

ACCESS TO JUSTICE FOR CHILDREN: RUSSIA

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

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

The Russian Federation ratified the CRC and the Optional Protocol on the Involvement of Children in Armed Conflict in August 1990 and September 2008 respectively.¹ Russia is also a signatory to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.²

Article 15(4) of the Constitution provides that international treaties of the Russian Federation, as well as “the generally recognised principles and norms of international law”, constitute an integral part of its legal system.

B. Does the CRC take precedence over national law?

Yes. Ratified international treaties and conventions take precedence over national law.³

C. Has the CRC been incorporated into national law?

The CRC was automatically incorporated into national law upon ratification and publication by the executive branch. The Parliament has also adopted implementing legislation by enacting the Federal Law on basic guarantees of child rights in the Russian Federation,⁴ and by supplementing the family legislation with additional guarantees.

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

Yes. In addition to the provisions of Russian law duplicating the CRC’s provisions, the CRC can be directly enforced in the courts.

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

There are several decisions of the Constitutional Court and Supreme Court of the Russian Federation using or applying the CRC’s provisions⁵ and a considerable number of decisions of district courts.

1 'Convention on the Rights of the Child', U.N.T.S., vol. 1577, p.3, available at:

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

2 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography', U.N.T.S., vol. 2171, p. 227, available at:

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

3 Constitution of the Russian Federation, 1993, Article 15(4); Supreme Court Decision No. 8 of 31 October 1995 and Decision No. 5 of 10 October.

4 The Federal Law of the Russian Federation “On basic guarantees of child rights in the Russian Federation” No. 124-FZ of 24 July 1998 (“**Law on Child Rights**”). Children’s Rights: Russian Federation, Library of Congress, available at: <http://www.loc.gov/law/help/child-rights/russia.php>.

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 through their representatives may lodge a complaint in court against any action or decision that violates their rights.⁶ They may launch a civil case where they have suffered injuries, seek judicial review of a law or actions or inaction of the state, report a crime to the police, or initiate a private or “private-public” prosecution in certain circumstances (see part III.A below). In certain cases, children aged 14 and over have the right to apply to court themselves (see part II.B below).⁷

When hearing cases brought by representatives of children, the court must involve the children in the court proceedings if they are aged 14-18;⁸ for children under 14, the court has the right to involve them in court proceedings.⁹ In certain cases, the court must obtain the opinion of a child aged over 10 before making a decision (e.g. to change the name of a child, to restore previously terminated parental rights, and in cases of adoption and guardianship).¹⁰

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?

Under Russian law only adults (persons aged 18 or over) may be claimants in court.¹¹ Generally, children cannot bring cases themselves in Russian courts. Instead, children’s rights are protected in court under claims of:¹² their parents or other legal representatives (adoptive parents, guardians, custodians, foster parents, state guardian supervisory authorities);¹³ prosecutors;¹⁴ children’s commissions;¹⁵ persons willing to adopt a child;¹⁶ the Ombudsman;¹⁷ or organisations.¹⁸

⁵ See Constitutional Court decisions: No.742-O-O dated 7 June 2011, available at: <http://www.ksrf.ru/ru/Decision/Pages/default.aspx>; No.434-O dated 5 March 2013, available at: <http://www.ksrf.ru/ru/Decision/Pages/default.aspx>; Supreme Court decisions: No. ГКПИ09-371 dated 15 May 2009, available at: <http://34374.info/lawdocs/show/16d8a-Reshenie-Verhovnogo-Suda-RF-ot-15-maya-2009-g.-N-GKPI09-371-Ob-ostavlenii-bez-udovletvoreniya-zayavleniya-o-priznanii-nedeystvuyushhim-Prikaza-Minobrnauki-RF-ot-28-noyabrya-2008-g.-362-Ob-utverzhenii-Polozheniya-o-formah-i-poryadke-provedeniya-gosudarstvennoy-itogov>; No. 4-AПГ12-19 dated 28 November 2012, available at: http://www.supcourt.ru/stor_pdf.php?id=519128; decision of the Plenum of Supreme Court No. 1 dated 1 February 2011 “On application by courts of the legislation which regulates specifics of criminal liability and imposition of punishment on juveniles”.

