

# **ACCESS TO JUSTICE FOR CHILDREN: LIECHTENSTEIN**

*This report was produced by White & Case LLP in April 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

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

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

The CRC was approved by the Landtag (Liechtenstein's legislative body) on 31 October 1995 and the Convention entered into force on 21 January 1996.<sup>1</sup> In addition, Liechtenstein signed the Optional Protocol to the Convention on the Rights of the Child on 8 September 2000, which prohibits the sale of children, child prostitution and child pornography.<sup>2</sup> The Optional Protocol was ratified on 30 January 2013.<sup>3</sup>

In addition, in 2009, Liechtenstein ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.<sup>4</sup>

Article 92(4) of the Constitution of the Principality of Liechtenstein provides that the national government (known as the "National Administration") must act within the limits of any international treaties.<sup>5</sup>

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

The CRC does not take precedence over national law. The rights enumerated in the CRC can only be enforced in domestic courts where they "are specific enough to serve as the basis of a decision".<sup>6</sup> Liechtenstein has reported that it does not consider all of the rights within the Convention to be sufficiently specific to establish rights that the courts can apply directly, though it is not clear which provisions can be directly applied.<sup>7</sup>

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

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<sup>1</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 37, CRC/C/61/Add.1, 2 August 1999, available at: [http://www.regierung.li/fileadmin/dateien/botschaften/ny\\_dokumente/2001-02/pdf-fl-aussenstelle-newyork-dokumente-children-crc-initial-report-1999\\_01.pdf](http://www.regierung.li/fileadmin/dateien/botschaften/ny_dokumente/2001-02/pdf-fl-aussenstelle-newyork-dokumente-children-crc-initial-report-1999_01.pdf).

<sup>2</sup> UN Status of Treaties, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11-c&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-c&chapter=4&lang=en).

<sup>3</sup> Id.

<sup>4</sup> Compendium, *Liechtenstein/4.2 Specific policy issues and recent debates*, available at: <http://www.culturalpolicies.net/web/liechtenstein.php?aid=424>.

<sup>5</sup> Constitution of Liechtenstein, Art. 92(4), available at: <https://www.gesetze.li/DisplayLGBL.jsp?Jahr=1921&Nr=15>.

<sup>6</sup> CRIN, *Liechtenstein: National Laws*, 7 December 2013, available at: <http://www.crin.org/en/library/publications/liechtenstein-national-laws>.

<sup>7</sup> Id.

Yes, the CRC has been incorporated into Liechtenstein's national law. Ratified treaties become part of the national law from the date that they enter into force. Implementing legislation is not necessary, as long as the provisions of the agreement are specific enough to serve as a basis for a legal decision.<sup>8</sup>

Also, Liechtenstein abides by the principle that treaty obligations should be entered into only when they can be complied with. According to the prevailing doctrine, international treaties have at least the status of law.<sup>9</sup>

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

Rights contained in the Convention can only be applied in domestic courts where they "are specific enough to serve as the basis of a decision".<sup>10</sup> Liechtenstein does not consider all of the rights set out in the CRC specific enough to enforce in the nation's courts.<sup>11</sup> Liechtenstein originally entered reservations into two articles of the CRC<sup>12</sup> and entered into a further declaration regarding a further article.<sup>13</sup>

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

Liechtenstein's Administrative Court has cited the CRC regarding "the right of the child to maintain contact with his or her parents." The Liechtenstein Supreme Court has also cited the CRC, concerning a child's right to express his or her opinion in a custody matter.<sup>14</sup> Further information about these cases is not publicly available online.<sup>15</sup>

## II. What is the legal status of the child?

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

Liechtenstein's Allgemeines Bürgerliches Gesetzbuch, or General Civil Code, contains several provisions protecting a child's right to be heard in judicial proceedings. Most importantly, the General Civil Code provides that before issuing orders that affect the care or upbringing of a child, the court must hear the child in person.<sup>16</sup> The court can decline to hear the child only when a hearing, or

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<sup>8</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para 37.

<sup>9</sup> *Id.*, para 34.

<sup>10</sup> CRIN, *Liechtenstein: National Laws*.

