

ACCESS TO JUSTICE FOR CHILDREN: POLAND

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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?

International treaties¹ are ratified by the President of Poland, but where they relate to certain matters such as freedoms or the rights and responsibilities of citizens, they must be ratified through an Act of Parliament.² Ratified and published treaties, including the CRC, form part of the national legal system and take precedence over any contradictory national legislation.

B. Does the CRC take precedence over national law?

Poland ratified the CRC on 7 June 1991. As an international agreement ratified under a statute, the CRC takes precedence over national law (except the Constitution).

However, currently two declarations limit the application of the CRC in Poland:

- (1) A child's rights, as defined in the Convention (in particular the rights defined in articles 12 to 16), shall be exercised with respect for parental authority in accordance with Polish customs and traditions regarding the place of the child within and outside the family;
- (2) With respect to article 24, paragraph 2 (f), of the Convention, family planning and education services for parents should be in keeping with the principles of morality.³

C. Has the CRC been incorporated into national law?

Yes. Poland ratified the CRC prior to the Sejm's consent. Since publication in the Journal of Laws (23 December 1991), it constitutes a part of the Polish legal system.

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

Yes. The CRC, as a part of the national body of law, is directly applicable and can be enforced in Polish courts.

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

¹ Comments on this report provided by the Polish Ombudsman for Children and Monika Leszko, Attorney-at-law, October 2015.

² The sources of universally binding law are listed in Chapter III of the Constitution (Articles 87-94): (1) the Constitution; (2) statutes; (3) ratified international agreements; (4) regulations, and (5) enactments of local law, available at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

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http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

Since the CRC is a part of Polish law, it is widely referred to by national courts. Both general principles and specific rights of the CRC are directly applicable.

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?

Article 72 of the Constitution of the Republic of Poland provides that the Republic of Poland shall ensure protection of the rights of the child and that everyone shall have the right to demand that organs of public authority defend children against violence, cruelty, exploitation and actions which undermine their sense of morality.⁴

Depending on the nature of the incident, in case a child's rights are violated, he or she may be represented before a court or administrative authority by a statutory representative (parent, legal carer). Every child whose rights are violated and every person aware of such a violation can make a request to the Ombudsman for Children for help. If the best interest of the child so requires, the Ombudsman has the authority to demand the initiation of court proceedings by authorised bodies or to join court proceedings regarding the rights of the child.⁵

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?

In general, children (i.e. persons under 18), cannot bring cases by themselves and do not have the capacity to perform actions in court proceedings on their own behalf.⁶ Children must be represented by a statutory representative (parent or legal carer) or a curator appointed by the Family Law Court before courts and administrative authorities. The Family Law Court can appoint a guardian as a permanent statutory representative of a child or to represent a child with respect to only one particular case or act in law.

In criminal cases, the rights of the child are enforced by the statutory representative or the person who has custody of the victim. As a rule, children are deprived of the possibility to enforce the rights of a victim / subsidiary prosecutor and proper representation before the judicial bodies.

There is no legal regulation in the Polish legal system that would require the body that is conducting the criminal proceedings to submit a motion to the guardianship court for appointment of a guardian *ad litem* for the child victim. Despite the lack of such regulations, such guardian is appointed, but most often at subsequent stages of the proceedings. There are no legal regulations that would guarantee professionalism in the

⁴ <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁵ Website of the Ombudsman for Children: <http://www.brpd.gov.pl/>; English version of the Act of 6th January 2000 on the Ombudsman for Children (Dz.U. 2000 nr 6 poz. 69), available at http://www.brpd.gov.pl/uploadfiles/ustawa_o_rpd_en.pdf.

⁶ Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (Dz. U. 1964 nr 43 poz. 296), Article 65 and 66, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>. However, children are allowed to perform actions in cases concerning acts in law which they can normally perform without a statutory representative (a parent or a curator).

guardian's execution of the obligation to represent the child in criminal proceedings. There are no specialised guardians *ad litem* for child victims of crimes in Poland, nor is there an institution of child attorneys.

The only legal regulation referring to the appointment of a so-called guardian *ad litem* in cases of conflict of interest is to be found in family and guardianship law.⁷

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

See part II.B above.

