

ACCESS TO JUSTICE FOR CHILDREN: CROATIA

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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?

Ratified international instruments automatically have the force of law in Croatia. The Convention of the Rights of the Child (“CRC”) entered into force in Croatia on 10 August 1991.

B. Does the CRC take precedence over national law?

According to Article 141 of the Croatian Constitution, international treaties that have been signed and ratified take precedence over domestic laws.¹ If a contradiction exists between the provisions of the CRC and national law, the CRC will be applied.²

C. Has the CRC been incorporated into national law?

Under Article 141 of the Croatian Constitution, international treaties that have been signed and ratified are “part of the internal legal order of the Republic of Croatia.”³

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

By virtue of being part of domestic law, 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?

On at least one occasion, the CRC has been directly enforced in the Croatian Constitutional Court, in relation to a parental access rights case regarding the best interests of the child.⁴

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?

¹ Croatian Constitution, art. 141, available at <http://www.sabor.hr/fgs.axd?id=17074>.

² See <http://www.crin.org/resources/infodetail.asp?id=31626>.

³ Croatian Constitution, art. 141.

⁴ See <https://www.crin.org/en/library/publications/croatia-national-laws>.

Under the Croatian Civil Procedure Act, any party, including a child, who has “full disposing capacity may undertake procedural actions [alone].”⁵ The Civil Procedure Act does not expressly define “disposing capacity,” but the term appears to refer to an individual’s capacity to act as a party in legal proceedings.⁶ The Civil Procedure Act further specifies that “[a] minor person who has not acquired full disposing capacity shall have the litigation capacity only within the limits in which his or her disposing capacity is recognized” and that any person who lacks the required capacity “shall be represented by [his] legal representative[],”⁷ who “may undertake all procedural actions on behalf of [him].”⁸ However, there is no guidance for determining an individual’s disposing capacity. Where a legal representative is required, the representative “shall be designated by [law] by [a] competent state body.”⁹ It is unclear which “state bodies” are empowered to make such designations.

Most criminal proceedings are instituted by the State’s Attorney’s Office.¹⁰ Nonetheless, in exceptional cases, injured parties may submit “private charges” under the Croatian Criminal Code.¹¹ A private charge submitted by a minor less than 16 years of age “shall be submitted by their legal guardian,” while a minor of at least 16 years of age may submit a private charge without assistance.¹²

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?

As noted in the previous part, the Civil Procedure Act does not impose a specific age requirement, but it requires that the child has capacity to bring civil proceedings without a representative, whereas the Criminal Procedure Act sets a minimum age of 16 years for bringing a private charge without assistance. See part II.A.

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

For infants and young children who lack “full disposing capacity,” civil cases would be brought by their representatives. See part II.A.

In the criminal context, a private charge can be submitted by an infant’s or a young child’s legal guardian on the child’s behalf. See part II.A.

⁵ Civil Procedure Act 2003, art. 79, *available at* http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Civil-Procedure-Act.pdf (emphases added).

⁶ *See id.* Title Four.

⁷ *Id.* art. 80.

⁸ *Id.* art. 81.

⁹ *Id.* art. 80.

¹⁰ Criminal Code 2003*, art. 8, *available at*

http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Code.pdf (The Criminal Code establishes some crimes for which private charges may be brought, including bodily injury, coercion, threats, and offenses against honor and reputation.). *The Criminal Code was amended in 2004, 2005, and 2006, but those amendments are not accessible online.

¹¹ *Id.*

¹² Criminal Procedure Act 2009, arts. 62, *available at*

http://www.legislationonline.org/download/action/download/id/4284/file/Croatia_Criminal_proc_code_am2009_en.pdf.

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

Croatia's Free Legal Aid Act ("FLAA") became effective on February 1, 2009.¹³ The FLAA provides for court approval of complete or partial legal aid in all matters adjudicating a person's "existential issues," which includes the "protection of children and young adults."¹⁴ Both Croatian citizens and foreign children who are in Croatia without a parent or legal guardian are eligible for legal aid.¹⁵ Providers of legal aid include attorneys, authorised associations, and institutions of higher learning.¹⁶

For more detail on the availability and procedure for applying for legal aid, please see part II.B below.