⁶ Act of the Russian Federation on Complaints to a Court against Actions or Decisions Infringing Citizens’ Rights and Freedoms, 27 April 1993.

⁷ Code of Civil Procedure of the Russian Federation, Article 37, para. 4.

⁸ Ibid., Article 37, para. 3.

⁹ Ibid., Article 37, para. 5.

¹⁰ Family Code of the Russian Federation, Article 57.

¹¹ Code of Civil Procedure, Article 37.

¹² Ibid., Article 52.

¹³ Family Code, Article 123.

¹⁴ Ibid., Article 56; Code of Civil Procedure, Article 45.

¹⁵ Family Code, Article 70.

¹⁶ Ibid., Article 125.

¹⁷ Federal Constitutional Law “On Ombudsman for Human Rights in the Russian Federation” No. 1-FKZ of 26 February 1997 (“**Law on Ombudsman**”), Article 29.

¹⁸ Code of Civil Procedure, Article 46(1).

For example, parents, guardians, those in charge of providing educational, development, health and/or social protection services for the child, or those who assist in the child's social adaptation and rehabilitation and/or other measures involving the child's participation are entitled to apply to the court on behalf of the child claiming compensation for pecuniary and non-pecuniary damages.¹⁹

If a child's rights and legal interests are violated, including if his/her parent fails to discharge or improperly discharges his/her duties involved in the child's upbringing and education or if he/she abuses his/her parental rights, the child has the right to turn for his/her protection to the guardianship and trusteeship body, and upon reaching the age of 14 years, to the court.²⁰ Children aged below 14 must be represented by their parents, adoptive parents, guardians and/or a custodian.

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

Cases on behalf of or in the interests of infants and young children are brought by their parents or legal representatives²¹ or other persons entitled by law.²²

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

The Constitution guarantees to every individual the right to qualified legal assistance and, in cases set forth by law, the right to free legal aid.²³ Furthermore, any person detained, taken into custody, or accused of committing a crime is guaranteed the right to receive legal assistance from the moment of detention, confinement in custody or facing charges accordingly.²⁴

The Law on Free Legal Assistance guarantees free legal aid to the following categories of children:²⁵

- children, if their per capita income is less than the minimum amount determined in a constituent entity of the Russian Federation;
- disabled children, orphans, or children left without parental care (and legal representatives of such children in case the questions requiring legal assistance are related to the protection of the rights and legal interests of such children);
- children kept in state institutions or imprisoned (and legal representatives of such children in case the questions requiring legal assistance are related to the protection of the rights and legal interests of such children);
- children accused of committing a crime;
- children undergoing mental health treatment (in case the questions requiring legal assistance are related to the protection of the rights and legal interests of such children);²⁶

¹⁹ Law on Child Rights, Article 23.

²⁰ Family Code, Article 56.

²¹ Code of Civil Procedure, Article 37.

²² Foster parents, adoptive parents, state guardian supervisory authorities; prosecutors; children's commissions; persons willing to adopt a child and the Ombudsman.

²³ Constitution, Article 48(1).

²⁴ Ibid., Article 48(2).

²⁵ Federal Law of the Russian Federation "On free legal assistance in the Russian Federation" No. 324-FZ dated 21 November 2011, Article 20.

²⁶ Law of the Russian Federation "On Psychiatric Assistance and on Guarantees for Citizens' Rights at Rendering Such" No. 3185-I dated 2 July 1992, Article 7(3).

- children of a person who has died as a result of an emergency situation.

Legal aid for the above categories of persons is available for, amongst other things, administrative review of acts issued by government agencies, local self-government bodies and public officials.²⁷

Free legal services may be provided either by state legal institutions or non-state legal institutions, at the individual's choosing (see part IV.C below).