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

Yes. Free and subsidised legal aid is available to all persons who cannot afford the cost of court proceedings and who have been granted an exemption from the cost by a decision of the relevant court.⁸ Such an exemption is provided by law in all cases where a child is represented by a curator appointed by the Family Law Court.⁹ Also, a person who is not exempted from court costs may demand the appointment of a legal representative, provided that he or she submits a declaration that he or she cannot afford to pay the costs of the representative's remuneration without a loss in the maintenance for him or herself and his or her family.

In order to receive free or subsidised legal aid, the party to the proceedings should request such assistance at any stage of the proceedings. While deciding upon such a request, the court takes into account, apart from income, whether the assistance by a lawyer seems "necessary".¹⁰ This criterion is interpreted by the courts very broadly. Refusal based on this criterion is very rare and unlikely in cases relating to the interests of a child.

In criminal cases when a child is harmed by a crime, the law provides the possibility to appoint a representative *ex officio*.¹¹ This may take place upon a request of a party. The appointment of the representative depends on the court president's discretion and is possible at every stage of the proceedings (preparatory and in court). Depending on the result, the party may only be required to pay the costs of appointing an *ex officio* representative.

In cases in which a child is an offender who, as a rule, has not yet reached the age of 17 (minor) and has not chosen his or her attorney, the court appoints an attorney *ex officio*, if the interests of the minor and his or her parents or a guardian are not in conflict; when the minor does not have an attorney and is, at the same time, deaf, dumb or blind; if he

⁷ Act of 25 February 1964 -Family and Guardianship Code (Dz.U. 2015. poz. 583, ze zm.), Article 99, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059>.

⁸ Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (Dz.U. 1964 nr 43 poz. 296), Article 117, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>.

⁹ Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych (Dz.U. 2005 Nr 167 poz. 1398) Article 96, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051671398>.

¹⁰ Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (Dz.U. 1964 nr 43 poz. 296), Article 117, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>.

¹¹ Act of 6 June 1997 r. - Code of Criminal Procedure (Dz.U. 1997 nr 89, poz. 555, ze zm.), Article 87a, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970890555>

or she had been placed in a juvenile centre; or when there is a justified doubt whether the state of mental health allows him/her to participate in the proceedings or run the defence on his/her own and reasonably. In other cases a minor may submit a request for appointment of a guardian (curator) *ad litem ex officio*. Such request may be considered if the president of the court finds the participation of the attorney useful and the minor and his or her parents cannot afford to pay for the person's remuneration.¹²

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)?

The possession of parental authority over a child gives a parent the right to represent the child's legal interests and pursue claims related to the child and his or her property.¹³ Each parent is entitled to exercise his or her rights individually. If parental rights are terminated, the child will be represented by a legal guardian (curator) appointed by the Family Law Court.

However, a parent cannot represent a child in cases against the other parent (or that parent's spouse) since both of them enjoy parental authority over the child.¹⁴ Parents also cannot represent their own children in cases between siblings. Further, a parent cannot act as a statutory representative of his or her own child in criminal cases against the other parent. In such cases, the child will be represented by a legal guardian (curator) appointed by the Family Law Court.

In cases where parents with joint parental authority over a child cannot reach an agreement in matters related to the interests of the child, the Family Law Court is entitled to decide whether the child requires legal protection and in what form.¹⁵

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?

The availability of a particular legal remedy depends on the form of such actions. Depending on the nature of the right violated and the resolution sought, the case should be brought either before the Civil Court, Family Law Court or Criminal Court.

Civil

In general, children through their representatives can initiate legal proceedings before the Civil Courts seeking compensation in the form of monetary damages. However,

¹² Act of 26 October 1982 on juvenile delinquency (Dz.U. 2014. poz. 382, ze zm.), Art. 132c, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228>

¹³ Ustawa z dnia 25 lutego 1964 r. - Kodeks rodzinny i opiekuńczy (Dz.U. 1964 nr 9 poz. 59), Article 98, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059>.

¹⁴ Ustawa z dnia 25 lutego 1964 r. - Kodeks rodzinny i opiekuńczy (Dz.U. 1964 nr 9 poz. 59), Article 98, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059>. The prohibition does not include cases concerning child support allowance due from one of the parents.

¹⁵ Ustawa z dnia 25 lutego 1964 r. - Kodeks rodzinny i opiekuńczy (Dz.U. 1964 nr 9 poz. 59), Article 97(2), available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059>.

children can also seek an injunction ordering the offending party to carry on or cease a certain action.