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

There is no requirement that a child's parents or guardian consent to a child's initiation of legal proceedings. However, under the Civil Procedure Act, if a minor's legal representative "does not exercise sufficient care" in the representation, then the court shall inform the child's guardian of the failure.¹⁷

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?

Children and their representatives may challenge violations of their rights by initiating legal proceedings in the civil courts. If a criminal offence has been committed and the public prosecutor does not file charges, children and their representatives may also bring private criminal charges under the Criminal Code and Criminal Procedure Act.

Croatia also has a series of specialised courts, including the Croatian Constitutional Court. The Constitutional Court is a body separate from Croatia's judiciary.¹⁸ It is responsible for ensuring the conformity of national laws with the Constitution, and therefore, international agreements, including the CRC.¹⁹ Anyone may lodge a constitutional complaint against an individual act of a state body, a body of local and regional self-government, or a legal person with public authority which he considers to be a violation of his constitutional rights.²⁰

¹³ Available at: www.mprh.hr/lgs.axd?t=16&id=2074.

¹⁴ *Id.* art. 5.

¹⁵ *Id.* art. 7; <http://www.mprh.hr/beneficiaries-of-free-legal-aid>.

¹⁶ Free Legal Aid Act 2009, art. 9.

¹⁷ Civil Procedure Act 2003, art. 81.

¹⁸ <http://www.confcoconsteu.org/reports/rep-xii/Kroatie-EN.pdf>.

¹⁹ Croatian Constitution, art. 129.

²⁰ Under the Constitutional Act on the Constitutional Court of the Republic of Croatia 2002, art. 62

[hereinafter Constitutional Act], available at

http://www.usud.hr/default.aspx?Show=ustavni_zakon_o_ustavnom_sudu&m1=27&m2=49&Lang=en.

Cases may be heard in the Constitutional Court by one of three procedures²¹: (1) a request for review; (2) a proposal to institute proceedings for review; or (3) the filing of a constitutional complaint. A request for review may only be submitted by lower courts or government figures²², therefore, depending on whether a child has personally been harmed by an alleged constitutional violation, children may submit either a proposal to institute proceedings for review (in order to redress abstract harms) or a constitutional complaint (in order to redress concrete harms), pursuant to the rules of the Croatian Constitutional Act on the Constitutional Court of the Republic of Croatia (“Constitutional Act”).²³

If a decision by the State directly violates a child’s “human rights or fundamental freedoms guaranteed by the Constitution,” the correct procedure is to file a constitutional complaint.²⁴ The party alleging a constitutional violation must lodge a constitutional complaint within thirty days of receiving the disputed decision,²⁵ but all other legal remedies must be exhausted first.²⁶ The complaint must include: (1) the names of the complainant and his representative (if any); (2) the title of the disputed decision; (3) the title of the constitutional right allegedly violated and which constitutional provision by which it is protected; (4) evidence that all other legal remedies are exhausted; and (5) the complainant’s signature.²⁷ The Court’s consideration of a Constitutional complaint does not *per se* suspend the application of the disputed decision, but, upon the complainant’s request, the decision may be suspended if it would otherwise cause the complainant irreparable harm and the suspension is not contrary to the public interest.²⁸

If a child has not yet suffered a violation of his constitutional rights (even if he will never personally suffer one), but believes the law at issue violates the Constitution, then the correct procedure would be to submit a proposal to institute proceedings for review.²⁹ A proposal to institute proceedings for review must include: (1) the law at issue; (2) the provisions of the Constitution allegedly violated; (3) an explanation of the alleged violation; and (4) the applicant’s signature.³⁰ Based on that submission, the Constitutional Court must decide whether to institute proceedings within one year.³¹ While deciding whether a constitutional violation exists, the Court may suspend any application of the law at issue to prevent “grave and irreparable consequences.”³²

It is also possible to challenge administrative acts and decisions before the specialised administrative courts with an appeal to the High Administrative Court.³³ Anyone,

²¹ *Id.* art. 17.