<sup>11</sup> *Id.*

<sup>12</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 37; the two reservations dealt with conflicting language in the Liechtenstein Civil Code concerning the legal status of children born out of wedlock; these have since been withdrawn following the passage of the European Convention on the Legal Status of Children Born out of Wedlock of October 15, 1975 (LGBI. 1997 No. 109).

<sup>13</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 37; the declaration concerns the rights afforded to children older than the age of adolescence (17) but younger than the age of adulthood (20).

<sup>14</sup> CRIN, *Liechtenstein: National Laws*.

<sup>15</sup> The Liechtensteinische Landesbibliothek (Liechtenstein National Library) in Vaduz maintains a complete collection of Liechtenstein legal materials.

<sup>16</sup> Allgemeines Bürgerliches Gesetzbuch [ABG] [Civil Code] Landesgesetzblatt [LGBI] No. 34/1967, as amended, § 178b, available at: <http://recht.li>.

the delay that a hearing might require, would endanger the child's well-being, or when, in light of the child's age or development level, an expression of opinion would not be expected from the child.<sup>17</sup>

According to Liechtenstein's Initial CRC Report in 1998, there is "no general provision regulating the right of children to be heard in court".<sup>18</sup> This is not a bright line rule; the Civil Code allows the court to exercise its discretion in granting a child a personal hearing in decisions that affect the care and upbringing of the child.<sup>19</sup> Governmental agencies can also interact with children under ten years of age in order to discern the child's opinion on the matter.<sup>20</sup>

Typically, a child is represented by one of his or her parents. The Civil Code provides that whenever a child has no one entitled to represent him or her in court, a legal guardian, or Vormund, must be appointed for him or her.<sup>21</sup> A Vormund functions more as a plenary guardian than a guardian ad litem, in that he or she not only must see to the child's legal representation, but also must care for the child's person and property.<sup>22</sup> Moreover, it is not necessary for the Vormund to be a lawyer. If no suitable Vormund can be found for a child, the Office of Social Services acts as Vormund.<sup>23</sup>

Children's rights provisions can also be found in Liechtenstein's constitution and children and their representatives can challenge any violations of these provisions in court. Chapter IV of the Constitution of Liechtenstein contains a number of rights provisions that apply regardless of age and a small number of provisions throughout the Constitution make specific reference to the rights of children:

- Article 15: requires the State to devote special attention to education and schooling and requires education and schooling to be designed and administered so that, "through the cooperation of family, school and church, the members of the younger generation are endowed with religious and moral learning, patriotic attitudes, and skills for their future occupations."
- Article 16(1)-(8): include a number of specific provisions related to education. In particular, the article provides that education shall be universal and compulsory and that nobody shall allow young persons in their charge to leave school without the degree of schooling prescribed for public elementary schools.
- Article 19(1): provides that the State shall protect the right to work and workers, especially women and young persons employed in trades and industry.<sup>24</sup>

The most important legislative basis for child and youth policy in Liechtenstein is the Youth Act.<sup>25</sup> The Youth Act outlines the three main tenets of Liechtenstein's

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<sup>17</sup> Id.

<sup>18</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 64.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Civil Code, § 187.

<sup>22</sup> Civil Code, § 188.

<sup>23</sup> Civil Code, § 213.

<sup>24</sup> CRIN, *Liechtenstein: National Laws*.

<sup>25</sup> Kinder- und Jugendgesetz [Child and Youth Act], available at: <https://www.gesetze.li/Seite1.jsp?LGBI>

youth policy: 1) promotion of the physical, moral, social, cultural and religious development of children and adolescents (care of juveniles), 2) protection against dangers to that development (protection of juveniles), and 3) assistance to children and adolescents (assistance to juveniles).<sup>26</sup> The Youth Act also serves as the legislative basis for the creation of administrative and regulatory bodies to implement the Youth Act's provisions and regulate the financing of youth assistance.<sup>27</sup> The Landgericht (County Court) is the judicial authority competent to hear violations of its provisions.<sup>28</sup> Any child seeking redress under the Youth Act must institute proceedings at the Landgericht.