Criminal

If a violation of a child's rights amounts to a criminal offence, a notification should be filed with the police or the Public Prosecutor's Office. Everyone is entitled to report a crime. Although the child does not have full legal capacity to conduct certain acts related to reporting a crime, the authorities are obliged to react to a report of a crime by a child in the same way as in the case of an adult. In such a case the authorities will then seek to contact his/her legal representative or ask the family court to appoint a guardian to represent the child's interests. The representatives of a child victim may also report a crime on his/her behalf. In addition to this, special provisions govern the reporting of an offence which can be prosecuted only upon the request of the victim. A child cannot lodge such a request – only his/her representative on behalf of the child. If the representative is an offender or refuses to lodge such a request for other reasons, the police will ask the family court to issue a decision adapted to the case in question.

If the Public Prosecutor refuses to pursue the case, a representative of the child can bring a private criminal prosecution against the suspect on behalf of the child. A person bringing a private criminal prosecution is entitled to receive free legal assistance if he or she cannot afford a lawyer.

The Prosecutor may demand the institution of proceedings in every case as well as enter proceedings if, in his or her opinion, the protection of law and order, the rights of the citizens or the public interest requires it. In non-property cases of family law the Prosecutor may bring an action only in cases defined by the Act.¹⁶

In cases pertaining to offences to the detriment of the minor, in cooperation with the minor or under circumstances that may indicate the minor's moral corruption or a morally corrupting influence on the minor, the criminal court, and the Prosecutor in preparatory proceedings, will notify the family court for consideration of measures provided in the regulations on juvenile delinquency and the Family and Guardianship Code.¹⁷

Administrative

In case of illegal actions or omissions of relevant state authorities, children through their representatives might bring their claims to the Administrative Court to seek the annulment or amendment of administrative decision affecting children's interests. Administrative Courts have the right to uphold, change, or annul challenged decisions. They can also decide to refer the case back to the relevant administrative body, while at the same time giving instructions as to the way the case should be handled.

Constitutional

¹⁶ Act of 17 November 1964 - Code of Civil Procedure (Dz.U. 2014. poz. 101, ze zm.), Article 7, Articles 55-60, available <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>.

¹⁷ Act of 6 June 1997 - Code of Criminal Procedure (Dz.U. 1997. poz. 555, ze zm.), Article 23, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970890555>.

Children through their representatives also have the right to lodge a complaint before the Constitutional Tribunal challenging a legislative act which they claim violates their constitutional rights. In such proceedings, the applicant needs to demonstrate that the impugned legislative act is in conflict with a particular constitutional right, such as the right to education. It is possible to bring such a complaint only after all ordinary means of legal protection have been exhausted, including examination by the ordinary courts.¹⁸

Ombudsman for Children

Violations of a child's rights may be reported to the Ombudsman for Children. The Ombudsman for Children has wide powers to deal with requests or act on his own initiative (see part V below for more information).

European Court of Human Rights

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?

Civil Courts have the authority to grant compensation or issue an injunction.

In cases where a violation amounts to an offence, a Criminal Court might order the offender to compensate the victim for all damages and injuries incurred. The court may also adjudicate criminal measures against the offender in the form of providing health

¹⁸ Ustawa z dnia 1 sierpnia 1997 r. o Trybunale Konstytucyjnym (Dz. U. Nr 102, poz. 643, z 2000 r. Nr 48, poz. 552 i Nr 53, poz. 638, z 2001 r. Nr 98, poz. 1070, z 2005 r. Nr 169, poz. 1417 oraz z 2009 r. Nr 56, poz. 459), available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19971020643>. See also <http://www.trybunal.gov.pl/skarga/skarga.htm>.

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.

care; teaching children or taking care of them; a prohibition on staying in certain environments or places, contacting certain persons, or leaving a defined place without the court's consent; or an order to leave the place shared with the victim for a defined period of time. The prohibition may be announced for a defined period of time or for life.²⁶

Administrative Courts are entitled to uphold, change or annul decisions adopted by State authorities. They can also refer the case back to the relevant administrative body, while at the same time giving instructions as to the way the case should be handled. However, Administrative Courts do not have power to grant compensation for the damage caused by an illegal administrative decision. An Administrative Court judgment quashing or changing such a decision may constitute the basis for a civil claim brought in separate proceedings before the Civil Court.

