

ACCESS TO JUSTICE FOR CHILDREN: IRELAND

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

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

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

Ireland signed the CRC on 30 September 1990, and subsequently ratified it on 21 September 1992 without any reservations.¹ Ireland has also ratified the Optional Protocols to the CRC on the involvement of children in armed conflict² and on a communications procedure.³ Ratified international conventions do not automatically have the force of law under Ireland's dualist legal system; they must be incorporated into domestic laws through implementing legislation in order for them to take effect.

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law, although national laws (such as the Child Care Act 1991) are occasionally interpreted in a manner consistent with the CRC where possible.⁴

C. Has the CRC been incorporated into national law?

Ireland has not incorporated the CRC into domestic law.⁵

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

The CRC cannot be directly enforced in Irish courts as the CRC has not been incorporated into domestic law, however it is sometimes used as a source of interpretive guidance in judicial decision-making.

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

The CRC has been cited in court decisions by Irish courts. The Supreme Court of

¹ For further information, see Children's Rights Alliance, 'The United Nations Convention on the Rights of the Child', available at: <http://www.childrensrights.ie/childrens-rights-ireland/un-convention-rights-child>.

² UN Treaty Collection, 'Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict', available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

³ UN Treaty Collection, 'Optional Protocol to the Convention on the Rights of the Child on a communications procedure', available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en.

⁴ *D v. Refugee Appeals Tribunal*, High Court of Ireland (2011). For further information, see CRIN, 'Ireland: national laws', available at: <http://www.crin.org/resources/infodetail.asp?ID=27957>.

⁵ Children's Rights Alliance, 'From rhetoric to rights: second shadow report to the UN Committee on the Rights of the Child', 2006, available at: http://www.childrensrights.ie/sites/default/files/submissions_reports/files/ShadowRepRhetorictoRights2006_0.pdf.

Ireland and the High Court of Ireland have discussed and referred to the CRC in cases concerning children's rights to education,⁶ adoption,⁷ and the immigration status of a foreign mother with a child.⁸

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?

Under the Rules of the Superior Courts, Rules of Circuit Courts, and Rules of the District Courts, children are permitted to bring civil cases in Irish courts with certain limitations.⁹ Judicial review proceedings may be brought on behalf of a child if it can be shown that the child has "sufficient interest" in the case (see part III.C below).¹⁰ In criminal actions, the child victim (or his or her representative) will not be party to the actual proceedings, as crimes are prosecuted by the State in Ireland.¹¹

Children can make complaints relating to government-funded organisations and services directly to the Ombudsman for Children.¹² The role of the Ombudsman for Children is to promote the rights and welfare of children in Ireland, and it has authority to carry out its own examination and investigation of complaints from children, young people or adults on their behalf.¹³

Concerns regarding child protection/welfare issues should be referred to the HSE Children and Family Social Work Services,¹⁴ and/or *An Garda Síochána* (Ireland's National Police Service).¹⁵

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 the Circuit and District Rules and Rules of the Superior Courts, children are required to have a "next friend" to conduct civil or judicial review proceedings on their behalf.¹⁶ In addition, when proceedings have been brought on behalf of or against an

⁶ *D. [a minor] v. Refugee Appeals Tribunal & anor.*, available at: <http://www.refworld.org/docid/4f2825ef2.html>.

⁷ *N. & anor. v. Health Service Executive & ors.*, summary available at: <http://www.crin.org/Law/instrument.asp?InstID=1598>.

⁸ *C.A. and S.O.A. v. The Minister for Justice, Equality and Law Reform, The Attorney General and Ireland, High Court of Ireland*, summary available at: <http://www.crin.org/Law/instrument.asp?InstID=1569>.

⁹ See Court Rules, available at:

<http://www.courts.ie/rules.nsf/webpages/bb9a582b582f736880256d2b003f6633?OpenDocument&l=en&p=042>.

¹⁰ Rules of the Superior Courts, Order 84, rule 20(4).

¹¹ See The Courts Service of Ireland, 'About the courts', available at:

<http://www.courts.ie/Courts.ie/library3.nsf/pagecurrent/10646F81427562D480256DA9004139B7?opendocument>.

¹² CRIN, 'Ombudsman for Children - Ireland', available at:

<http://www.crin.org/organisations/viewOrg.asp?ID=3072>.

¹³ For further information on how children may make a complaint, see Ombudsman for Children, 'Complaints from children and young people', available at: <http://www.oco.ie/complaints/complaints-from-children-and-young-people/>.

¹⁴ <http://www.hse.ie/eng/services/list/4/ChildrenandFamilyServices/childrenfirst/childrenfirst.html>.

¹⁵ <http://www.garda.ie/Controller.aspx?Page=3430&Lang=1>.

¹⁶ This is the term used in Ireland for a person who voluntarily helps a minor or an incompetent in legal

infant, the court is able to appoint a next friend or guardian *ad litem* to act for or on behalf of such infant, and may change any next friend or guardian *ad litem* as it sees fit.¹⁷ Written authority, signed by the next friend, for the commencement and prosecution of the suit on behalf of the infant and the use of the name of such person as next friend must be lodged with the Civil Bill prior to commencement.¹⁸

Should the child attain full age during the proceedings, it is possible for the next friend or guardian to apply for a certificate to enable the “plaintiff or defendant lately an infant” to proceed in his or her own name.¹⁹

In addition, under the Child Care Act 1991, the court may, when it deems necessary in the interests of the child and justice, order that the child be either joined as party to proceedings or have specified rights of a party in the proceedings as the court may direct. In such cases, the intervention of a next friend will not be necessary, and the court may appoint a solicitor to represent the child in the proceedings.²⁰

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

In cases involving infants and young children, lawsuits would typically be initiated by the child's parent or legal guardian on behalf of the child as a next friend as described above.