**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 age of majority in Liechtenstein is 20 years and the age of competence is 14 years.<sup>29</sup> Majority is a basic prerequisite for full capacity to perform legal acts and conclude contracts.<sup>30</sup> Under the Civil Code, a child's minority can be extended beyond 20 years of age if the child cannot competently represent him or herself.<sup>31</sup> Conversely, a child's age of majority can be reduced through a court order from 20 years of age to 18 years of age if the child demonstrates that they can represent him or herself.<sup>32</sup>

For purposes of juvenile protection under the Youth Act, children are defined as persons who have not yet reached the age of 14 and adolescents are defined as persons who have reached the age of 14, but not yet 18.<sup>33</sup>

The Liechtenstein civil code regulates guardianship of a child by those other than the child's biological parents.<sup>34</sup> When there is no person who is entitled to legally represent the minor child, a guardian is to be appointed to represent the child's interests.<sup>35</sup> A guardian can undertake certain property affairs of the child such as the institution of proceedings so long as they first obtain court approval.<sup>36</sup>

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

Children under ten years of age may be interviewed by the Office of Social Services instead of appearing in court.<sup>37</sup> The General Civil Code offers special protection to children who are the subject of adoption proceedings.

A child who is the subject of adoption proceedings, and who has reached the age

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<sup>26</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 41.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*, para. 43.

<sup>29</sup> Persons and Companies Act (LGBl. 1926 No. 4).

<sup>30</sup> *Id.*

<sup>31</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 50.

<sup>32</sup> *Id.*

<sup>33</sup> Art. 5 Youth Act.

<sup>34</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 123.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Civil Code, § 213.

of five, has a right to a hearing.<sup>38</sup> Likewise, before transferring custody of a child to her foster parents, the court must hear from the child him or herself, if he or she is at least ten years old.<sup>39</sup>

In all other cases where the child has yet to reach the age of majority, any proceeding must be brought by someone having legal custody of the child, be it a parent, guardian or the Ombudsperson.

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

Any natural person may apply for legal aid in Liechtenstein. As defined in Liechtenstein's civil procedure laws, legal aid helps to alleviate the monetary burden of hiring an attorney by causing some or all of the legal costs to be temporarily cancelled and/or by providing an attorney free of charge.<sup>40</sup> Yet, the right to legal aid is not absolute in Liechtenstein. Natural persons are only entitled to legal aid if they are "not able to bear the costs without affecting his or her livelihood and if the intended lawsuit does not seem to be 'mischievous or senseless'".<sup>41</sup> Legal entities, such as corporations and partnerships, do not have the right to legal aid.<sup>42</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

According to the General Civil Code of Liechtenstein, children are empowered to submit their own motions to the court under certain circumstances, including bringing a case. For example, when measures urgently need to be taken in order to safeguard a child's well-being, the court can act without the consent of one or both parents, as long as legitimate interests of the parents will not be unreasonably harmed.<sup>43</sup> The child him or herself is among the parties who may prompt the court to act this way is.<sup>44</sup> A similar provision (though it does not influence child protective proceedings directly) permits a child over the age of 14 to seek a judicial hearing if he or she cannot reach agreement with his or her parents regarding his or her own education.<sup>45</sup>

Under the terms of the Civil Code, parents shall take care of the upbringing of their children and shall promote their well-being in general. If the parents or grandparents, through their conduct, jeopardise the well-being of a child, the court, regardless of who makes an application to it, is authorised to issue the necessary instructions to ensure the well-being of the child. In particular, the court may transfer, in whole or in part, custody of the child, and also suspend the rights of

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<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Wolff/Gstoehl/Bruckschweiger, *Overview of Liechtenstein Civil Proceedings*, Section 1.4, available at: [http://www.wgb-law.li/sites/default/files/Liechtenstein\\_Civil\\_Proceedings\(1\)\\_0.pdf](http://www.wgb-law.li/sites/default/files/Liechtenstein_Civil_Proceedings(1)_0.pdf).

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Civil Code, § 137(a)(2).

<sup>44</sup> Id.

<sup>45</sup> Civil Code, § 147.

authorisation and consent provided for by law.<sup>46</sup> Protection of the well-being of the child is guaranteed, apart from the provisions of the social welfare legislation, by the juvenile protection provisions of the Youth Act and numerous provisions of the Penal Code.<sup>47</sup>

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

#### A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

There are two courts which exercise public law jurisdiction in Liechtenstein and where challenges based on public law or constitutional matters can be brought: the Administrative Court and the Constitutional Court. The Administrative Court deals with appeals of decisions made by administrative officials, including those by the Children's and Youth Service Branch of the Office for Social Services, the national entity responsible for the care of youth.<sup>48</sup> The Constitutional Court has jurisdiction over matters involving constitutional rights and the constitutionality of treaties and laws.<sup>49</sup> Thus, the appropriate court to petition for redress depends on whether the grounds of complaint are administrative or statutory/constitutional.