The Constitutional Tribunal has the authority to declare that the given legislative act is in conflict with the Constitution and issue a judgment which will result in abolition of the impugned provisions.²⁷

Family Law Courts have the power to make decisions concerning the situation of the child, such as limiting or depriving parental authority or approving decisions on the property of the child.

In case the child's life or health is threatened because of family violence, a social worker, in cooperation with a policeman and a doctor of medicine or a paramedic or a nurse are entitled to remove the child from the family and place the child with another person from the family or in foster care. The family court is immediately (within 24 hours) informed of the removal of the child from the family. The court then investigates the reasons for the decision and undertakes measures to look into the situation of the child.²⁸

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

In general, it is not possible to challenge potential children's rights violations in civil, criminal, administrative or constitutional proceedings without naming a specific victim. However, some administrative acts might be challenged not only by their addressees but also by persons having a sufficient interest in challenging such a decision.

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

No. Collective action or group litigation in cases concerning the violation of child's rights is not possible.

²⁶ Act of 6 June 1997 – the Penal Code (Dz.U. 1997. nr 88, poz. 553 ze zm.), Article 39, Article 41a and Article 43, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553>

²⁷ Act of 25 June 2015 on Constitutional Tribunal (Dz. U. 2015 poz.1064), available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19971020643>. See also <http://www.trybunal.gov.pl/skarga/skarga.htm>.

²⁸ Act of 29 July 2005. on domestic violence prevention (Dz.U. 2015. poz. 1390, ze zm.) Article 12a-d, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493>

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?

According to the Code of Civil Procedure, non-governmental organisations are permitted to intervene or bring challenges in cases concerning, among other things, discriminatory treatment and the child's allowance.²⁹ In order to act on behalf of a child, non-governmental organisations need to receive a written consent from the child's legal representative granted on the child's behalf.

A representative of a community organisation that provides support to families may represent the child in cases concerning determination or denial of the child's origin, and alimony claims.³⁰

In criminal cases, a representative of a community organisation may enter the court proceedings if there is a need, i.e., to protect the rights of the child. The representative of the community organisation may participate in the hearing, speak and make statements in writing. The court admits the representative of the community organisation to participate in the proceedings if it is in the interest of justice.³¹

In juvenile cases, the court may admit the representative of a community organisation to participate in the proceedings if the organisation provides educational measures regarding minors or supports their social rehabilitation.³²

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?

In general, civil claims shall be brought before the court of the first instance in whose region the defendant's place of residence is located. Pecuniary claims not exceeding PLN 75,000, alimonies independent of the value of the claim, cases for determination or denial of the child's origin, establishment of ineffectiveness or the acknowledgement of fatherhood, and dissolution of adoption should be brought before Regional Courts, while non-pecuniary claims and pecuniary claims in excess of PLN 75,000 (except for alimonies) should be brought before District Courts.³³ Detailed rules on how to initiate civil cases can be found in the Code of Civil Procedure.

Challenges against administrative decisions can be brought to the District Administrative Court in whose area a public administration body (whose decisions or

²⁹ Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (Dz.U. 1964 nr 43 poz. 296), Article 61; available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>.

³⁰ Ibid. Article 87 par. 3.

³¹ Act of 6 June 1997. - Code of Criminal Procedure (Dz.U. 1997. poz. 555, ze zm.), Article 90 and Article 91, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970890555>.

³² Act of 26 October 1982 on juvenile delinquency (Dz.U. 2014. poz. 382, ze zm.), Article 30 (4) and Article 32q, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228>.

³³ Act of 17 November 1964 - Code of Civil Procedure (Dz.U. 2014 poz.101), Article 17 and Article 18; available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>.

activities were contested) has its jurisdiction. All procedural rules relevant for this type of proceeding can be found in the Law on Proceedings before Administrative Courts.³⁴

Private criminal prosecution can be initiated, depending on the gravity and type of the offence, before a Regional or a District Legal Court.³⁵ Territorial jurisdiction is vested in the court in whose region the criminal offence has been committed.

- 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?