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

Legal aid is available to children in Ireland in certain situations. Legal aid can be available for any legal matter (although the process is very different for criminal matters),²¹ but is statistically more likely to be forthcoming for family law cases.²²

Legal aid for civil cases is usually assessed on an individual basis through a combined means (financial) and merits test. The financial test will be satisfied if a person's disposable income is less than the figure prescribed by the Minister for Justice. The merits test is likely to be more lenient in cases involving the welfare of children.²³ Civil legal aid and advice will generally not be free, and the claimant will be asked to make a

matters, particularly by filing a lawsuit, also known as ‘litigation friend’ or ‘tutor’ in other common law jurisdictions. See District Court Rules, Order 7.2; Circuit Court Rules, Order 6(6); and Higher Court Rules, Order 15, Part II, 16 and 18.

¹⁷ See Circuit Court Rules, Order 6, and Rules of the Superior Courts, Order 15.

¹⁸ See *Ibid.*, and District Court Rules, Order 7.

¹⁹ See Rules of the Superior Courts, Order 15, part II, rule 16, available at:

<http://www.courts.ie/rules.nsf/8652fb610b0b37a980256db700399507/f10c1841df0af07380256d2b0046b3d4?OpenDocument>.

²⁰ See Child Care Act, 1991, Part V, Order 25, available at:

<http://www.irishstatutebook.ie/1991/en/act/pub/0017/>.

²¹ For further information, see Law Society of Ireland, ‘Access to justice: a report of the legal aid taskforce’, 2012, available at: <http://www.lawsociety.ie/Documents/news/LegalAidTFreport.pdf>.

²² See the Legal Aid Board, ‘30th anniversary conference report: Access to justice and legal aid – learning from the past, looking to the future’, 15 September 2010: “The Chief Justice noted that the vast bulk of cases funded by civil legal aid remained in the family law area.” Available at:

[http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/5b231bb79c94bc66802577c3004c76d0/\\$FILE/Legal%20Aid%20Board%2030th%20Anniversary%20summary%20report.docx.pdf](http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/5b231bb79c94bc66802577c3004c76d0/$FILE/Legal%20Aid%20Board%2030th%20Anniversary%20summary%20report.docx.pdf).

²³ For further information, see Law Society of Ireland, ‘Civil Legal Aid in Ireland: Information for the Profession’, p. 8: “The merits test is significantly modified in cases involving the welfare of children”. Available at: <http://www.lawsociety.ie/Documents/pdfs/Civil%20Legal%20Aid%20Booklet.pdf>.

contribution. See part IV.B below for more information.

In criminal matters, the main legal aid available to an accused person is that provided under the Criminal Justice (Legal Aid) Act 1962. Criminal Legal Aid is usually completely free.²⁴ To qualify for criminal aid, a person must be charged with an offence and apply to the judge hearing the charge.²⁵ The judge will assess the person's financial means, the seriousness of the alleged offence, and whether the granting of legal aid would be in the interests of justice. Particular consideration will be given to cases where the person is "immature", lacks a formal education, or lacks the mental capacity to understand the process of the court case – all three of these factors are likely to be relevant to children in criminal cases.²⁶ See part IV.B below for more information.

A person charged with a criminal offence may also apply to the clerk or registrar of the court for information on the specific legal aid provisions available to them. Alternative assistance may also be available through the Garda Station Legal Advice Scheme,²⁷ or through the Custody Issues Scheme (formerly the Attorney General's Scheme),²⁸ both administered by the Legal Aid Board.

Legal aid for judicial review is very limited and not available generally.²⁹ Judicial review proceedings relating to refugee or asylum-seeking matters may be eligible for legal aid separately administered under the Refugee Legal Service.³⁰

The Council of Europe has a limited legal aid scheme for applicants without sufficient means to bring a case.³¹

In addition, the Irish Human Rights and Equality Commission (IHREC) operates a statutorily mandated scheme to grant legal advice and representation to those requesting assistance in legal proceedings involving law or practice related to the protection of human rights.³²

Under the Child Care Act 1991, if a solicitor is appointed by the court to the child where the child is a party to proceedings against Tusla (the Child and Family Agency), the cost and expenses incurred on behalf of a child exercising any rights of a party in any proceeding under this Act are to be paid by the Agency. Tusla is able to apply to the court to have the amount of these costs or expenses measured or taxed.³³

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

²⁴ Law Society of Ireland, 'Access to justice: a report of the legal aid taskforce', p. 2.

²⁵ Ibid., p. 4.

²⁶ For further information, see Citizens Information, 'Criminal legal aid', available at: http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/criminal_legal_aid.html.

²⁷ Legal Aid Board, 'Garda Station Legal Advice Scheme', available at: http://www.legalaidboard.ie/lab/publishing.nsf/content/Garda_Station_Legal_Advice_Scheme.