²² *Id.* art. 35.

²³ Constitutional Act 2002, art. 38 (“Every individual or legal person has the right to propose the institution of proceedings to review the constitutionality of the law and the legality and constitutionality of other regulations.”).

²⁴ *Id.* art. 62.

²⁵ *Id.* art. 64.

²⁶ *Id.* art. 62.

²⁷ *Id.* art. 65.

²⁸ *Id.* art. 67.

²⁹ *See id.* art. 38; <http://www.confcoconsteu.org/reports/rep-xii/Kroatie-EN.pdf>.

³⁰ *Id.* arts. 39-40.

³¹ *Id.* art. 40.

³² *Id.* art. 45.

³³ *See* http://www.juradmin.eu/en/eurtour/eurtour_en.lasso?page=detail&countryid=29.

including a person with limited legal capacity and a group of persons, can complain of a violation of their rights or legal interests by an act or a failure to adopt a decision by a body of administrative law.³⁴

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

Civil courts have the power to award money damages or issue injunctions, while criminal courts have the power to impose a criminal sentence. The Constitutional Court may declare unconstitutional and repeal laws and regulations.³⁵ The administrative courts may nullify decisions of local authorities and award compensation.³⁶

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?

Civil and criminal proceedings require at least one injured child.³⁷ Civil proceedings are instituted by complaints,³⁸ which must contain information about the injured party's claim.³⁹ These complaints must include the names of all injured parties.⁴⁰

Likewise, criminal proceedings instituted by private charge require an "injured person."⁴¹ However, the Criminal Procedure Act does not expressly state whether a victim must be identified by name.

In contrast, the Constitutional Court may hear abstract challenges from any individual or legal person by a proposal to institute proceedings for review, even if that person has not or will never personally suffer a constitutional violation of his rights.⁴²

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

Civil proceedings may be jointly instituted by multiple claimants,⁴³ who must be named.⁴⁴

In the criminal context, when several persons are injured by the same criminal offense, the "prosecution shall be instituted or continued upon the motion or private charge [of]

³⁴ Law on Administrative Disputes 2010, art. 17 available at: <http://www.legislationline.org/documents/action/popup/id/16466>.

³⁵ *Id.* art. 55.

³⁶ Law on Administrative Disputes 2010, arts. 58-59.

³⁷ *See* Civil Procedure Act 2003, arts. 185-186;

³⁸ Civil Procedure Act 2003, art. 185.

³⁹ *Id.* art. 186.

⁴⁰ *Id.* art. 106

⁴¹ *See generally* Criminal Procedure Act 2009, arts. 2, 197 and Chapter V.

⁴² *See id.* art. 38; <http://www.confcoconsteu.org/reports/rep-xii/Kroatie-EN.pdf>.

⁴³ *See* Civil Procedure Act 2003, arts. 147, 313.

⁴⁴ *See id.* art. 106 ("Submissions shall be comprehensible and shall contain everything which is necessary for them to be proceeded upon. In particular, they shall specify: the name of court, the name, occupation and permanent or temporary residence of the parties, their legal representatives and agents, if any, the subject matter of dispute, the contents of the statement and the submitter's signature.").

each injured person.”⁴⁵ But, as above, the Criminal Procedure Act does not expressly state whether a victim must be identified by name.

It is unclear whether collective action or group litigation is available in the Constitutional Court. A proposal to institute proceedings for review must include the signature and seal of the presenter,⁴⁶ but the Constitutional Act does not expressly state whether a single proposal may be presented by more than one presenter. Likewise, a constitutional complaint must include the name of citizen alleging a constitutional violation of his rights,⁴⁷ but the Constitutional Act does not expressly state whether a single complaint may be filed by more than one citizen. As above, in a proposal to institute proceedings for review, the presenter must be named, but individual victims need not be named; in a constitutional complaint, both the presenter and individual victims must be named.