In Poland, release from court costs and free legal aid are granted to all persons who cannot afford to incur these costs. In criminal cases the only criterion taken into account by the court when deciding upon legal aid is the financial status of the party. If the request for appointment of a representative is filed by a person who is not a party to the proceedings, an *ex officio* representative may be appointed for this person if the court finds that the protection of the interest of the person who is not a party to the proceedings requires it.³⁶

In civil cases the court assesses, apart from income, whether such aid is necessary to protect the interest of the given party. This criterion is interpreted very broadly and aid is granted virtually in all cases, provided that the party demonstrates that it cannot afford a lawyer. Aid might be granted at any stage of the procedure, including formulation of a lawsuit.

Additionally, free legal aid³⁷ includes provision of information on the applicable law, rights or obligations of the party; advice on how the legal problem may be solved; provision of help in writing a letter, excluding pleadings in the ongoing preparatory proceedings or court proceedings as well as in court-administrative proceedings; elaboration of a draft letter on exemption from court costs; or appointment *ex officio* of a representative in court proceedings or court-administrative proceedings. The financial situation of the person who applies for free aid or the person's age (under 26 or over 65 years) are criteria that entitle a person to receive free legal support.³⁸ Free legal aid is provided by attorneys or legal advisers; from 1 January 2016 NGOs will also be able to provide it.

- 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?

³⁴ Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi (Dz.U. 2002 nr 153 poz. 1270), available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270>.

³⁵ Act of 06 June 1997 - Code of Criminal Procedure (Dz.U. 1997. nr 89 poz. 555, ze zm.), Article 55, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228>.

³⁶ Ibid. Article 67a.

³⁷ Act of 18 August 2015 on free legal aid and legal education (Dz. U. 2015. Poz. 1255), Article 3, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20150001255>

³⁸ Ibid. Article 4 par. 1 p. 1, 5, 6

Children may seek assistance from non-governmental children's rights and human rights organisations. The biggest children's rights organisations are the Committee for Protection of Children's Rights (*Komitet Ochrony Praw Dziecka*)³⁹ and the Nobody's Children Foundation (*Fundacja Dzieci Niczyje*).⁴⁰

Furthermore, children and their representatives might seek help from the Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*), an organisation that promotes human rights.⁴¹

Every child and adult may ask the Ombudsman for Children for help. In 2014 the Ombudsman for Children undertook almost 50,000 cases pertaining to violations of children's rights.⁴² The Office of the Ombudsman for Children also offers a Child Helpline where violations of children's rights may be reported and help may be provided.⁴³

A child may also call one of the many hotlines run by public authorities or different NGOs providing assistance to victims of crimes or child victims. There are also special hotlines to report domestic violence and cybercrime, as well as special children's helplines - for example, the Blue Line, Nobody's Children Foundation, the Committee for the Protection of Children's Rights, Victims, Helpline, 116111 Hotline, and Kidprotect Foundation.

In principle, the Attorney's Ethical Code adopted by the Polish Bar Association advises lawyers against providing legal services under contracts which make their remuneration dependent on the outcome of litigation.⁴⁴ Nevertheless, such arrangements are not prohibited by law and there are cases when legal is provided for a fee calculated as a percentage of the compensation awarded.

- 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?

The time limit to bring a court case depends on the nature of the violation in question and the remedy sought.

With regard to the period of limitation of the claims, such period towards a person who does not have full capacity for juridical acts (e.g. children under 18 years old) may not end earlier than upon the lapse of two years from the appointment of a statutory representative for him/her or from the cessation of the cause for such an appointment. Where the period of limitation is shorter than two years, its course shall be counted from the day of the appointment of the statutory representative or from the cessation of the cause for such an appointment.

A limitations period does not start and, if started, is suspended: (1) for claims by children against parents - for the duration of the parental authority; (2) for claims by

³⁹ See <http://www.kopd.pl>.

⁴⁰ See <http://www.fdn.pl/>.

⁴¹ See <http://www.hfhr.pl/en/fundacja/>.

⁴² rpd@brpd.gov.pl

⁴³ Number 800 12 12 12.

⁴⁴ Kodeks Etyki Adwokackiej, paragraph 50: <http://www.nra.pl/nra.php?id=249>.

persons who do not have full capacity for legal acts against persons exercising guardianship or curatorship - for the time during which the guardianship or curatorship is exercised.