Liechtenstein was one of the first jurisdictions worldwide to offer its citizens the possibility of a direct application to the Constitutional Court by means of the so-called Individualbeschwerde (individual complaint).<sup>50</sup> This complaint procedure is also available for child claimants if their challenge is based on violations of the constitution.

In order to challenge a violations of Liechtenstein's Youth Act and its three main tenets - care of juveniles, protection of juveniles and assistance to juveniles<sup>51</sup> - children can bring a case in front of the Landgericht (County Court). The County Court is the competent court to hear any allegations of violations of provisions of the Youth Act.<sup>52</sup>

As Liechtenstein is a Member State of the Council of Europe, it also falls under the jurisdiction of the European Court of Human Rights. The European Court of Human Rights decides cases concerning alleged violations of one of the rights contained in the European Convention on Human Rights.<sup>53</sup> Any individual, group of individuals or an NGO who considers to be a victim of a violation of one of these rights may submit a complaint to the Court,<sup>54</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>55</sup> Anonymous

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<sup>46</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 76.

<sup>47</sup> *Id.*, para. 80.

<sup>48</sup> *Id.*, para. 47.

<sup>49</sup> Constitution of Liechtenstein, Art. 104.

<sup>50</sup> Gesetz ueber den Staatsgerichtshof [Law on the Constitutional Court], Art. 15, available at: <https://www.gesetze.li/Seite1.jsp?LGBIm=2004032>.

<sup>51</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 41.

<sup>52</sup> *Id.*, para. 43.

<sup>53</sup> 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](http://www.echr.coe.int/Documents/convention_ENg.pdf).

<sup>54</sup> European Convention on Human Rights, Article 34.

<sup>55</sup> European Convention on Human Rights, Article 35.

complaints are not permitted.<sup>56</sup> The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>57</sup> After examining the case, the Court renders a judgement which is binding on the state<sup>58</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>59</sup> It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

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

Liechtenstein's General Civil Code allows for the government to interfere with the rights of parents under certain limited circumstances; under its terms, the only time anyone other than a parent may interfere with the child's upbringing and well-being is by direct application of Liechtenstein's laws by a court or via an official order.<sup>60</sup> Typically, third party interference takes the form of either withdrawal or restriction of parental custody. Interference is granted following a factual determination of "endangerment of the best interests of the child" and the parents' rights will only be restricted to the extent necessary to ensure those interests.<sup>61</sup> Following restriction or removal of parental custody, appropriate provisions must be made to place the child with foster parents or with institutions dedicated to custodial child care (when foster parents are unavailable).<sup>62</sup> Children placed in institutional care are monitored by the Children and Youth Service which "prepares persons in institutional care for discharge, and provides follow-up care for them".<sup>63</sup>

Liechtenstein's laws also allow for preliminary injunctions by the courts.<sup>64</sup> The purpose of an injunction under Liechtenstein law is to preserve the applicant's legal claim by "suitable means," including freezing accounts and restraining orders.<sup>65</sup> A Liechtenstein citizen who applies for such an injunction does not need to provide factual proof of the injury; also, the court has discretion whether it will hear the defendant's case before issuing an injunction.<sup>66</sup> Injunctions are issued by the County Court and typically decided within a couple of days.<sup>67</sup> If the applicant is successful in applying for a preliminary injunction, then they must next file a lawsuit in which the applicant provides justification for the injunction. If the applicant does not file the suit in a timely manner following issuance of the injunction, the court can withdraw the measure on its own or by application of the defendant.<sup>68</sup>

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<sup>56</sup> Id.

<sup>57</sup> Rules of Court, July 2014, Rule 36, available at: [http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>58</sup> European Convention on Human Rights, Article 46.

<sup>59</sup> European Convention on Human Rights, Article 41.

<sup>60</sup> *Liechtenstein Report on Follow-up to the World Summit for Children*, 6 March 2001, available at: [http://www.unicef.org/specialsession/how\\_country/edr\\_liechtenstein\\_en.doc](http://www.unicef.org/specialsession/how_country/edr_liechtenstein_en.doc).