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

Provided the case is filed by a proper applicant (see part II.B above), no prior approval is required of the child or his/her representative to bring a case to protect the child's rights.²⁸

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 is a range of options available to challenge a potential violation of children's rights, as follows:

An individual citizen or organisation may bring a civil claim for the protection of a child's rights in a court of general jurisdiction. Any injury to a person is subject to full compensation by the person who inflicted the damage.²⁹

Any individual citizen or group of citizens may petition the Constitutional Court about a violation of their constitutional rights and freedoms as a result of a law that has been applied in a specific case.³⁰ The complaint will be admissible if the law: (1) infringes on the constitutional rights and freedoms of citizens; and (2) was applied in a specific case whose consideration has been completed in court.³¹

Under administrative law, decisions, actions or inaction of bodies of state authority and local self-government, public associations and officials may be appealed against in court.³² Any injury inflicted on an individual as a result of unlawful actions or inaction of state and local self-government bodies or officials is subject to redress at the expense of the state.³³

Any person may report a crime to the police, either verbally or in writing, which

27 <http://www.pilnet.org/public-interest-law-programs/legal-aid-reform/dimas-blog/137-russian-legal-aid-bill-signed-into-law.html>.

28 Code of Civil Procedure, Article 46(1).

29 Civil Code of the Russian Federation, Article 1064(1).

30 Federal Constitutional Law of the Constitutional Court of the Russian Federation, Article 36, available at: <http://www.ksrf.ru/en/Info/LegalBases/FCL/Pages/default.aspx>.

31 Ibid., Article 97.

32 Constitution, Article 46(2).

33 Civil Code, Article 1069; Ibid., Article 53.

prompts an investigation.³⁴ Additionally, a prosecutor may file a case on behalf of a child if his/her rights, freedoms or legitimate interests are infringed.³⁵ Criminal cases are generally prosecuted by the state. In exceptional circumstances a victim or his/her legal representative may apply to initiate a private prosecution (e.g. infliction of light injuries or battery), or a victim may make a complaint to initiate a “private-public” prosecution (e.g. rape).³⁶

Legal representatives of children may also apply to the Ombudsman where they have already challenged a decision, action or inaction of state or local authorities (including a violation of children’s rights) in court and are not satisfied with the court’s decision. The Ombudsman has the power to investigate complaints, file a human rights complaint with a court, request a court to review a court decision, and request a criminal investigation against the responsible official.³⁷ The Ombudsman for children’s rights, however, cannot apply to court or appeal against court decisions; instead, it may join court proceedings to support the claims filed in court to protect children’s rights.

With regard to regional mechanisms, the European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.³⁸ 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,³⁹ but the complaint will be admissible only if all domestic remedies have been exhausted.⁴⁰ Anonymous complaints are not permitted.⁴¹ 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.⁴² After examining the case, the Court renders a judgment which is binding on the State⁴³ and also has powers to award monetary compensation to the victims of human rights abuses.⁴⁴ 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.

34 Criminal-Procedural Code of the Russian Federation No. 174-FZ of 18 December 2001, Article 141.

35 Code of Civil Procedure, Article 45.

36 Criminal-Procedural Code, Article 20.

37 Law on Ombudsman, Article 29.

38 European Convention for the Protection of Human Rights and Fundamental Freedoms (“**European Convention on Human Rights**”), 1950, Articles 19 and 32, available at: http://www.echr.coe.int/Documents/convention_ENg.pdf.

39 Ibid., Article 34.

40 Ibid., Article 35.

41 Ibid.

42 Rules of Court, July 2014, Rule 36, available at:

http://www.echr.coe.int/documents/rules_court_eng.pdf.