According to the Civil Code, claims for compensation resulting from a tort must be brought within a time limit of three years from the moment when the injured party learned about the damage and the identity of the person liable for the compensation.⁴⁵ However, the general limitation period is 10 years from the moment the damage occurred. If the damage was caused by a crime, the period of limitation of the claim to redress the damage shall expire after 20 years from the day the crime was committed, regardless of when the victim knew about the damage and the person obliged to redress the damage. For cases regarding children involving damage to person (bodily injury), the time limit cannot expire earlier than two years after the injured person reached the age of 18. In the case of other civil law claims, relevant time limits might be different. All time limits are specified in the Civil Code.⁴⁶

In the case of the Criminal Court, the limitation period for redress of damages or compensation depends upon the statute of limitations for the crime. For example, for homicide it is 30 years from the commission of the crime; for other crimes it is 20 years; if the crime is subject to a penalty of five years' imprisonment, it is 15 years. If a crime against life and health, subject to a penalty of over five years' imprisonment, was committed to the detriment of a minor, the limitation period is suspended until the injured minor reaches the age of 30. The same applies to crimes against the sexual freedom and decency of a minor or when pornographic materials include the minor.⁴⁷ All statutes of limitations mentioned above are prolonged by five subsequent years in case criminal proceedings were instituted against the offender in the period of limitation.⁴⁸

Challenges against administrative decisions must be brought to administrative courts within 30 days of receipt of the decision.

Complaints to the Constitutional Tribunal must be filed within three months of the delivery of the final judgment or decision regarding the violation of the child's rights.⁴⁹

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

In Poland, both in civil and in criminal cases, courts make decisions in accordance with the principle of free evaluation of evidence. Types of evidence allowed in civil cases are provided in the Code of Civil Procedure. Similar provisions can be found in the Code of

⁴⁵ Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny (Dz.U. 1964 nr 16 poz. 93), Article 442¹, available at

<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093>.

⁴⁶ Act of 23 April 1964 - The Civil Code (Dz.U. 1964 nr 16 poz. 93)

<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093>.

⁴⁷ Ibid. Article 101.

⁴⁸ Ibid. Article 102.

⁴⁹ Ustawa z dnia 1 sierpnia 1997 r. o Trybunale Konstytucyjnym (Dz. U. Nr 102, poz. 643, z 2000 r. Nr 48, poz. 552 i Nr 53, poz. 638, z 2001 r. Nr 98, poz. 1070, z 2005 r. Nr 169, poz. 1417 oraz z 2009 r. Nr 56, poz. 459), available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19971020643>. See also <http://www.trybunal.gov.pl/skarga/skarga.htm>.

Criminal Procedure. As a general rule, all types of evidence are admissible in order to prove a violation of children's rights, including documents, witness testimonies, experts' opinions, recordings and photographs. The right of the child to be heard and to express his or her opinion in proceedings conducted by judicial bodies are regulated by law.

In principle, both civil and criminal law allow the testimony of a child. However, the rules of civil procedure provide that testimony may be given only by a person capable of perceiving facts and communicating his or her perception.⁵⁰ Therefore, very young children may not have the capacity to act as witnesses in civil cases.

In court proceedings in civil cases, there is a statutory obligation to hear a child with respect to affairs that concern him or her if the child's mental development, health condition and level of maturity allow him or her to be heard.⁵¹ The hearing takes place out of the courtroom. The regulations are very general and do not determine the way the hearing should be prepared or conditions that the hearing rooms must meet. In practice, the hearing usually takes place in the judge's room in the court building. The court is also obliged to take account of, when assessing the case, the opinion and reasonable wishes expressed by the child, in accordance with the circumstances, the child's mental development, health condition and level of maturity.

The rules of procedure in criminal cases provide that witnesses under the age of 17 are not required to take an oath.⁵² All witnesses, including children, have the right to refuse to give testimony⁵³ against persons with whom they have a close relationship, such as close relatives.

Legal representatives of the child, or their lawyers, can further protect the child's interest by requesting that the court:

- conduct the hearing *in camera* (this is the usual practice in cases concerning offences against sexual liberty and decency and offences against the family and guardianship);
- take testimony from the child victim as early in the procedure as possible, before questioning other witnesses and before evaluating other evidence;
- question the child victim without the presence of the accused; or
- reject questions which are not necessary for the conduct of the proceedings and which violate the child's dignity.