²⁸ Further information, see Citizens Information, 'Criminal legal aid', and Department of Justice and Equality, 'Criminal Assets Bureau (CAB) Ad-Hoc Legal Aid Scheme', available at: http://www.justice.ie/en/JELR/Pages/CAB_legal_aid.

²⁹ Comments provided by Prof. Ursula Kilkelly, Director of the Child Law Clinic, School of Law, University College Cork, Ireland, August 2015.

³⁰ For further information, see Legal Aid Board, 'Services for asylum seekers', available at: http://www.legalaidboard.ie/lab/publishing.nsf/Content/RLS_Services.

³¹ For further information, see European Court of Human Rights, available at: www.echr.coe.int.

³² Irish Human Rights and Equality Commission Act 2014, section 40, available at: <http://www.irishstatutebook.ie/eli/2014/act/25/section/1/enacted/en/print.html>.

³³ Child Care Act 1991, section 25(4).

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

There are no further conditions or limits.

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?

Legal proceedings to challenge violations of children's rights that amount to torts can be brought in civil courts, following the procedures outlined in the Circuit, District, and Superior Court rules. Civil actions typically request compensation in the form of money damages, but may also seek an injunction ordering a party to carry out or cease a particular action. Civil cases usually commence in the District Court, but claims for over a certain amount may commence in the Circuit Court or High Court (see part IV.A below).

Criminal matters which arise from violations of children's rights will usually be prosecuted through the State by the Director of Public Prosecutions (DPP).³⁴ If the DPP does not bring a criminal case against the suspect, the victim(s) may have the right to bring a private criminal prosecution,³⁵ however, these have been rare since the promulgation of the Criminal Justice Act 1999.³⁶ The DPP retains the power to take over such a private prosecution, or rule it out, at any time.³⁷

The High Court of Ireland has the power to conduct judicial review.³⁸ Judicial review may be brought to challenge the decisions of the *Oireachtas* (Ireland's National Parliament) and other administrative bodies, including the lower courts. Judicial review is concerned primarily with the decision-making process as opposed to the substance of the decision and generally parties seek a declaration or an injunction.³⁹

The European Convention on Human Rights Act 2003 gave further effect to the European Convention on Human Rights in Irish law. People in Ireland can, therefore, claim that organs of the state have not acted in a Convention compliant manner argue where laws are incompatible with the Convention. Irish courts are obliged to interpret Irish law insofar as is practicable in a manner compatible with the Convention.⁴⁰

Regional and international mechanisms

³⁴ For further information, see Director of Public Prosecutions, 'About us', 29 April 2014, available at: http://www.dppireland.ie/about_us/.

³⁵ For further information, see Phelan, S. and Giblin, R., 'Court clears way for people to sue individual bankers', *Independent*, 28 July 2013, available at: <http://www.independent.ie/irish-news/courts/court-clears-way-for-people-to-sue-individual-bankers-29453856.html>.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Procedure governing the traditional type of judicial review is found in Order 84 of the Rules of the Superior Courts 1986 to 2011.

³⁹ For further information on judicial review, see Citizens Information, 'Judicial review of public decisions', 12 December 2012, available at: http://www.citizensinformation.ie/en/government_in_ireland/national_government/standards_and_accountability/judicial_review_public_decisions.html.

⁴⁰ For further information, see IHRC, 'Section 3: Ireland and the European Convention on Human Rights (ECHR)', available at: <http://www.ihrc.ie/training/guides/echr/section3ireland.html>.

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.⁴¹ 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,⁴² but the complaint will be admissible only if all domestic remedies have been exhausted.⁴³ Anonymous complaints are not permitted.⁴⁴ 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.⁴⁵ After examining the case, the Court renders a judgment which is binding on the State⁴⁶ and also has powers to award monetary compensation to the victims of human rights abuses.⁴⁷ 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.

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,⁴⁸ which Ireland has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.⁴⁹ The violations must concern a right granted by either the CRC or the Optional Protocol on the involvement of children in armed conflict⁵⁰ and must have occurred after the entry into force of the Protocol on 24 December 2014.⁵¹

Anonymous complaints are inadmissible and so are complaints not made in writing.⁵² In addition, only complaints made in one of the working languages of the UN will be accepted.⁵³ After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.⁵⁴

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

⁴¹ 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>.

⁴² Ibid., Article 34.

⁴³ Ibid., Article 35.

⁴⁴ Ibid.

⁴⁵ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁴⁶ European Convention on Human Rights, Article 46.

⁴⁷ Ibid., Article 41.

⁴⁸ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en.

⁴⁹ Ibid., Article 5.

⁵⁰ Ibid.

⁵¹ Ibid., Article 7(g).

⁵² Ibid.