43 European Convention on Human Rights, Article 46.

44 Ibid., Article 41.

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

Depending on the nature of the violation, a court of general jurisdiction may make an order to: recognise a right; restore the situation which existed before the right was violated; stop the violation; invalidate or not apply an illegal act of a state or local self-government body; and award compensation (including for moral damages for physical and moral suffering).⁴⁵

The Constitutional Court, upon complaints about violations of constitutional rights and freedoms of citizens, has the power to review the constitutionality of a law applied or subject to be applied in an individual case.⁴⁶ Following its review, the Court can invalidate laws or legal provisions recognised as incompatible with the Constitution.⁴⁷

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?

It does not appear possible to challenge a law or action without naming a specific victim (see part IV.A below).

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

Civil procedure legislation provides for group litigation. Under Russian legislation, several plaintiffs may file a joint action if: (i) the subject of the lawsuit encompasses the common rights or obligations of such plaintiffs; (ii) the rights and obligations of such plaintiffs have one legal ground; and (iii) the subject of the lawsuit encompasses similar rights and duties. Each plaintiff in such proceedings acts independently or co-plaintiffs may empower one or several plaintiffs to act on their behalf in the court proceedings.⁴⁸

Furthermore, organisations or citizens may apply to court for the protection of the rights, freedoms and legitimate interests of an indefinite class of persons, including children. Such cases may be filed irrespective of the requests of the children concerned or their legal representatives.⁴⁹

Finally, a group of citizens may file a collective complaint with the Constitutional Court about a violation of their constitutional rights and freedoms as a result of a law that has been applied in a specific case.⁵⁰

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?

⁴⁵ Civil Code, Article 12.

⁴⁶ Constitution, Article 125(4).

⁴⁷ Ibid., Article 125(6).

⁴⁸ Code of Civil Procedure, Article 40.

⁴⁹ Ibid., Article 46.

⁵⁰ Federal Constitutional Law of the Constitutional Court, Article 96.

As stated in part III.D above, organisations have the right to apply to court for the protection of the rights, freedoms and legitimate interests of a child or an indefinite class of children, and may do so irrespective of the requests of the children concerned or their legal representatives.⁵¹

More specifically, the Law on Child's Rights empowers non-governmental organisations (NGOs) to file a case challenging actions of officials of state authorities, organisations, or citizens, including parents, teachers or social workers, if such actions violate rights of children in difficult life circumstances.⁵²

In addition, NGOs may enter the court proceedings after the application is already filed by the child's representative.

III. 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?

A civil claim for the protection of rights, freedoms and lawful interests is initiated by submitting a written statement of action to a court of general jurisdiction in the region where the respondent resides. The statement of action must contain, amongst other things: the name of the plaintiff, his/her place of residence or, if the plaintiff is an organisation, its place of location, as well as the name of the representative and his/her address, if the application is filed by the representative; a description of the violation or threat of violation of the rights, freedoms and lawful interests of the plaintiff, and his/her claims; the facts on which the plaintiff bases his/her claims, and the proof confirming these facts; and the amount of the claim.⁵³

A constitutional petition must be communicated to the Constitutional Court in writing and must indicate, amongst other things: the full name and address of the petitioner; details of the petitioner's representative; details of the challenged law; and the specific grounds of the petition.⁵⁴

Criminal cases are generally initiated by prosecutors or following a complaint to the police, and are heard in district courts.

Cases concerning deprivation or restriction of parental rights, adoption of the child and other cases concerning disputes involving children shall be reviewed by courts of general jurisdiction, in particular, district courts.⁵⁵

⁵¹ Ibid.

⁵² Law on Child Rights, Article 15. The Law on Child Rights sets out in Article 1 an extensive definition of children in difficult life circumstances.

⁵³ Code of Civil Procedure, Article 131.

⁵⁴ See Federal Constitutional Law of the Constitutional Court of the Russian Federation, Article 37.

⁵⁵ Code of Civil Procedure, Articles 23(1) and 24. However, there might be exceptions.

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?

See part II.D above.