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> Wolff/Gstoehl/Bruckschweiger, *Overview of Liechtenstein Civil Proceedings*, Section 2(b).

<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> Id.

<sup>68</sup> Id.

The provisions of the Youth Act relating to juvenile protection primarily establish regulations relating to gathering in public places, alcohol and tobacco consumption and media protection and do not offer effective remedies. Rather, the Youth Act creates several administrative bodies which implement the Act's provisions.<sup>69</sup>

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

All provisions under the General Civil Code and the Youth Act refer to the protection and potential redress on behalf of individual children. There are numerous provisions which allow for proceedings to be instituted by someone other than the child; however, these proceedings are on behalf of the child and aim to benefit the specific harm faced by that child.<sup>70</sup>

In the case that claimants are looking to challenge a law, this can be done without the involvement of a victim in some limited cases, using the so-called Popularklage (popular action), see III.D. for further details.

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

There is one form of collective action available to claimants in Liechtenstein which does not require the naming of an individual victim. The so-called Popularklage (popular action) is available to groups of 100 citizens or over. Claims on these grounds can theoretically be brought directly in front of the Constitutional Court within one month of the promulgation of an act, yet this challenge is hardly used in practice.<sup>71</sup>

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

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

Jurisdiction in Liechtenstein is divided into public law jurisdiction and ordinary jurisdiction. All courts in Liechtenstein have their seat in the country's capital Vaduz.<sup>72</sup>

For claims arising from governmental action, a plaintiff must file his or her claim at

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<sup>69</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 41.

<sup>70</sup> *Id.*, para. 75 - 91.

<sup>71</sup> Professor Georg Brunner, *Der Zugang des Einzelnen zur Verfassungsgerichtsbarkeit im europäischen Raum*, Strasbourg, 28 March 2001, p. 36, available at: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-JU%282001%29022-ger>.

<sup>72</sup> For an overview of Liechtenstein's court system, see the country's Gerichtsorganisationsgesetz [Court Administration Act], available at: [http://www.gerichte.li/ueber-die-gerichte.jsessionid=F4FE9356367A0AAE5D6CF81F0\\_2391C85](http://www.gerichte.li/ueber-die-gerichte.jsessionid=F4FE9356367A0AAE5D6CF81F0_2391C85).



the Verwaltungsgerichtshof (Administrative Court) or the Staatsgerichtshof (Constitutional Court) which both exercise public law jurisdiction.<sup>73</sup> The Administrative Court hears complaints stemming from administrative actions while the Constitutional Court decides constitutional complaints and determines whether Liechtenstein's legislation conforms with the country's constitution.<sup>74</sup> Thus, the appropriate court in which to institute proceedings depends on the nature of the claim, whether it stems from an administrative decision, a legislative act or the actions of a third party. The Administrative Court and the Constitutional Court both exercise original jurisdiction over their area of responsibility; hence the Constitutional Court does not function as an appeal court for decisions of the Administrative Court.<sup>75</sup>

The Constitutional Court hears claims concerning the protection of the rights guaranteed by Liechtenstein's Constitution and rights stemming from the European Convention on Human Rights.<sup>76</sup> Also, the Constitutional Court decides cases which are concerned with conflict between lower courts and administrative authorities.<sup>77</sup> Finally, the Constitutional Court also acts as a disciplinary court for members of government and verifies the constitutionality of laws and the legality of government ordinances.<sup>78</sup>

Ordinary jurisdiction encompasses all civil and penal cases.<sup>79</sup> The Landgericht (County Court) is the competent court of first instance for all civil and criminal cases and proceedings are presided over by a single judge. All decisions of the County Court can be appealed to the Obergericht (High Court) and, ultimately, to the Oberster Gerichtshof (Supreme Court), both of which also have mixed criminal and civil jurisdiction.<sup>80</sup> The County Court is also the competent court of first instance for the following criminal cases: (1) minor civil cases and summary criminal offenses, (2) juvenile cases, and (3) misdemeanors.<sup>81</sup> For major crimes, such as felonies, the Kriminalgericht (Criminal Court), a specialist sub-division of the County Court, is the competent court of first instance.<sup>82</sup> All these courts also have jurisdiction to hear cases concerning children's rights.