⁵³ Office of the United Nations High Commissioner for Human Rights, '23 FAQ about Treaty Body complaints procedures', available at:

<http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

⁵⁴ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

For civil matters, courts are able to award general remedies such as money damages⁵⁵ and may issue injunctions (which are only available if the court is not satisfied that damages would be an adequate remedy).⁵⁶ These are primarily only used against the state.⁵⁷

There are a number of possible criminal sentences in cases where violations of children's rights have taken place; the type of sentence available will depend on the type and severity of the crime committed. The judge will decide what sentence should be issued.⁵⁸

Judicial review in Ireland originates in the Constitution. Article 34 provides that "the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution."⁵⁹ This essentially gives the Irish courts considerable powers to interpret the Constitution.⁶⁰ In practice, the Court will employ one or more of the remedies detailed in Order 84 of the Superior Court Rules: issue a quashing order (setting aside or declaring the decision to be invalid), order a public body to fulfil a legal obligation, prohibit it from doing something it ought not to do, or restrain the body from doing something in an improper and/or unfair way. These remedies are discussed further in part IV.I below.

Where a rule of law or statutory provision is found to be incompatible with the European Convention on Human Rights, the Irish courts may issue a "declaration of incompatibility."⁶¹ In these circumstances, the law will remain the same until it is revised by the Irish Parliament.⁶² A civil remedy (usually damages) in Irish law may be available based on the incompatibility.⁶³

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 proceedings typically require the identification of individual child victims. One exception is when cases are filed by the IHREC. Such action will not require the disclosure of a specific victim as the case will be brought in the IHREC's own name (see part III.E below).

In general civil cases, as articulated by Article 34(1) of the Irish Constitution states, "justice shall be administered in courts... and save in such special and limited cases as

⁵⁵ Citizens Information, 'Negligence and compensation in a civil case', 8 April 2008, available at: http://www.citizensinformation.ie/en/justice/civil_law/negligence_and_compensation.html.

⁵⁶ See *Campus Oil Limited and Others v. Minister for Industry and Energy*, and Others [FN1] (Case 72/83).

⁵⁷ Comments provided by Prof. Ursula Kilkelly, Director of the Child Law Clinic, School of Law, University College Cork, Ireland, August 2015.

⁵⁸ Director of Public Prosecutions, 'Sentencing', 29 April 2014, available at: <http://www.dppireland.ie/brief-guide-to-the-criminal-justice-system/category/6>.

⁵⁹ Constitution of Ireland, Article 34.

⁶⁰ Cited in O Tuama, S., 'Judicial review under the Irish Constitution: More American than Commonwealth', *Electronic Journal of Comparative Law*, 2008, available at: http://cora.ucc.ie/bitstream/handle/10468/19/SOT_JudicialReviewIrishConst.pdf?sequence=3.

⁶¹ European Convention on Human Rights Act 2003, section 5(2), available at: <http://www.irishstatutebook.ie/2003/en/act/pub/0020/sec0005.html>.

⁶² Ibid.

⁶³ See EMN, 'European Convention on Human Rights Act 2003', available at: http://emn.ie/cat_search_detail.jsp?clog=4&itemID=40.

prescribed by law, shall be administered in public.”⁶⁴ Family law court proceedings fall into the category of “special and limited cases,”⁶⁵ so are usually held in private (*in camera*) to prevent disclosure of confidential and/or intimate details. As a large number of civil cases concerning children are family law cases, this has enabled Irish courts to preserve the anonymity of children in such proceedings.

Hearings may be held in private where the court considers it necessary to protect the anonymity and interests of any child. *In camera* restrictions will not “prohibit bona fide representatives of the press from attending proceedings” or from reporting on these cases,⁶⁶ though the report should not “contain any information which would enable the parties to the proceedings, or any child to which the proceedings relate, to be identified”.⁶⁷

Criminal cases will not name victims directly since the DPP will prosecute on behalf of the people of Ireland rather than on behalf of individuals. Victims do not, however, remain anonymous if required to give evidence. This is because the Constitution specifies that all cases should take place in public.⁶⁸ However, trials for cases where the accused is under the age of 18 can take place without the public being present. Journalists may be present but will generally not be permitted to report the names of the accused or the victim.⁶⁹ Extra provision may be made in some circumstances to allow the victim or accused to give evidence via video link (if under 17 years of age),⁷⁰ or to make statements via video recordings (if under 14 years).⁷¹

Judicial review proceedings in Ireland do not require the identification or involvement of individual child victims. Proceedings may be brought by parties with a “sufficient interest” in the case.⁷² This requirement has been interpreted liberally and allows representative challenges to the legality of administrative decisions by groups not directly affected by the decision in question.⁷³

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

⁶⁴ Constitution of Ireland, Article 34(1).

⁶⁵ See Supreme Court of Ireland, ‘Jurisdiction of the Court’, available at: <http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/pagecurrent/9034466B2045E5EC8025743200511625?opendocument&l=en>.

⁶⁶ Courts and Civil Law (Miscellaneous provisions Act) 2013, Part 2 (in particular section 5).

⁶⁷ *Ibid.*, section 5. This amends the Civil Liability and Courts Act 2004 Section 40 to insert the following subsection after subsection (3): “(3A)...(b) ...where, in proceedings under a relevant enactment, a court is satisfied that it is necessary to do so – (i) in order to preserve the anonymity of a party to the proceedings or any child to whom the proceedings relate... (iii) as ...is...necessary in the interests of justice, the court may, on its own motion, or on application to it by a party to the proceedings or by a person on behalf of a child to whom the proceedings relate, by order – (I) exclude, or otherwise restrict the attendance of, bona fide representatives of the Press from the court..., or, (II) prohibit or restrict the publication or broadcasting of any evidence given or referred to”. Paragraph (c) then provides that in determining whether or not to make an order under paragraph (b), the court should have regard to “the best interests of a child to whom the proceedings relate”.