In addition, in all cases the court may close a trial to the public in whole or in part, if even one of the accused is a minor, or for the time of questioning a witness under 15 years of age. Also, questioning of a witness may take place with the use of technical devices enabling this procedural action to be conducted remotely on the basis of a simultaneous, direct transmission of image and sound.

Recently, the provisions of the Criminal Procedure Code regarding protecting the child during interviews and when giving testimony have been changed. According to Article

⁵⁰ Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (Dz.U. 1964 nr 43 poz. 296), Article 290, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>.

⁵¹ Act of 17 November 1964 - Code of Civil Procedure (Dz. U. 2014. poz. 101), Article 216 with mark 1, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>

⁵² Ustawa z dnia 6 czerwca 1997 r. - Kodeks postępowania karnego (Dz.U. 1997 nr 89 poz. 555) Article 189, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970890555>.

⁵³ Ibid. Article 182 and Article 183.

185a of the Criminal Procedure Code, in cases related to criminal offences committed with the use of violence or unlawful threat, or crimes against freedom, sexual freedom and decency, or family and care, the injured child who as at the moment of questioning is under 15 years of age shall be questioned in the capacity of a witness only when his or her testimony could be of particular importance to the resolution of the case, and only once, unless significant circumstances are disclosed and there is a need for repeated questioning to clarify them, or the accused who remained without a counsel for defence during the first questioning of the injured child demands so. The questioning shall be carried out by the court in a session with the participation of an expert psychologist. The public prosecutor, counsel for defence, or attorney for the injured child has the right to participate in the questioning. The recording of the image and sound of the questioning shall be replayed, and the record of the questioning read, at the main trial. In cases related to criminal offences, an injured child who at the moment of questioning is at least 15 years of age shall be questioned in accordance with the conditions defined above, if there is a justified concern that the questioning in other conditions could have a negative impact on his or her psychological condition.

According to Article 185b of the Criminal Procedure Code, in cases related to criminal offences committed with the use of violence or unlawful threat, or crimes against sexual freedom and decency, or family and care, a witness who as at the moment of questioning is under 15 years of age shall be questioned in line with the conditions defined in Article 185a, if his or her testimony could be of particular importance to the resolution of the case. In cases related to such criminal offences, a child witness who at the moment of questioning is at least 15 years of age shall be questioned using technical devices enabling this to be conducted remotely on the basis of a simultaneous, direct transmission of image and sound, if there is a justified concern that the direct presence of the accused at the questioning could constrain the testimony of the witness or have a negative impact on his or her psychological condition. Questioning in line with the procedure defined in Articles 185a and 185b shall be carried out in adequately adapted premises in the headquarters of the court or outside the headquarters.

As far as administrative and disciplinary proceedings that result from the offence by a teacher are concerned, the law does not provide the option for a child to be heard using a safe and friendly procedure. Hence the child, while being protected in certain situations in the course of criminal proceedings, will at the same time be exposed to being heard in the direct presence of the person who committed the offence against him/her.

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

Detailed statistical information about the length of court proceedings in all types of cases is published every year on the website of the Ministry of Justice.⁵⁴

The actual length of proceedings in a particular case depends on many factors, such as the complexity of the case, backlog of cases in the given court, and behaviour of the parties (*i.e.*, whether they actively take part in the proceedings and promptly respond to the court's requests). Family Law Courts in urgent matters will issue decisions promptly. In case a claim is considered for removal of a child from a family pursuant to

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<http://bip.ms.gov.pl/pl/dzialalnosc/statystyki/>.

the Act on Domestic Violence Prevention, the time limit is 24 hours.⁵⁵ However, civil cases concerning compensation usually take several years. Similarly, in criminal cases, final judgments are usually provided several years after the crime was committed.

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

Appeals against judgments of courts of first instance, such as Regional Courts, can be brought before District Courts, which in such cases would act as the courts of second instance. If the case in the court of first instance was decided by a District Court, the appeal might be brought to the Appellate Court. Appeals may be brought in all types of cases.

Courts of second instance have the same powers as courts of first instance. They can amend the challenged judgment, adopt a new one, or, in cases where there is a need to carry out the entire or a significant part of the evidence proceedings again, they can refer the case back to the court of first instance.