Under the general rule of Russian procedural legislation,⁵⁶ a winning party may demand all costs from the losing party to the court proceedings. The winning party may collect reasonable costs of the legal representative from the defeated party by filing a written pleading to the court.⁵⁷

Actions for the purpose of protecting children's rights and lawful interests are free from state duties in courts.⁵⁸ Courts may reduce or discharge other court costs if a person cannot afford them due to his/her financial situation.⁵⁹

In constitutional challenges, if a law or legal provision is found by the Constitutional Court to be inconsistent with the Constitution, the following costs borne by the petitioners will be reimbursed by the state: charged state fee; fees paid for the services of representatives; travel and lodging expenses of petitioners and their representatives related to their appearance in court; postal expenses related to consideration of a case; and compensation in lieu of actual time lost.⁶⁰

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?

Russian law permits legal assistance to be provided by practising lawyers on a pro bono basis to both physical persons and NGOs. Non-state legal institutions rendering free legal services include individual practising lawyers, law firms, legal clinics and other legal specialists. Under pro bono arrangements a person is not required to pay for services, however it should be taken into account that free legal services may be treated as income by tax authorities for the purposes of income tax calculation.

There are several NGOs helping certain categories of children. For example, legal assistance is provided by the Center of Curative Pedagogics,⁶¹ Osoboe Detstvo (for children with autism),⁶² and Otkazniki (Refusenik).⁶³ More than 140 law clinics have been set up across the country, providing free legal assistance to people in need.⁶⁴ A list

⁵⁶ Ibid., Article 98.

⁵⁷ Ibid., Article 100.

⁵⁸ Tax Code of the Russian Federation (Part One No. 146-FZ dated 31 July 1998, Part Two No. 117-FZ dated 5 August 2000), Article 333.36 and 333.37.

⁵⁹ Code of Civil Procedure, Article 96(3).

⁶⁰ Federal Constitutional Law of the Constitutional Court of the Russian Federation, Article 100.

⁶¹ <http://www.ccp.org.ru/>

⁶² <http://www.osoboedetstvo.ru/>.

⁶³ <http://otkazniki.ru/index.php?id=21>

⁶⁴ <http://www.probonoinst.org/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

of non-state legal institutions is published on the official website of the Ministry of Justice: <http://minjust.ru/ru/besplatnaya-yuridicheskaya-pomoshch-5>.

Recently, however, there have been increasing restrictions placed on NGOs receiving foreign funding (see part V).

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?

Russian law operates a three-year general limitation period on actions.⁶⁵ However, the Civil Code provides that claims for the protection of violated rights shall be accepted by the court for consideration regardless of the expiry of the term of the limitation of actions.⁶⁶

Complaints about violations of constitutional rights and freedoms must be lodged with the Constitutional Court within one year after consideration of the case in court.⁶⁷

With respect to crimes, the Criminal Code provides that a person will be released from criminal responsibility if the following time limits have expired since the date of the commission of a crime:

- a) two years after the commission of a crime of light gravity;
- b) six years after the commission of a crime of average gravity
- c) 10 years after the commission of a grave crime; and
- d) 15 years after the commission of an especially grave crime.⁶⁸

For “crimes against the peace and the security of humankind” (including planning, preparing, unleashing or waging an aggressive war, genocide or ecocide), there is no period of limitation.⁶⁹

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?

There are no special regulations in relation to the evidence that is admissible or required to prove a violation. Types and the procedure for reviewing evidence are set out in the Code of Civil Procedure. Among the types of admissible evidence are: explanations of parties and third parties, testimonies, written and material evidence, audio and video recordings and expert reports.⁷⁰

A child witness aged under 14 has to be examined in the presence of a teacher. A child aged 14 to 16 may also be examined in the presence of a teacher at the court’s discretion. If it is necessary, parents, adoptive parents, guardians and custodians may be summoned to appear in court for the child’s examination.⁷¹ A child witness under 16 is required to leave the courtroom unless the judge considers his or her presence to be

⁶⁵ Civil Code, Article 196.