E. Are non-governmental organizations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

In the civil context, “[e]very physical and legal person may be a party in the proceedings.”⁴⁸ Thus, a non-governmental organization (“NGO”) could be a party as a “legal person.”⁴⁹ An NGO also could likely serve as a child’s legal representative if that child lacked full disposing capacity.⁵⁰

An NGO may also seek to intervene in an existing civil matter if it “has a legal interest that one of the parties succeeds.”⁵¹ To intervene, an NGO must give a statement regarding its interest in entering the litigation, either at a hearing or by written submission.⁵² An NGO may intervene at any time, “right up to the legal effectiveness of the decision.”⁵³ Both parties have a right to know the contents of the NGO’s statement of interest⁵⁴ and “may contest [its] right to participate in the proceedings and propose that [it] be rejected.”⁵⁵ Likewise, the court may independently reject the intervention, if “it establishes that the [NGO] has no legal interest.”⁵⁶ An NGO may participate as an intervenor until the court expressly rejects its intervention.⁵⁷ After a rejection, no appeal is available.⁵⁸

If admitted as an intervenor, an NGO “is authorized to present motions and take all other procedural actions within the time limits within which the party [it] . . . joined [is]

⁴⁵ Criminal Procedure Act 2009, art. 50.

⁴⁶ Constitutional Act 2002, art. 39.

⁴⁷ *Id.* art. 65(1).

⁴⁸ Civil Procedure Act 2003, art. 77.

⁴⁹ The Civil Procedure Act treats individuals as “physical persons” and corporate-type entities as “legal persons.” *See id.* at art. 101 (“With the death of a physical person, or the termination of a legal person, the power of attorney which he/she issued is also terminated.”). *See also id.* art. 80 (permitting the appointment of legal representatives).

⁵⁰ *Id.* art. 80.

⁵¹ *Id.* art. 206.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *See id.*

⁵⁵ *Id.* art. 207.

⁵⁶ *Id.*

⁵⁷ *See id.*

⁵⁸ *Id.*

able to take the same action.”⁵⁹ Further, its procedural actions “have legal effect for the party [it] . . . joined.”⁶⁰

Alternatively, as discussed above, an NGO could propose to institute proceedings for review in the Constitutional Court, even without identifying a specific child victim.⁶¹ The Constitutional Act does not address whether an NGO may intervene in a constitutional case.

The Criminal Procedure Act does not address whether an NGO may file private charges based on children’s rights violations or whether an NGO may intervene in criminal cases.

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?

Croatia has a three-tiered, independent judicial system governed by the Constitution and national legislation enacted by the Sabor (Croatian Parliament).⁶² The Supreme Court is the highest court of appeal in Croatia; it has civil and criminal departments.⁶³ Croatia’s lower courts are the municipal and county courts.⁶⁴

Civil and criminal cases are usually filed in municipal courts.⁶⁵ The county courts generally hear appeals.⁶⁶ However, the county courts may hear a case in the first instance if it involves a criminal punishment of more than ten years or if certain special regulations apply.⁶⁷

If a lower court believes a law to be unconstitutional, the court has a duty to stop its proceedings and submit a request for review to the Constitutional Court.⁶⁸ In turn, the Constitutional Court must inform the Supreme Court when requests for review are submitted by lower courts.⁶⁹

As discussed above, the Constitutional Court also hears proposals to institute proceedings for review and constitutional complaints. The Constitutional Act provides extensive guidance on how to initiate Constitutional proceedings.⁷⁰

Depending on their age, children accused of committing criminal offenses will either be charged in juvenile or criminal court. “Minors” (children who committed an offense

⁵⁹ *Id.* art. 208.

⁶⁰ *Id.*

⁶¹ Constitutional Act 2002, art. 38.