⁶⁸ Constitution of Ireland, Article 34(1).

⁶⁹ Children Act 1997, section 252. For further information, see Director of Public Prosecutions, ‘Victims of crime’, 29 April 2014, available at: <http://www.dppireland.ie/brief-guide-to-the-criminal-justice-system/category/5>.

⁷⁰ Criminal Evidence Act 1992, section 13.

⁷¹ *Ibid.*, section 16. For further information, see Citizens Information, ‘Witnesses under 18 years’, available at: http://www.citizensinformation.ie/en/justice/witnesses/witnesses_under_17_years.html.

⁷² Superior Courts Rules, Order 84, rule 20(4).

⁷³ See, for instance, the case of *Open Door and Dublin Well Woman v. Ireland* (ECtHR), available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57789#{"itemid":\["001-57789"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57789#{).

individual victims?

Class actions are not possible under Irish law. However, the court rules do provide for representative proceedings and group litigation. Representative proceedings may be brought by one person on behalf of a group of people who have the “same interest in one action or matter.”⁷⁴ Group litigation is also possible where, “if such persons brought separate actions, any common question of law or fact would arise.”⁷⁵

Typically for group litigation at least one victim will have to be named, but this may not be required in cases (particularly family law cases) where minors are involved. Such cases “may be held in private to preserve the anonymity and the ‘best interests’ of the child,” as discussed in part III.C above.⁷⁶

The DPP prosecutes cases on behalf of the people of Ireland, rather than on behalf of individuals or particular groups, so the number of individuals affected by the crime or traumatic incident will not be a barrier to bringing a case.⁷⁷ The same issues regarding naming of victims as discussed in part III.C above will apply.⁷⁸

Group litigation is possible through judicial review, so long as the group as a whole can be found to have “sufficient interest”.⁷⁹ In such situations, generally at least one victim must be named, but others in the group can remain anonymous.⁸⁰ Alternatively, anonymity could be preserved if an independent non-governmental body applies for judicial review itself, on the applicant’s behalf. In these situations, the body would still need to have a “sufficient interest”.⁸¹ This is very difficult to prove and has been largely unsuccessful in cases involving the Irish Penal Reform Trust.⁸²

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

In civil cases court rules do not provide for non-governmental or other organisations (with the exception of the IHREC, see below) filing cases on behalf of children in situations where children’s rights have been violated. The circumstances in which a non-governmental organisation (NGO) can bring a case where there is no directly affected plaintiff are “somewhat unclear”.⁸³ The Irish Penal Reform Trust has called on the Irish Government to legislate to make it easier for NGOs with a genuine interest in

⁷⁴ Circuit Court Rules, Order 6, rule 10.

⁷⁵ Ibid., rule 1. See also Rules of the Superior Courts, Order 15.

⁷⁶ Courts and Civil Law (Miscellaneous Provisions) Act 2013, Section 5, which modifies Section 40 (3A) of the Civil Liability and Courts Act 2004.

⁷⁷ See Article 30.3 of the Constitution of Ireland, which states that “all crimes and offences prosecuted in any court constituted under Article 34 of this Constitution... shall be prosecuted in the name of the People.”

⁷⁸ Director of Public Prosecutions, ‘Victims of crime’.

⁷⁹ Rules of the Superior Courts, Order 84, rule 20(4).

⁸⁰ See Law Reform Commission, ‘Report on judicial review procedure’, 2004, p. 70, which demonstrates that group actions can be brought in one person’s name, with others effectively kept anonymous. Available at:

<http://www.lawreform.ie/fileupload/Reports/Report%20Judicial%20Review%20Procedure.pdf>

⁸¹ See discussion below at part III.E, and PILA, ‘FAQ – standing (locus standi)’, 23 February 2012, available at: <http://www.pila.ie/key-issues/faq-standing-locus-standi>.

⁸² Comments provided by Prof. Ursula Kilkelly, Director of the Child Law Clinic, School of Law, University College Cork, Ireland, August 2015.

⁸³ See IPRT, ‘IPRT briefing: the rule of law and prisons: barriers to accessing justice’, June 2012, available at: http://www.iprt.ie/files/The_Rule_of_Law_and_Prisons_-_Barriers_to_accessing_justice.pdf.

particular areas to become involved in litigation on behalf of others.⁸⁴

NGOs may bring judicial review proceedings in their own name where they have a “sufficient interest” (see part III.C above). The judicial review should concern a live issue which affects an individual. The court will need to be persuaded as to why an NGO - and not the individual affected - is bringing the case.⁸⁵ The court will also need to be satisfied that the NGO has a genuine and good-faith interest in the matter and either: (1) the individual affected by the issue was not in a position to adequately assert the claim;⁸⁶ and/or (2) the issue affected the public as a whole and yet it was unlikely that anyone else would be in a position to bring the claim.⁸⁷

An NGO may seek to intervene in existing civil matters as *amicus curiae*. However, unlike other common law jurisdictions such as England, Ireland does not have statutory provisions or rules of court providing for the appointment of *amicus curiae*, except as discussed below.⁸⁸ Despite this, there have been instances where NGOs have appeared as *amicus curiae* in court proceedings in Ireland. It seems that the court must be satisfied the body applying to be *amicus curiae* has a *bona fide* interest in the matter, in which case the court has inherent jurisdiction in allowing intervention where the applicant might be of assistance in the matter.⁸⁹ It appears that NGOs may be permitted to intervene in criminal matters where they have a strong interest, but this will be at the discretion of the court.

