the way that best suits the children's interests and needs.²²

According to Article 17(1) of the Act on Civil Procedure (Law No. 91/1991) parties are allowed to represent themselves in all cases.²³ However, they may apply for legal aid to pay for the assistance of a lawyer.²⁴ The child protection committee makes grants of money to parents and children who are party to a child protection case, in order for them to be able to pay for legal counsel.²⁵

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

Children aged 15 years and older are regarded as legal parties in child protection cases and can appeal decisions by the child protection committee to a district court judge. For children under the age of 15, the child

¹⁶ Child Protection Act, Section XVIII.

¹⁷ *Written replies by the Government of Iceland to the list of issues in connection with the consideration of the third and fourth periodic reports of Iceland*, 15 September 2011, para. 30-34, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhsonQwPuEjqHITAw%2b8KxrmIH3W4P%2f48XKx73YPcItz96yJJtaiRXBdHwqFkIA8kUAz3sYYAyD2PffFeo%2bBgw8KOAQMgqKGX%2b9cKxYt67j0wzIOLjuc4hfz6Px%2bYUIykIRDQ%3d%3d>.

¹⁸ Children's Act, Chapter I-III (paternity), Chapter V-VII (custody).

¹⁹ Child Protection Act, Article 27, 46.

²⁰ Child Protection Act, Article 60.

²¹ Child Protection Act, Article 46(2), 47(1).

²² Children's Act, Article 28.

²³ Thorgerdur Erlendsdottir and Sigridur Ingvarsdottir, *Cost and fee allocation in Civil Procedure*, p. 4, available at: http://www-personal.umich.edu/~purzel/national_reports/Iceland.pdf.

²⁴ Child Protection Act, Articles 46(2), 47(2).

²⁵ Child Protection Act, Article 47(2).

protection committees have the power to appoint a spokesperson to help the child express their position.²⁶

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

Children or their representatives may apply for legal aid to pay for the assistance of a lawyer.²⁷ Child protection committees make grants of money to parents and children who are party to a child protection case, in order for them to be able to pay for legal counsel.²⁸

Iceland has a publicly funded legal aid system. According to Article 126 of the Act on Civil Procedure, individual legal aid is offered if one party to a legal dispute is not financially able to sustain the cost of protecting their interests. This is conditional on there being a sufficient motive to get a resolution of the matter in court and reasonable arguments for need of legal aid from public funds. Legal aid obligates the State to pay all cost which the individual might incur, including lawyers fees.²⁹

In addition, the Icelandic Government Agency for Child Protection has been operating the so-called “Children’s House” since 1998. The Children’s House is responsible for all cases in which it is suspected that a child has been subject to sexual harassment or abuse. Children and their guardians may, with a reference from a child protection committee, obtain all required legal services for child sexual abuse cases free of charge.³⁰

In criminal cases, legal costs, including lawyers' fees, are paid for by the State as well. However, persons who are convicted of a crime are then required to reimburse the treasury. If it is sufficiently clear that a convicted person has no assets or income to cover the legal costs, the claim can be waived.³¹

E. Are there any other conditions or limits on children or chosen legal

²⁶ Child Protection Act, Articles 25, 46, 55.

²⁷ Child Protection Act, Articles 46(2), 47(2).

²⁸ Child Protection Act, Article 47(2).

²⁹ Thorgerdur Erlendsdottir and Sigridur Ingvarsdottir, p. 7.

³⁰ Government Agency for Child Protection, *The Children’s House brochure*, p. 2, available at: <http://www.bvs.is/media/barnahus/childrens-house-brochure.pdf>; European Commission, *Screening report Iceland: Chapter 23 - Judiciary and Fundamental Rights*, 1 July 2011, p. 12, available at: http://ec.europa.eu/enlargement/pdf/iceland/key-documents/screening_report_23_is_internet_en.pdf; *Report of the Ombudsman for Children in Iceland to the UN Committee on the Rights of the Child*, 2010. Article 19, p. 8-9, available at: http://barn.is/media/19020/ub_report_to_the_un_committee_on_the_rights_of_the_child_2010.pdf; Statement by Gréta Gunnarsdóttir, Ambassador of Iceland, *to the General Assembly 3rd Committee on the promotion and protection of the rights of children*, 19 October 2012, available at: <http://www.iceland.is/iceland-abroad/un/nyc/statements-and-news/rights-of-children---statement-of-iceland/9426>.