Further, second instance judgments might be challenged in particular cases, set forth in law, before the Supreme Court. Such measure of appeal in criminal proceedings may for example take the form of cassation appeal. These are extraordinary measures and may be used against legally valid decisions of second instance courts.⁵⁶ The Supreme Court has limited jurisdiction and will review only pleas relating to violations of law and violations of procedure which are relevant to the outcome of the case. The Supreme Court will not review allegations concerning evaluation of evidence.

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?

There is no doctrine of precedent in the Polish judicial system. Decisions of higher courts are not formally binding on lower courts. However, parties typically refer in their pleadings to judgments in similar cases to support their arguments. Lower courts are likely to respect interpretation adopted by higher courts and, in particular, decisions of the Supreme Court.

In response to a question referred by a lower court, the Supreme Court has the right to adopt resolutions which are binding upon the referring court in a given case. Although such resolutions do not bind other courts, they are usually followed.

Political repercussions from positive decisions are highly unlikely in Poland.

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

The enforcement of awards in civil proceedings is governed by the Code of Civil

⁵⁵ Act of 29 July 2005 on domestic violence prevention (Dz.U. 2015. poz. 1390, ze zm.) Article 12b par.3, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493>

⁵⁶ *ibid.* Article 519

Act of 17 November 1964 - Code of Civil Procedure (Dz.U. 1964 nr 43 poz. 296), Article 519 with mark 1, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>.

Procedure.⁵⁷

Judgments rendered by Administrative Courts can either amend or annul administrative decisions. Such judgments either directly remedy the violation of children's rights or constitute the basis for further claims brought before Civil Courts. In situations when an Administrative Court refers cases back to the relevant administrative body, it can only give guidance on how the case should be handled, and cannot force the authority to follow any particular course of action.

If the Constitutional Tribunal finds that a piece of legislation violates children's rights guaranteed by the Constitution, it will announce when such legislation will lose its legal force.⁵⁸

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 Ombudsman for Children is a constitutional body that safeguards the rights of children. The Ombudsman for Children's terms of reference are broad. He may act upon his own initiative, considering any and all information that come from citizens or civil organisations which may prove the alleged infringement of the child's right or the threat to his or her well-being. The Ombudsman is obliged to give notice to the person or organisation who reported the infringement of rights or violation of the well-being of the child on his position on that matter and, in case measures are taken, on the effects of such measures.

The mandate of the Ombudsman for Children includes the following powers:

- investigate, including without prior notice, every case *in situ*;
- request the Supreme Court to adjudicate cases of divergence in legal interpretation with regard to regulations of law concerning the rights of the child;
- lodge cassation or appeal against a legally valid sentence;
- require that proceedings be instituted in civil or criminal cases and enter ongoing proceedings with the rights enjoyed by the prosecutor;
- request the institution of administrative proceedings, lodge complaints with the Administrative Court and participate in those proceedings with the rights enjoyed by the prosecutor;
- participate in proceedings before the Constitutional Tribunal;
- ask competent authorities, organisations or institutions to take measures aimed at protecting the child within the scope of the responsibilities of those entities; and
- call for the respective organs to take legislative action, issue a legal act or amend the existing legal acts.⁵⁹

⁵⁷ Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (Dz.U. 1964 nr 43 poz. 296), Section, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>.

⁵⁸ Act of 25 June 2015 on Constitutional Tribunal (Dz. U. 2015. poz. 1064) Article 100 oar.2, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19971020643>. See also <http://www.trybunal.gov.pl/skarga/skarga.htm>

⁵⁹ The Internet Site of the Ombudsman for Children: <http://www.brpd.gov.pl/>; The English version of the Act of 6 January 2000 on the Ombudsman for Children (Dz.U. 2000 nr 6, poz. 69, ze zm.), Article 10 par. 1 p. 2c, 3, 4, 5 and 6 available at http://www.brpd.gov.pl/uploadfiles/ustawa_o_rpd_en.pdf

Given the broad scope of its powers and its expertise, the assistance from the Ombudsman for Children can be very useful. Also, assistance provided by the Ombudsman might in fact offer an alternative to excessively lengthy court proceedings. In certain cases, the Ombudsman's intervention or mediation might help remedy children's rights violations outside the courtroom.

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