⁶² See <http://www.nyulawglobal.org/globalex/Croatia1.htm#CourtsOfGeneralJurisdiction>.

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ <http://www.nyulawglobal.org/globalex/Croatia1.htm#CourtsOfGeneralJurisdiction>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Constitutional Act 2002, art. 37.

⁶⁹ *Id.*

⁷⁰ *Id.* arts. 17-34.

between the ages of 14 and 18) are charged in juvenile court,⁷¹ while “young adults” (persons who committed a crime between the ages of 18 and 21) are charged in municipal or county courts.⁷²

In addition, adult perpetrators accused of committing crimes against children, such as rape, neglect, and abuse, are tried by juvenile panels and judges.⁷³ Such proceedings are administered in accordance with the Criminal Procedure Act.⁷⁴

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 above, child complainants and/or their representatives may qualify for free or subsidized legal assistance to bring civil proceedings, depending on their financial status.⁷⁵

Approval of legal aid depends, in part, upon an applicant’s financial status.⁷⁶ The approval process requires an applicant to submit an application to the office of state administration⁷⁷ in the county or city of the applicant’s permanent or temporary residency,⁷⁸ along with a written statement detailing and giving permission to inspect the applicant’s household assets.⁷⁹

The FLAA provides for both primary and secondary legal aid.⁸⁰ Primary legal aid includes: general legal information; legal assistance in drawing up documents before administrative bodies and legal entities vested with public authority; representation in administrative matters; legal aid in peaceful out-of-court settlement disputes; and representation before the European Court of Human Rights and international organizations, if in accordance with international agreements and regulations on the work of those bodies.⁸¹ Secondary legal aid includes: representation before courts and in peaceful settlement of disputes before a court, along with the drafting of documents in court proceedings.⁸² Both forms of legal aid include exemption from payment of taxes and costs of court proceedings.⁸³

⁷¹ Juvenile Courts Act 1997*, arts. 2, 34, *available at* http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Juvenile-Courts-Act.pdf. *The Juvenile Courts Act was amended in 1998 and 2002, but those amendments are not accessible online.

⁷² *Id.* arts. 2, 111.

⁷³ *Id.* art. 117.

⁷⁴ *Id.* art. 118.

⁷⁵ <http://www.mprh.hr/Default.aspx?sec=470>.

⁷⁶ *See* <http://www.mprh.hr/beneficiaries-of-free-legal-aid>. As a general rule, legal aid is provided to applicants if the costs of the court procedure jeopardize the maintenance of the applicant and his household.

⁷⁷ Free Legal Aid Act 2009, art. 15.

⁷⁸ *Id.* art. 3.

⁷⁹ *Id.* art. 16.

⁸⁰ *Id.* art. 4; <http://www.mprh.hr/forms-of-legal-aid>.

⁸¹ Free Legal Aid Act 2009, art. 4; <http://www.mprh.hr/forms-of-legal-aid>.

⁸² Free Legal Aid Act 2009, art. 4; <http://www.mprh.hr/forms-of-legal-aid>.

⁸³ Free Legal Aid Act 2009, art. 4; <http://www.mprh.hr/forms-of-legal-aid>.

Primary legal aid may be provided in procedures relating to: (1) the status of citizens; (2) protection of workers' rights; (3) the determination of rights and obligations from pensions and/or health insurance; (4) the determination of rights and obligations from the social care system; and (5) exceptionally, in all other administrative procedures when need arises from specific life circumstances of the applicant and members of his household, in accordance with the basic objective and purpose of the FLAA.⁸⁴

Secondary legal aid may be provided in procedures relating to: (1) property rights; (2) labor relations; (3) family relations; (4) peaceful settlements; (5) some enforcement procedures; and (6) exceptionally, in all other administrative procedures when need arises from specific life circumstances of the applicant and members of his household, in accordance with the basic objective and purpose of the FLAA.⁸⁵

Moreover, the court may approve legal aid for reasons of fairness, in *any judicial procedure*, upon the request of a party, who does not fulfill the above criteria.⁸⁶

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?