The IHREC is empowered to institute proceedings in its own name “for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights of any person or class of persons.”⁹⁰ It can also appear as *amicus curiae* in proceedings that concern the human rights of any person before the High Court or Supreme Court.⁹¹

Ireland has ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints⁹², meaning that complaints of violations of children’s rights contained in the European Social Charter⁹³ can be made to the European Committee of Social Rights. Such complaints of unsatisfactory application of

⁸⁴ Ibid.

⁸⁵ See also PILA.

⁸⁶ *The Society for the Protection of Unborn Children (Ireland) Limited v. Diarmuid Coogan & Ors, Defendants* [1988] IR 734, available at: <http://www.pila.ie/key-issues/the-society-for-the-protection-of-unborn-children-ireland-limited-v-diarmuid-coogan-ors-defendants-1988-ir-734/>; *Irish Penal Reform Trust Limited & Ors v. the Governor of Mountjoy Prison & Ors* [2005] IEHC 305, available at: <http://www.pila.ie/key-issues/irish-penal-reform-trust-limited-ors-v-the-governor-of-mountjoy-prison-ors-2005-iehc-305/>.

⁸⁷ *Digital Rights Ireland v. Minister for Communication, Marine and Natural Resource & Ors* [2010] IEHC 221, available at: <http://www.pila.ie/key-issues/digital-rights-ireland-ltd-v-minister-for-communication-ors-2010-iehc-221/>.

⁸⁸ For further information on *amicus curiae* in Irish law, see Barry, E., ‘Amicus curiae: the experience of a statutory body’, 30 April 2007, available at: http://www.flac.ie/download/pdf/pil15_ebarry_amicus_curiae_sem2_30apr07.pdf.

⁸⁹ In *Doherty and others v. South Dublin County Council*, the intervention of the Equality Authority was opposed by the respondents on the grounds that the Authority had not been given explicit power to appear as an *amicus*. The judge, however, held that he was satisfied that the Authority had a *bona fide* interest in the matter, stating that the court had inherent jurisdiction in allowing intervention where the applicant might be of assistance in a matter.

⁹⁰ Irish Human Rights and Equality Commission Act 2014, section 41.

⁹¹ Ibid., section 10(2)(e).

⁹² Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

⁹³ Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

the Charter may only be submitted by international NGOs that have participatory status with the Council of Europe.⁹⁴ The Committee reviews the information provided by both sides and writes a report with its conclusions, which is sent to the Committee of Ministers of the Council of Europe that adopts a resolution and makes a recommendation to the State.⁹⁵ The State then must provide information about the steps taken to comply with the recommendation in its next report under the Charter.⁹⁶

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?

Civil claims of limited and local jurisdiction up to €15,000 must be brought in the District Court.⁹⁷ The Circuit Court has limited local jurisdiction on a regional basis, dealing with civil claims up to €70,000; for personal injury actions, the limit is €60,000.⁹⁸ The High Court has full organisational jurisdiction and power to determine all matters. This means that there is no limit or restriction either as to where proceedings should be commenced or how much money can be awarded by the High Court in compensation or damages. The High Court is the appropriate court to hear cases involving claims for damages in excess of €70,000 (or for personal injury actions, in excess of €60,000).⁹⁹

Individuals may initiate private criminal prosecutions in the District Court.¹⁰⁰ The vast majority of criminal cases, however, are prosecuted by the State, through the DPP (for more serious cases) or the Garda (police force).¹⁰¹ Children (under-18s) charged with minor criminal offences are tried in a special Children's Court.¹⁰² Other offences can be referred or prosecuted in the Circuit Criminal Court, and murder, manslaughter and sexual assault must be tried in the Central Criminal Court.¹⁰³

⁹⁴ Additional Protocol for a System of Collective Complaints, Article 1. See also:

http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

⁹⁵ Additional Protocol for a System of Collective Complaints, Articles 8-9.

⁹⁶ Additional Protocol for a System of Collective Complaints, Article 10.

⁹⁷ Under Part 3 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 the monetary jurisdiction of the District Court increased to €15,000 (from €6,348.69) with effect from 3 February 2014. See Citizens Information, 'District Court', available at:

http://www.citizensinformation.ie/en/justice/courts_system/district_court.html.

⁹⁸ Under Part 3 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 the monetary jurisdiction of the Circuit Court increased to €75,000 (from €38,092.14) with effect from 3 February 2014. See Citizens Information, 'Circuit Court', available at:

http://www.citizensinformation.ie/en/justice/courts_system/circuit_court.html.

⁹⁹ Citizens Information, 'High Court', available at:

http://www.citizensinformation.ie/en/justice/courts_system/high_court.html.

¹⁰⁰ Petty Sessions Act 1851, section 10, available at:

<http://www.irishstatutebook.ie/1851/en/act/pub/0093/sec0010.html>.