³¹ Law on criminal procedure, Law No. 88/2008, Article 88(1), available at: <http://eng.innanrikisraduneyti.is/laws-and-regulations/english/procedural-law/nr/1339>; European Commission, p. 14.

representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Under the Child Protection Act, a child protection committee can choose to investigate a case with or without the consent of the parents. If the child protection committee determines that measures undertaken with parental consent are inadequate to protect a child's health or well-being, the committee may take court action on behalf of the child or put in place other remedial measures without the consent of the parents.³²

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?

A legal challenge can be brought by the child, a guardian, a child protection committee, or the police when they receive information that a criminal offense has been committed against a child.³³

In accordance with Article 24(1) of the Act on Civil Procedure (Law No. 91/1991), the courts have the power to render judgements on any complaint covered by a statute and other sources of domestic law (civil, criminal, administrative and constitutional law).³⁴

As Iceland is a Member State of the Council of Europe, Icelandic claimants can also call upon the European Court on Human Rights as a last resort, once domestic remedies in Icelandic courts have been exhausted. The European Court on Human Rights decides cases concerning alleged violations of the rights contained in the European Convention on Human Rights.³⁵ Any individual, or group of individuals who considers themselves to be a victim of a violation of one of these rights, as well as NGOs, may submit 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

³² Child Protection Act, Articles 12, 24-29.

³³ Child Protection Act, Article 17(1), 18(1), 32(1), 46, 62(1).

³⁴ Sigurdur Tómas Magnússon, *Access to Courts for Civil Proceedings in Iceland*, p. 370, available at: <http://www.scandinavianlaw.se/pdf/51-16.pdf>; Stockholm Institute for Scandinavian Law, *Iceland's Judicial System*, 2007, p. 606, available at: <http://www.scandinavianlaw.se/pdf/51-29.pdf>; Lex Mundi, *Guide to Doing Business, Iceland*, 2010, p. 6, available at: <http://www.lexmundi.com/Document.asp?DocID=2034>; Grétar Thór Eythórsson and Detlef Jahn, *Das politische System Islands*, p. 211, available at: http://www.phil.uni-greifswald.de/fileadmin/mediapool/ipk/publikationen/jahn/7_Westeuropa_Island_Fin_al.pdf.

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

³⁶ European Convention on Human Rights, Article 34.

³⁷ European Convention on Human Rights, Article 35.

³⁸ *Id.*

child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.³⁹ After examining the case, the Court renders a judgement which is 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.

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

The courts may impose criminal sentences against the party responsible for the violation and may award compensation to the child victim in sexual or violent crimes.⁴²

In case of a violation of the Constitution, e.g. due to a violation of Article 76(3) and the guarantee of children's rights therein, the courts have the power to declare a law null and void.⁴³

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?

Pursuant to the Icelandic Act on Civil Procedure, legal proceedings need to be initiated by an individual which has a direct legal interest in the outcome of the case.⁴⁴ As a result of this rule and the principle of equality, a rights violation claim will generally have to involve one or more individual victims. However, according to Article 25(3) of the Act on Civil Procedure Act (Law No. 91/1991), a claim for the recognition of certain rights can be brought under the auspices of an organisation or association.⁴⁵ Thus, it is possible to challenge a law or action without directly involving or naming specific victims.

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

The Act on Civil Procedure allows several parties to initiate legal proceedings collectively if their claims derive from the same incident,

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 General Penal Code, Article 191-193, 198, 200-202, 206, 210, 212, 220, 222-223, 227 a; Child Protection Act, Article 96-99.

⁴³ Georg Brunner, *Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum*, in: *Jahrbuch des öffentlichen Rechts, Neue Folge*, Band 50, 2002, p. 196.

⁴⁴ Sigurdur Tómas Magnússon, p. 362-363, 369.