If the parties fail to reconcile their dispute, the plaintiff can then file a case in front of the County Court. Prior to initiating civil litigation, the parties must participate in a conciliatory meeting at the place of residence of the defendant in order to attempt reconciliation without involving the court.<sup>83</sup> The hearing aims to find an amicable solution between the parties. If the non-court-appointed facilitator fails to

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<sup>73</sup> Id.

<sup>74</sup> Id.

<sup>75</sup> Peter Sprenger, *Die Verwaltungsgerichtsbarkeit*, in: Gerard Batliner (Hg.): *Die liechtensteinische Verfassung 1921, Elemente der staatlichen Organisation*. Vaduz: Verlag der Liechtensteinischen Akademischen Gesellschaft (Liechtenstein Politische Schriften, Bd. 21), p. 329-369, on p. 364, available at: [http://www.liechtenstein-institut.li/Portals/0/contortionistUniverses/408/rsc/Publikation\\_downloadLink/21\\_09\\_Die\\_Verwaltungsgerichtsbarkeit.pdf](http://www.liechtenstein-institut.li/Portals/0/contortionistUniverses/408/rsc/Publikation_downloadLink/21_09_Die_Verwaltungsgerichtsbarkeit.pdf).

<sup>76</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 28.

<sup>77</sup> Id.

<sup>78</sup> Id.

<sup>79</sup> Id. at 29.

<sup>80</sup> Id.

<sup>81</sup> Id.

<sup>82</sup> Id.

<sup>83</sup> Wolff/Gstoehl/Bruckschweiger, *Overview of Liechtenstein Civil Proceedings*, Section 1.4.

achieve an agreement, he must file a letter along with the claim to the County Court in order to prove that conciliation measures were undertaken prior to initiation of the suit.<sup>84</sup> After receiving the complaint, the court serves the complaint to the defendant and sets a date for a first hearing where the defendant can voice specific objections to the plaintiff's claim.<sup>85</sup> The court usually fixes the means of evidence which it will use to decide the case while witnesses and parties are heard in later hearings.<sup>86</sup>

- B. Legal aid / Court costs. Under what conditions would free or subsidized 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 explained in section II.D., legal aid is available to all natural persons and can cover some or all of the attorney's fees needed to bring a claim. Alternatively, a lawyer may be provided free of charge by the state to indigent persons.

There are both public and private sources from which citizens can obtain general legal advice. Some non-traditional private sources of legal advice include insurance companies, banks, or trustees. Legal aid is granted by the court of first instance in which the case is filed, even if the case is later appealed to a higher court.<sup>87</sup>

Liechtenstein has a "loser pays" legal system which requires the non-prevailing party to reimburse the prevailing party for its legal representation and court costs.<sup>88</sup> As a result, the state will be fully reimbursed if the party seeking legal aid prevails in their claim. Conversely, if the applicant loses their case, the state bears the opposing party's costs which are not covered by the legal aid system.<sup>89</sup>

- 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 legal fees up front?

There are no requirements or restrictions on pro bono representation in Liechtenstein; fees are freely negotiable between the lawyer and the client and there is no minimum fee that lawyers must charge.<sup>90</sup> Nonetheless, pro bono legal services are not prevalent in Liechtenstein's culture. Some have attributed this fact to the extraordinary wealth that Liechtenstein and most of its inhabitants enjoy.<sup>91</sup>

- D. Timing. How soon after a violation would a case have to be brought? Are there

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<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Latham & Watkins LLP, *A Survey of Pro Bono Practices and Opportunities in 71 Jurisdictions*, p. 162, available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> Id..