¹⁰¹ For further information, see Director of Public Prosecutions, 'The prosecution system in Ireland', available at:

http://www.dppireland.ie/filestore/documents/Chapter_2_The_Prosecution_System_in_Ireland.htm.

¹⁰² For further information, see Courts Service, 'Children Court', 5 January 2006, available at:

<http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/9EC8DE648821A12B80256D8700505159?opendocument&l=en>.

¹⁰³ Comments provided by Prof. Ursula Kilkelly, Director of the Child Law Clinic, School of Law, University College Cork, Ireland, August 2015.

Claims for judicial review are filed directly at the High Court.¹⁰⁴

Initial filing procedures are court-specific in Ireland, and are established in the respective court rules for each court.¹⁰⁵ Forms for use in the courts are set out in the appendices and schedules to the court rules.¹⁰⁶ Helpful guidance on filling out these forms can be found on the Courts Service website.¹⁰⁷

- 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?

Civil matters

The Legal Aid Board in Ireland provides eligible persons with legal services, including legal advice and legal aid (representation), in relation to civil law matters. To qualify, the Legal Aid Board's criteria must be met: i) the case must have merit, and ii) financial eligibility requirements must be satisfied.

In determining the merits of a case, the Board will take into account several factors, including: prospect of success, availability of other methods of dealing with the problem, (e.g. mediation), probable cost to the Board as measured against the likely benefit to the individual, and the wider benefit to the community.¹⁰⁸ The merits test is modified in cases involving the welfare of a child, including cases regarding custody and access.

The financial eligibility requirements involve a means test. All persons under 18 are regarded as dependants; therefore, in such circumstances, the parents', step-parents' or guardians' income is taken into account if the child is seeking legal aid.¹⁰⁹ The applicant's annual disposable income must be less than €18,000, and capital resources (other than possession of a home) are also taken into account. If the value of those resources exceeds €100,000, it will not be possible to qualify for legal services from the Board.¹¹⁰

Should a person qualify for legal aid and/or advice, he or she will be placed on a waiting list at the Law Centre where the application was made. Waiting lists vary, but the Legal Aid Board designates a period of between two and four months as acceptable;

¹⁰⁴ Rules of the Superior Courts, Order 84, rule 20(2).

¹⁰⁵ District Court Rules, Order 39 (Commencement of proceedings); Circuit Court Rules, Order 5 (Commencement of proceedings); Rules of the Higher Courts, Order 1 (Commencement of proceedings).

¹⁰⁶ For the Supreme Court and High Court see Appendices to the Rules of the Superior Courts, available at: <http://www.courts.ie/rules.nsf/SuperiorApps?OpenView>; Forms for use in the Circuit Court are set out in the Rules; Forms for use in the District Court are set out in the Schedules to the District Court Rules, available at: <http://www.courts.ie/rules.nsf/DistrictApps?OpenView>.

¹⁰⁷ Courts Service, 'Help with court forms', available at:

<http://www.courts.ie/courts.ie/Library3.nsf/PageCurrentWebLookUpTopNav/Court%20Forms>.

¹⁰⁸ See Legal Aid Board, 'LAB FAQs', available at:

http://www.legalaidboard.ie/lab/Publishing.nsf/Content/LAB_FAQ_4.

¹⁰⁹ Citizens Information, 'Civil legal advice and legal aid', 20 September 2013, available at:

http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/civil_legal_advice_and_legal_aid.html

¹¹⁰ For further information, see Legal Aid Board, 'How do I qualify?', available at:

http://www.legalaidboard.ie/lab/Publishing.nsf/Content/How_do_I_qualify.

the actual waiting time can be considerably longer.¹¹¹ If the matter is viewed as urgent, the case can be treated as a priority and moved more quickly through the process. The general test for whether a matter is “urgent” is whether: (1) it is essential to issue the legal aid certificate in the interests of preserving the applicant’s rights, and (2) undue hardship would be caused to the applicant were the ordinary procedure to be followed. Cases given priority in the past have included child abduction (both into and out of Ireland), and childcare proceedings.

All applicants must make a contribution to the Legal Aid Board. The current contribution amounts are as follows:

- Disposable income under €11,500 – €30 for legal advice, and €130 for legal aid.
- Disposable income over €11,500 (but under €18,000) – for legal advice, 10% of the difference between the applicant’s disposable income and €11,500 (subject to a maximum of €150); for legal aid, 25% of the difference between the applicant’s disposable income and €11,500, plus €50.¹¹²

If the applicant has disposable capital of over €4,000, he or she will also be liable for a “capital contribution”, as follows:

- €4,001 to €54,000 - 2.5% of any amount over €4000 (maximum €1,250).
- €54,001 or more - €1,250, plus 5% of the amount over €54,000.¹¹³

If the person is unsuccessful in the case, despite having obtained legal aid, they will still be responsible for paying costs should an order for costs be made against them.