⁴⁵ Sigurdur Tómas Magnússon, p. 363, 369. (There is no English translation available of Article 25 of the Act on Civil Procedure)

situation or legal instrument.⁴⁶ In such cases, the legal guardians of the children concerned would represent the children's interests. Similarly, Article 17 of the Act on Civil Procedure authorises representative action.⁴⁷ Organisations are therefore allowed to bring claims on behalf of groups of three or more people if their claims derive from the same incident, situation or legal instrument. This makes it generally possible for children to challenge a law or administrative decision which concern their interests collectively.

Pursuant to Article 25(3) of the Act on Civil Procedure, *actio popularis* claims are not permitted under Icelandic law. Yet, a claim can be brought under the auspices of an organisation or association of people for the recognition of certain rights of its members, if it is compatible with the organisation's or association's purpose to safeguard the interests to which the claim relates.⁴⁸ Organisations with the purpose of protecting the rights of children can therefore challenge a law or action without directly involving or naming individual victims.

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?

As stated in part III.D, in accordance with Article 25(3) of the Act on Civil Procedure, a claim can be brought by an organisation or association of people for the recognition of certain rights of its members if it is compatible with the organisation's or association's purpose to safeguard the interests to which the claim relates.⁴⁹ Organisations with the purpose of protecting the rights of children can therefore challenge a law or action without directly involving or naming individual victims.

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?

The Icelandic Act on the Judiciary provides that the court system comprises of eight District Courts (Héraðsdómur) and the Supreme Court (Hæstiréttur) as the highest judicial authority in the country.⁵⁰ The district courts in Iceland have jurisdiction in civil, criminal, administrative and constitutional cases and deal with cases involving children as well. The Supreme Court is

⁴⁶ Sigurdur Tómas Magnússon, p. 362-363.

⁴⁷ Sigurdur Tómas Magnússon, p. 369.

⁴⁸ Sigurdur Tómas Magnússon, p. 363, 369.

⁴⁹ Sigurdur Tómas Magnússon, p. 363, 369.

⁵⁰ Act on the Judiciary, Law No. 15/1998, Sections 1 and 2, available at:

<http://eng.innanrikisraduneyti.is/laws-and-regulations/nr/109>,

<http://www.althingi.is/lagas/nuna/1998015.html>.

the only court of appeal and has nationwide jurisdiction. Judgments in criminal cases may be referred to the Supreme Court without any restriction while the appeal of civil judgments is dependent on requirements related to the minimum interests at stake.⁵¹ Any other decisions of the district courts can be appealed to the Supreme Court, provided that the value of the subject matter under adjudication surpasses a minimum set out in the law.⁵²

Child protection committees are tasked with ensuring that children are cared for in their homes and by their guardians. These committees are elected non-judicial administrative bodies which are under the control of the Government Agency for Child Protection, as established by the Protection Act.⁵³ They investigate reports of mistreatment of children and implement measures to remedy violations.⁵⁴

- 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?

Please see part II.D.

The Children's House is responsible for cases in which it is suspected that a child has been subject to sexual harassment or abuse. Children and their guardians may, with a reference from a child protection committee, obtain all required legal services for child sexual abuse cases free of charge.⁵⁵

In criminal cases, costs of proceedings including lawyers' fees are paid for by the State. However, persons who get convicted of a crime are then required to reimburse the treasury. If it is sufficiently clear that a convicted person has no assets or income to cover the legal costs, the claim can be waived.⁵⁶

In civil cases, a child and his or her legal representatives shall be granted legal proceedings without cost to themselves.⁵⁷

- 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 organization, or under an agreement that does not require the payment of

⁵¹ Rán Tryggvadóttir and Thordis Ingadóttir, para. 2.3; Sigurdur Tómas Magnússon, p. 370, Stockholm Institute for Scandinavian Law, p. 606; Lex Mundi, p. 6; Grétar Thór Eythórsson and Detlef Jahn, p. 211.

⁵² Lex Mundi, p. 6.

⁵³ Child Protection Act, Articles 7-8.