The FLAA provides for complete or partial legal aid,⁸⁷ with funds provided from the state budget and donations.⁸⁸ A number of legal associations and clinics are authorized to give free legal aid under the FLAA.⁸⁹ Several legal organisations tailor their services to assist refugees, specifically.⁹⁰

In addition, the Croatian "Attorneys' Code of Ethics" requires attorneys to "accept representation of deprived persons and victims of the war for the homeland in civil and criminal cases when assigned by an authorized body of the [Bar] Association."⁹¹ Attorneys may also voluntarily choose to provide free legal services.⁹² Nonetheless, attorneys are permitted to accept a fee for voluntary services, so long as the representation "will not lose its social and humane character."⁹³

Contingency fee arrangements are only available in property law cases.⁹⁴

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?

⁸⁴ <http://www.mprh.hr/forms-of-legal-aid>.

⁸⁵ <http://www.mprh.hr/forms-of-legal-aid>.

⁸⁶ <http://www.mprh.hr/forms-of-legal-aid> (emphases added).

⁸⁷ Free Legal Aid 2009, art. 6.

⁸⁸ *Id.* art. 53.

⁸⁹ See <http://www.mprh.hr/authorized-associations-and-legal-clinics>.

⁹⁰ See <http://www.refugeelegalaidinformation.org/croatia-pro-bono-directory>.

⁹¹ Attorneys' Code of Ethics 1999, ¶ 36, *available at*

http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/The_Attorneysdoc1_121_1251980891.pdf.

⁹² *Id.* ¶ 38.

⁹³ *Id.* A representation's social and human character is never lost when an attorney accepts a fee equal to the amount recovered by virtue of the attorney's representation. See *id.*

⁹⁴ Croatian Bar Association: Attorney Fee Schedule and Cost Compensation 2009, tit. 39, ¶ 3, *available at* <http://www.hok-cba.hr/default.aspx?sec=93>

For civil proceedings, the time limit for bringing cases depends on the type of claim brought.⁹⁵ If no time limit is fixed by law, then the court shall set a time limit while considering the circumstances of the case.⁹⁶

For criminal proceedings, the time limit for charging a defendant depends on the crime's statute of limitations as set by the Criminal Code.⁹⁷ The Criminal Code defines the statute of limitations as follows:

- 30 years in the case of a criminal offense for which a punishment of life imprisonment is prescribed;
- 20 years in the case of a criminal offense for which a punishment of more than 10 years of imprisonment is prescribed;
- 15 years in the case of a criminal offense for which a punishment of more than five years of imprisonment is prescribed;
- 10 years in the case of a criminal offense for which a punishment of more than three years of imprisonment is prescribed;
- five years in the case of a criminal offense for which a punishment of more than one year of imprisonment is prescribed;
- three years in the case of other criminal offenses.⁹⁸

For constitutional proceedings, as above, a constitutional complaint must be submitted within thirty days of receiving the disputed decision.⁹⁹ The Constitutional Act does not specify a time limit to submit requests or proposals to institute proceedings for review.

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?

Under the Civil Procedure Act, “[e]vidence comprises all facts of importance for rendering a decision” and the court “decide[s] which of the evidence shall be presented to establish the decisive facts.”¹⁰⁰ In a civil case, admissible evidence includes inspections,¹⁰¹ qualifying documents,¹⁰² and testimony by lay¹⁰³ and expert¹⁰⁴ witnesses.

The Criminal Procedure Act discusses several types of evidence, including fingerprints,¹⁰⁵ testimony by lay and expert witnesses,¹⁰⁶ and data from the criminal register.¹⁰⁷

⁹⁵ See Civil Procedure Act 2003, art. 111.

⁹⁶ *Id.*

⁹⁷ Criminal Code 2003, art. 18.

⁹⁸ *Id.* art. 19.