<sup>91</sup> Id.

any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

In civil cases there is a general statutory limitation period of 30 years.<sup>92</sup> There are various exceptions where this statutory period is limited, none of which include any potential claims that a child would raise to vindicate his or her rights.<sup>93</sup>

The statute of limitations for criminal claims varies depending on the length of a potential prison sentence identified for each crime. For crimes with a penalty of ten to twenty years of imprisonment or life imprisonment, claims are not limited. For all other crimes, the statute of limitation for claims is between one and twenty years, depending on the possible length of a prison sentence for each crime.<sup>94</sup>

The statute of limitations for criminal complaints against sexual abuse or genital mutilation does not start to run until the victim has reached the age of 18.<sup>95</sup>

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

For court cases proceedings under ordinary jurisdiction, i.e. civil and penal cases, the principles of oral examination, personal presence and free submission of evidence apply. Also, in criminal cases the accusatory principle is applied.<sup>96</sup>

Liechtenstein law does not recognize an age limit on the obligation to give evidence. The Code of Civil Procedure only prohibits the giving of evidence by persons who are incapable of communicating their perceptions or were, at the time to which their statements refer, incapable of perceiving the relevant circumstance.<sup>97</sup> The Code of Criminal Procedure provides that an oath may not be administered to persons under the age of 14 after they have been heard as witnesses.<sup>98</sup> Special procedures are also provided for cases in which child victims present evidence, such as the use of technical equipment to transmit the victim's testimony to the courtroom without the need of physical presence of the victim in the courtroom itself.<sup>99</sup> As a result, children who are capable of giving evidence may testify before the court as witnesses in both civil and criminal proceedings, but are not required to swear under oath.

Liechtenstein does not have a consolidated code of evidence. As is reflected in the composition of the Liechtenstein courts, much is borrowed from the legal systems

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<sup>92</sup> Liechtenstein Law Digest, available at: [http://www.martindale.com/members/Article\\_Atachment.aspx?od=1012137&Id=368078&filename=asr-368080.pdf](http://www.martindale.com/members/Article_Atachment.aspx?od=1012137&Id=368078&filename=asr-368080.pdf).

<sup>93</sup> Id.; claims for payment of services and goods, salary, and rent payments expire after five years; claims for contestation of wills, claiming of compulsory portion, revocation of donation for ingratitude, avoidance of contract because of error or fear, and raising of damage claims expire after three years.

<sup>94</sup> Strafgesetzbuch [Criminal Code], § 57, available at: <https://www.gesetze.li/Seite1.jsp?LGBIm=1988037>.

<sup>95</sup> Criminal Code, § 58(3)(3).

<sup>96</sup> *Initial report of Liechtenstein to the UN Committee on the Rights of the Child*, para. 27.

<sup>97</sup> Zivilprozessordnung [Code of Civil Procedure], § 320, available at: <https://www.gesetze.li/Seite1.jsp?LGBIm=1912009a>.

<sup>98</sup> Strafprozessordnung [Code of Criminal Procedure], § 123, [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=234980#LinkTarget\\_3560](http://www.wipo.int/wipolex/en/text.jsp?file_id=234980#LinkTarget_3560).

<sup>99</sup> Code of Criminal Procedure, § 115a(2).

of its neighboring countries, Austria and Switzerland. Thus, these countries' evidence codes may provide guidance.

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

For cases arising under Liechtenstein's civil or penal codes, a reconciliation procedure must be conducted at the place of residence of the defendant. Only if this fails, application can be made to the County Court which is the court of first instance for all civil and penal proceedings. A decision of the County Court can be appealed to the to the Obergericht (High Court) and, ultimately, to the Oberster Gerichtshof (Supreme Court).<sup>100</sup>

Decisions of the Verwaltungsgerichtshof (Administrative Court) and Staatsgerichtshof (Constitutional Court) cannot be appealed as they constitute the final instance of the administrative complaints procedure. These decisions are considered final.<sup>101</sup>

G. 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?

As Liechtenstein is a civil law country negative court decisions will have little to no precedential impact on any subsequent matters.

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 Ombudsstelle für Kinder und Jugendliche (OSKJ; Ombudsperson for children and adolescents) was established under the Children and Young Persons Act 2008.<sup>102</sup> The Ombudsperson is tasked with the monitoring of the implementation of the CRC, mediating disagreements between children and state authorities, delivering opinions on draft laws and ordinances and addressing complaints from children and their parents.<sup>103</sup>

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

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<sup>100</sup> Initial report of Liechtenstein to the UN Committee on the Rights of the Child, para. 29.

<sup>101</sup> Id.; Peter Sprenger, p. 364.

<sup>102</sup> Ombudsstelle für Kinder und Jugendliche Liechtenstein (OSKJ), available at: <http://www.oskj.li/%C3%9CberdieOSKJ/tabid/62/Default.aspx>.

<sup>103</sup> Id.