⁵⁴ Child Protection Act, Sections IV and VI.

⁵⁵ European Commission, p. 12; Report of the Ombudsman for Children in Iceland to the UN Committee on the Rights of the Child, Article 19, p. 8-9; Statement by Gréta Gunnarsdóttir.

⁵⁶ Law on criminal procedure, Article 88(1); European Commission, p. 14.

⁵⁷ Child Protection Act, Article 60

legal fees up front?

There is a publicly funded legal aid system in Iceland, please see part II.D.

The Icelandic Bar Association has been providing free legal advice since 1993, based on the non-binding United Nations Basic Principles on the Role of Lawyers.⁵⁸ In addition, the Icelandic Bar Association may connect individuals seeking legal advice with pro bono lawyers.⁵⁹

“Orator”, the association of law students at the University of Iceland, also provides free public counseling during the winter.⁶⁰ “Lögrétta”, the association of law student at the University of Reykjavík, provides similar services for immigrants.⁶¹ Various other private organisations also provide free legal advice.⁶²

Finally, the Office of the Ombudsman for Children can provide free legal advice on matters concerning children’s rights.⁶³

- 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 Iceland, the statute of limitations for all crimes depends on the length of the prescribed penalty. Crimes punishable by no more than a year in prison have a statute of limitations of two years, crimes punishable by no more than four years in prison have a five year statute of limitations, crimes punishable by no more than ten years in prison have a statute of limitations of ten years, and crimes punishable by more than ten years in prison have a statute of limitations of fifteen years.⁶⁴ The statute of limitations for sexual crimes against children was tolled until the child reaches the age of consent at 15 years.⁶⁵ However, the General Penal Code’s amendments of 2015 state that criminal liability does not expire when the offence was committed against a child under the age of 18 years.⁶⁶

⁵⁸ Thorgerdur Erlendsdottir and Sigridur Ingvarsdottir, p. 7; Stefanie Lemke, *Anwaltschaft und Anwaltsrecht in Island*, July 2011, p. 9, available at: http://legalprofession.uni-koeln.de/fileadmin/user_upload/Island/Die_Anwaltschaft_in_Island_NEU.pdf; United Nations Human Rights, *Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990, available at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

⁵⁹ Stefanie Lemke, p. 9.

⁶⁰ Website of the association of law students at the University of Iceland, available at: http://english.hi.is/school_of_social_sciences/faculty_of_law/student_life_0.

⁶¹ University of Reykjavík School of Law information brochure, available at: http://en.ru.is/media/skjol-lagadeildar/LD_Bkl_21x21_ML_PhD_Enska.pdf.

⁶² Thorgerdur Erlendsdottir and Sigridur Ingvarsdottir, p. 7.

⁶³ Information provided to CRIN by the Office of the Ombudsman for Children in Iceland.

⁶⁴ General Penal Code, Law No. 19, Article 81, available at: <http://eng.innanrikisraduneyti.is/laws-and-regulations/nr/1145>.

⁶⁵ General Penal Code, Article 82.

⁶⁶ General Penal Code, Article 81(4), available at:

http://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AH_sept.-2015.pdf

Claims for money or other payments are subject to limitation periods.⁶⁷ The general limitation period for such claims is four years.⁶⁸ Claims for damages are subject to a limitation period of four years from the date on which the injured party acquired, or should have acquired, necessary knowledge of the damage and the identity of the person liable for the damage caused. However, the limitation period in respect of claims for damages for physical injury, including non-pecuniary damages, runs for ten years. Claims can become barred no later than 20 years after the event that caused the damage, or other basis for liability, ended. This does not, however, apply to physical injury if the damage occurred in the course of occupational activity or equivalent activities, or while the injured party was below 18 years of age.⁶⁹ Yet, even if a limitation period has expired, a claim for damages may be made in criminal proceedings in which a debtor can be obligated to provide the grounds for the claim for damages. Such claims may also be brought in separate proceedings, instituted within one year of a conviction rendered in a criminal case.⁷⁰

The statute on the limitation period for claims is applicable only for monetary claims and is therefore not applicable to administrative and constitutional claims.⁷¹ In the Constitution there are no provisions⁷² introducing limitation periods for constitutional claims.