⁶⁶ Ibid., Article 199.

⁶⁷ Federal Constitutional Law of the Constitutional Court of the Russian Federation, Article 97(2).

⁶⁸ Criminal Code, Article 83.

⁶⁹ Ibid.

⁷⁰ Code of Civil Procedure, Article 55.

⁷¹ Ibid., Article 179.

necessary.

In addition, courts are entitled to arrange closed trials and hear witnesses in closed court hearings in cases which concern state secrets, adoption, and in other cases provided by law.⁷² A party to the court case may also plead for a closed trial when the court case concerns commercial secrets, private life or other circumstances, when an open trial may hinder the hearing of the case or disclose the said secrets, or violate a person's rights and interests.

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

According to Russian legislation civil cases shall be considered and resolved by the court in two months as from the day of registering the application with the court.⁷³ In practice, however, this time limit is almost never met and may extend to years in the most difficult cases since it is possible to postpone court proceedings⁷⁴ and extend the time limit.⁷⁵ The main reason for this is the considerable workload of courts. At the same time the Code of Civil Procedure requires that court proceedings must be carried out in a reasonable time.⁷⁶ The legal and factual complexity of the case, behaviour of the participants in civil proceedings, and sufficiency and effectiveness of court actions should be taken into account in order to determine a reasonable time in every particular case.⁷⁷

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

Russian law provides that court decisions which have not yet come into force may be appealed and reviewed in appellate courts. In addition, court decisions which have come into force may be appealed through the following three means: appeal, cassation, supervision and review on the basis of newly discovered facts.

Appeal

Decisions of district courts may be appealed to a higher court - the supreme court of a republic, the territorial or regional court, the court of a federal city, the court of an autonomous region, the court of an autonomous area - by the parties and other persons. Appeals must be filed with the court of first instance within one month of the date of the decision.⁷⁸ The Civil Panel of the Supreme Court hears appeals against decisions of the supreme courts of a republic, the territorial or regional court, the court of a federal city, the court of an autonomous region, the court of an autonomous area where the said courts acted as courts of first instance. The Appellate Panel of the Supreme Court hears appeals against decisions of the Supreme Court of the Russian Federation where the Court acted as court of first instance

Cassation

Decisions of an appellate court can be appealed to a court of cassation within six

⁷² Ibid., Article 10.

⁷³ Ibid., Article 154.

⁷⁴ Ibid., Article 169.

⁷⁵ Ibid., Article 111.

⁷⁶ Ibid., Article 6.1.

⁷⁷ Ibid.

⁷⁸ Court decisions come into force after one month from the delivery.

months of the ruling.⁷⁹ Cassation appeals are filed with the courts of cassation: appellate rulings of supreme courts of a republic and regional courts, courts of federal cities, autonomous regions and district courts should be filed with the presidiums of respective courts; and appellate rulings of the presidiums of the said courts may be appealed in cassation to the Civil and Administrative Panels of the Supreme Court.⁸⁰

Supervision

Review of judicial decisions by way of supervision is an extraordinary stage. At this stage judicial decisions may be reviewed by the Presidium of the Supreme Court on the basis of appeals from parties to the trial and other persons, whose rights and interests were violated by the decisions concerned.⁸¹ Appeals for supervision should be filed within three months from the entry into force of the respective decisions. The Presidium of the Supreme Court cancels or alters the decision if it finds that the court decision violates the following: (1) civil and human rights and freedoms guaranteed by the Constitution of the Russian Federation, the universally recognised principles and rules of international law and international treaties concluded by the Russian Federation; (b) the rights and legitimate interests of an indefinite group of persons or other public interests; (3) uniformity of interpretation and application of law by courts. In case the Presidium establishes the above violations it may either refer the case for new trial to the initial court or deliver its own ruling. The ruling of the Presidium of the Supreme Court comes into force on the date of its delivery and may not be appealed.