⁹⁹ Constitutional Act 2002, art. 64.

¹⁰⁰ Civil Procedure Act 2003, art. 220.

¹⁰¹ See *id.* art. 227.

¹⁰² See *id.* art. 230.

¹⁰³ See *id.* art. 235.

¹⁰⁴ See *id.* art. 251.

¹⁰⁵ See Criminal Procedure Act 2009, art. 307.

The Criminal Procedure Act also provides special protections for child witnesses under 16 years of age,¹⁰⁸ including that a child witness must be treated “with consideration for his age, personality and other circumstances, in order to avoid possible harmful consequences to the future education and development of the child”.¹⁰⁹

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

In civil and criminal courts, no express timeframe exists, but Croatia is undertaking an effort to increase the efficiency of its judicial system.¹¹⁰ Under the Constitutional Act, the Constitutional Court must render a final decision within one year.¹¹¹

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

As discussed above, municipal court decisions may be appealed to county courts, and county court decisions may be appealed to the Supreme Court.¹¹² Every Croatian citizen and legal entity has the constitutional right to an appeal.¹¹³

As discussed above, cases may only reach the Constitutional Court by one of three procedures: (1) a request for review; (2) a proposal to institute proceedings for review, or; (3) the filing of a constitutional complaint—never via an “appeal.”

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?

Croatia employs a civil law system; its core principles are codified.¹¹⁴ Thus, most court decisions have little precedential impact.

Constitutional Court decisions, however, do have precedential effect under the Croatian Constitution.¹¹⁵ All other courts and government bodies must adhere to the Constitutional Court’s decisions.¹¹⁶

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

The Civil Procedure Act does not specify the procedure for enforcement of judgments, but acknowledges the existence of enforcement proceedings.¹¹⁷ On the other hand, the Criminal Procedure Act expressly addresses the procedure for enforcement of

¹⁰⁶ See *id.* art. 423.

¹⁰⁷ See *id.* art. 418.

¹⁰⁸ See *id.* art. 292.

¹⁰⁹ *Id.* art. 44.

¹¹⁰ See <http://wbi.worldbank.org/sske/story/enhancing-efficiency-and-transparency-croatias-judiciary>.

¹¹¹ Constitutional Act 2002, art. 33.

¹¹² <http://www.vsrh.hr/EasyWeb.asp?pcpid=282>.

¹¹³ Croatian Constitution, art. 18.

¹¹⁴ See <http://www.vsrh.hr/EasyWeb.asp?pcpid=286>.

¹¹⁵ <http://www.nyulawglobal.org/globalex/Croatia1.htm#ConstitutionalCourtOfCroatia>.

¹¹⁶ *Id.*

¹¹⁷ See Civil Procedure Act 2003, art. 63.

judgments.¹¹⁸

If the Constitutional Court finds a regulation to be unconstitutional, the regulation is repealed or amended to comply with the Constitution.¹¹⁹ The Constitutional Act ensures that the Court's decisions are executed by the government and binding on every physical and legal person.¹²⁰

- 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.

In 2003, Croatia established the Office of the Ombudsman for Children to monitor and promote the rights of children as they are stated in the Constitution, domestic laws, and international treaties, specifically including the CRC.¹²¹ Although the Ombudsman for Children has no such explicit power, the Ombudsman in Croatia, who also has mandate over child rights issues, can file requests to initiate proceeding for review of conformity of laws with the Constitution.¹²²

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

¹¹⁸ Criminal Procedure Act 2009, arts. 178-182.

¹¹⁹ <http://www.nyulawglobal.org/globalex/Croatia1.htm#ConstitutionalCourtOfCroatia>.

¹²⁰ Constitutional Act 2002, art. 31.

¹²¹ <http://www.dijete.hr/en.html>.

¹²² Ombudsman's Act 2012, art. 6(2) available at:

<http://www.ombudsman.hr/index.php/en/documents-3/legislation/finish/16-legislation/41-the-people-s-ombudsman-act>.