- 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?

The party responsible for gathering evidence is generally the one seeking to rely on it, however the judge may instruct a party to obtain evidence about certain aspects of the case.⁷³ Expert testimony cannot be introduced by the parties in Iceland, rather the judge may appoint experts if such testimony is necessary to resolve a case.⁷⁴

Iceland's Act on Civil Procedure sets the general rule that any person aged 15 years or above is obliged to appear in court as a witness.⁷⁵ However, judges can decide, with regard to the circumstances in each individual case, whether a person under the age of 15 shall be required to make a statement

⁶⁷ Act on the limitation periods for claims, Law No. 150/2007, Article 1(1), available at: <http://eng.atvinnuvegaraduneyti.is/laws-and-regulations/nr/nr/7422>.

⁶⁸ Act on the limitation periods for claims, Article 3.

⁶⁹ Act on the limitation periods for claims, Article 9(1), Article 9(2).

⁷⁰ Act on the limitation periods for claims, Article 11.

⁷¹ Act on the limitation periods for claims, Article 1(1).

⁷² Constitution of Iceland.

⁷³ Act on Civil Procedure, Article 46. See also <http://www.chambersandpartners.com/guide/practice-guides/location/241/6599/1483-200>.

⁷⁴ Id.

⁷⁵ Act on Civil Procedure, Article 8(3); UN Committee on the Rights of the Child, *State Party Report: Iceland*, 15 March 1995, CRC/C/11/Add.6, para. 81, available at: <http://www.refworld.org/docid/3ae6af7d0.html>.

as a witness.⁷⁶ In criminal cases, no minimum age is specified regarding the obligation to bear witness. Under the Code of Criminal Procedure, the judge has to assess in each individual case whether a child has reached a level of maturity such that his or her understanding of the facts of the case will be sufficient for them to give evidence.⁷⁷ In the event that there is a violation of Chapter XXII of the Penal Code and the victim has not yet reached 15 years of age, he or she does not have to appear before the court again unless the judge finds that there is a special reason to do so.⁷⁸ In both civil and criminal cases, witnesses under the age of 15 are not required to confirm their statements by taking an oath or giving their word of honour.⁷⁹

With regard to anonymity, judges may decide on a case-by-case basis if hearings should take place *in camera*, i.e. that the hearing shall be closed to the public, in case it is regarded necessary for the protection of one of the parties of the case.⁸⁰ This is an important exception to Article 70(1) of the Constitution, according to which court hearings must always be held in public. In addition, children in civil cases generally enjoy anonymity upon publication of judgments that are of importance to their interests.⁸¹

The Code of Criminal Procedure authorises judges to erase any information from court judgments or other rulings that should be kept secret with respect to private interests. This provision can also be applied when children are involved in a case.⁸² The Child Protection Act also provides for this information to be erased.⁸³

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

The Constitution of Iceland and the European Convention on Human Rights provide for the right to just court procedure within a suitable timeframe.⁸⁴ Generally, civil cases in the district courts in Iceland take between eight to ten months.⁸⁵ However, parties may request priority treatment for such cases if there is an urgent need for a speedy resolution, provided that the case is of general significance or concerns vital interests of a party.⁸⁶ The procedure in cases that are given priority treatment generally takes two to three months.⁸⁷

⁷⁶ UN Committee on the Rights of the Child, para. 81.

⁷⁷ Code of Criminal Procedure, Article 10(3), 111(2).

⁷⁸ Code of Criminal Procedure, Article 111(2).

⁷⁹ UN Committee on the Rights of the Child, para. 81.

⁸⁰ Child Protection Act, Article 54(2); Act on Civil Procedure, Law No. 91/1991, Article 8(1); Code of Criminal Procedure, Article 10.

⁸¹ Child Protection Act, Article 58.

⁸² Report of the Ombudsman for children in Iceland to the UN Committee on the Rights of the Child, Article 19, p. 7.

⁸³ Child Protection Act, Article 58.