Review on the basis of newly discovered facts

A final judicial decision may be reviewed on the basis of newly discovered or new facts. It should be noted that decisions of the European Court of Human Rights which have found violations of the European Convention on Human Rights are treated as new circumstances for the purposes of review.

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?

The actual impact of judicial decisions to a great extent depends on the actions of executive and legislative bodies, on which courts usually rely to implement their rulings. Court decisions may result in annulment of the acts of legislatures, executives and other political institutions, which are contrary to the existing legislation. In such cases, however, these bodies are likely to obstruct, misapply or ignore court decisions. Thus, it is reported that the judiciary lacks independence from the executive branch.⁸² Additionally, legislative bodies have a power to override unwanted decisions and implement new, more preferable rules.

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

⁷⁹ Code of Civil Procedure, Article 376.

⁸⁰ Ibid., Article 377.

⁸¹ Ibid., Article 391.1.

⁸² Freedom House, 'Freedom in the world: Russia', 2014, available at:

<http://www.freedomhouse.org/report/freedom-world/2014/russia-0#.VEaBMvhx0>

Even with a positive decision by the court, there may be certain difficulties in enforcement. For example, decisions awarding monetary compensation or determining the place of residence of children⁸³ may be difficult to enforce even with the help of a special execution service.

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.

Juvenile justice system

A major point of complaint for the UN Committee on the Rights of the Child regarding Russia is the weak protection of children in conflict with the law within the criminal justice system. In particular, the Committee has expressed its concern about the “lengthy delays in the adoption of laws establishing juvenile courts with specialised staff” and the “[f]requent unlawful detention of children by law enforcement agencies in circumstances where there is no apparent illicit behaviour on the children’s part”.⁸⁴ The prolonged placement of children in institutions after they commit crimes is an ever growing problem, as well as the lack of rehabilitation and reintegration programmes for children after their release from institutions.⁸⁵ Recent attempts to move these children into family homes have been blocked.⁸⁶

Torture and ill-treatment

While acknowledging the establishment of an Investigation Committee to identify, investigate, prosecute and sanction acts of torture, violence and inhumane or degrading treatment against children, the Committee on the Rights of the Child noted the lack of mechanisms for children themselves to file complaints on acts of ill-treatment. It also expressed particular concern about the lack of investigations by the law enforcement authorities into reports of violence against children in police detention or during pre-trial proceedings, Roma children, and children of other national minorities including migrant children, which reinforces the feeling of impunity.⁸⁷

Restrictions on foreign-funded NGOs

The Committee on the Rights of the Child is deeply concerned about the increasing restrictions placed on foreign-funded NGOs working in the area of human rights and child rights. The 2012 Federal Act regarding the regulation of activities of non-commercial organisations performing the function of foreign agents requires that organisations receiving financial support from sources outside Russia register and identify themselves publicly as “foreign agents”. Moreover, recent amendments to the Criminal Code expanded the definition of the crime of state treason to include “providing financial, technical, advisory or other assistance to a foreign State or

⁸³ There is considerable number of cases where parents (often fathers) ignored court decisions which established places of residence of children of the divorced parents.

⁸⁴ Committee on the Rights of the Child, *Concluding observations on the fourth and fifth periodic report of Russia*, CRC/C/RUS/CO/4-5, 25 February 2014, paras 69-70. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fRUS%2fCO%2f4-5&Lang=en.

⁸⁵ Ibid.

⁸⁶ Tim Whewell, *Russia: Are efforts to help thousands of 'abandoned' children being resisted?*, BBC News, available at: <http://www.bbc.co.uk/news/world-europe-21994332>.

⁸⁷ Committee on the Rights of the Child, *Concluding observations on the fourth and fifth periodic report of Russia*, paras 30-31.

international organisation... directed at harming Russia's security", which are used against organisations working on child rights.⁸⁸

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

⁸⁸ Ibid., paras 18-19.