⁸⁴ Constitution of Iceland, Article 70(1); European Convention on Human Rights, Article 6.

⁸⁵ *Iceland's EU Accession Negotiations 2009-2013*, September 2013, Chapter 23, p. 31, available at: http://www.vidraedur2009-2013.is/media/esb_svor/23_-_Judiciary_and_Fundamental_Rights/Ch._23_-_Judiciary_&_Fundamental_Rights-_FINAL.pdf.

⁸⁶ No sources available in English.

⁸⁷ No sources available in English.

The average duration of criminal cases is between two to three months.⁸⁸

It is specified in the Children's Act that cases concerning the custody or domicile of children shall always be given rapid treatment.⁸⁹ The Child Protection Act regulates that cases shall receive priority attention in accordance with Section XIX of the Act on Civil Procedure.⁹⁰

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

In Iceland, the Supreme Court is the only court of appeal. Judgments in criminal cases may be appealed without restriction, while judgments of civil matters carry minor appeal requirements with regard to the minimum interest at stake.⁹¹ Any other decisions of the district courts can be appealed to the Supreme Court, provided that the value of the subject matter under adjudication surpasses a minimum set out in the law.⁹²

Some decisions by the child protection committees may be appealed to the Child Protection Appeals Board.⁹³

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?

Due to the small size of the population of Iceland, small-scale legal cases are more likely to receive widespread media coverage than might be the case in other countries. Any legal decision by a domestic court can therefore influence public, as well as political, opinion much more directly.

As a civil law country, court practice in Iceland does not have the same authoritative role as in common law countries. The Supreme Court has no duty to follow its earlier decisions and the district courts are not obligated to adhere to earlier decisions of the Supreme Court. However, in matters of legal uncertainty, the decisions of the Supreme Court carry considerable authority for the disposition of future cases. In certain areas of law which did or do not have extensive statutory legislation, e.g. tort law, the decisions of the Supreme Court are a source of law of central importance.⁹⁴

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

Research suggests that there are no indicators for further significant challenges in enforcing a positive decision. The annulment of a law or administrative decision, for example, takes immediate effect upon

⁸⁸ Iceland's EU Accession Negotiations 2009-2013, p. 31.

⁸⁹ Children's Act, Article 38(3).

⁹⁰ Child Protection Act, Article 53 b.

⁹¹ Rán Tryggvadóttir and Thordis Ingadóttir, para. 2.3.

⁹² Lex Mundi, p. 6.

⁹³ Child Protection Act, Articles 23, 25, 26, 33.

⁹⁴ Rán Tryggvadóttir and Thordis Ingadóttir, para. 3.4.

conclusion of the court proceedings.⁹⁵

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.

Through the Ombudsman for Children Act,⁹⁶ Iceland established a specialist agency office to protect the interests of children in the country and to work towards adapting Icelandic laws more closely to the CRC. Both children and adults may turn to the ombudsman for matters pertaining to children. Children may also lodge a complaint with the Ombudsman who is required to decide whether a case should be opened and investigated. While the ombudsman cannot file complaints with the courts, he or she has the obligation to inform the complainant of their rights and guide the complainant on how to use the legal system to advance a case.⁹⁷

The Ombudsman for children recently circulated a letter to most public complaint mechanisms to enquire whether they have dealt with complaints made by children who are not represented by a parent or legal guardian and, if not, how they would have dealt with such complaints. The answers indicated that it is very rare for children to submit complaints independently. Some complaints mechanisms indicated that they would consider the complaints, while others said they would be refused on the grounds that the consent of a parent or guardian is necessary.⁹⁸

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

⁹⁵ Grétar Thór Eythórsson and Detlef Jahn, p. 213.

⁹⁶ Ombudsman for Children Act, Law No. 83/1994, available at: <http://web61388.aiso.net/Law/instrument.asp?InstID=1184>.

⁹⁷ Website of the Office of the Ombudsman for Children, available at: <http://barn.is/um-empaettid/upplysingar-a-erlendum-tungumalum/enska>.

⁹⁸ Information provided to CRIN by the Office of the Ombudsman for Children in Iceland.