Criminal matters

There are no clear guidelines as to the circumstances in which legal aid will be granted to accused persons in criminal matters, as it will usually be on a subjective basis and decided by the judge in the particular case. The general rule is that the court will grant a legal aid certificate where the offence is a serious one and the person is unable to pay for his or her own legal advice.¹¹⁴ The judge will consider whether the person has sufficient means to pay for his or her own legal aid, and whether it is in the interest of justice that the person should have legal aid.¹¹⁵ In the case of a minor, the court will look to the means of the parents or guardian to assess whether they can afford to pay for the legal advice.¹¹⁶

If granted, the legal aid certificate will entitle the applicant to different services depending on the court. For the District Court, for instance, it entitles the solicitor assigned to the case to be paid for all of his or her appearances in the District Court. For sufficiently complex cases, the District Court legal aid certificate will entitle the defendant to both a solicitor and barrister at this stage.¹¹⁷

¹¹¹ For further information, see FLAC, ‘Civil legal aid guide’, available at:

<http://www.flac.ie/publications/civil-legal-aid-flacsheet/>.

¹¹² Legal Aid Board, ‘Cost of the service’, available at:

http://www.legalaidboard.ie/lab/publishing.nsf/Content/Cost_of_the_Service.

¹¹³ Ibid.

¹¹⁴ Citizens Information, ‘Criminal legal aid’.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Citizens Information, ‘Legal aid certificates’, available at:

http://www.citizensinformation.ie/en/justice/legal_aid_and_advice/legal_aid_certs.html. This site also contains further information on the types of aid the legal aid certificate will entitle defendants to in other courts.

Judicial review

Legal aid for judicial review will also be assessed by the Legal Aid Board on an individual basis. There are no set guidelines on the threshold figures taken into account in any means test.¹¹⁸

- 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 organisation, or under an agreement that does not require the payment of legal fees up front?

The Public Interest Law Alliance (PILA) Pro Bono Referral Scheme is currently the primary way that barristers and solicitors can engage in pro bono activities in Ireland. Under this scheme, PILA is the main point of contact for both the legal practitioner and the pro bono client; however, PILA only works with organisations, not with individuals directly. Individuals will need to liaise with an NGO through which they can gain indirect assistance from PILA.¹¹⁹ PILA matches pro bono requests with solicitors and barristers with relevant expertise.¹²⁰

PILA supports a wide range of NGOs which use the law to promote and protect children's rights, including Barnardos,¹²¹ the Children's Rights Alliance,¹²² EPIC (Empowering Young People in Care),¹²³ and the Irish Society for the Prevention of Cruelty to Children (ISPCC).¹²⁴ The Child Law Clinic at the School of Law at University College Cork also provides free legal research services to lawyers litigating children's rights issues and supports NGOs on legal issues.¹²⁵

Solicitors in Ireland cannot advertise conditional fee arrangements (e.g. "no win no fee"), but these arrangements are still common practice in some areas, particularly within the field of personal injuries.¹²⁶

The general rule is that "costs follow the event", so the losing party will be responsible for the winning party's costs, although there will be exceptions in certain cases.¹²⁷

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

¹¹⁸ For further information, see Legal Aid Board, 'Legal Aid - Custody Issues Scheme'.

¹¹⁹ See PILA, 'Criteria for working with PILA', available at: <http://www.pila.ie/key-issues/criteria-for-working-with-pila>.

¹²⁰ See Latham & Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', August 2012, available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

¹²¹ <http://www.barnardos.ie>.

¹²² <http://childrensrights.ie>.

¹²³ <http://www.epiconline.ie>.

¹²⁴ <https://www.ispcc.ie>; PILA, 'Children', available at: <http://www.pila.ie/key-issues/children>.

¹²⁵ Comments provided by Prof. Ursula Kilkelly, Director of the Child Law Clinic, School of Law, University College Cork, Ireland, August 2015.

¹²⁶ For further information, see Buckley, D., 'Fostering a culture of compensation', *Irish Examiner*, 10 August 2012, available at: <http://www.irishexaminer.com/analysis/fostering-a-culture-of-compensation-203629.html>.

¹²⁷ For further information, see European Justice, 'Cost of proceedings – Ireland', 24 October 2013, available at: https://e-justice.europa.eu/content_costs_of_proceedings-37-ie-en.do, and Citizens Information, 'Cost of the case', available at http://www.citizensinformation.ie/en/justice/civil_law/cost_of_the_case.html.

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

For civil claims or personal injury claims resulting from negligence, nuisance, or breach of duty, the time limit does not commence until the child reaches his or her 18th birthday, from which point he/she has two years in which to bring a claim.¹²⁸ There is no time limit in Ireland on indictable offences (offences to be tried by a judge and jury in the Circuit Court or the Central Criminal Court),¹²⁹ for example, allegations of historic sexual abuse;¹³⁰ this is the case even when an indictable offence is tried summarily.¹³¹ However, judges have discretion regarding excessively long delays, even in such cases.¹³² To determine whether there is an excessively long delay, the judge will assess whether the delay has reduced the chances of a fair trial for the defendant, for instance, if the delay may have affected the memory of the defendant, or if key witnesses are no longer available to give evidence.¹³³

An application for leave to apply for judicial review should be made within three months from the date on which the grounds for the application first arose.¹³⁴ If the relief sought is to quash a judgment or other proceeding, the date when the grounds for the application arose is taken to be the date of that judgment or proceeding. Extensions may be possible if the court is satisfied that there is good and sufficient reason for granting one, and that the circumstances for failing to apply within the three month period were outside the control of the applicant.¹³⁵

- 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?

Some of the types of evidence commonly admissible in both civil and criminal Irish courts include: “real evidence”¹³⁶ – material, tangible evidence such as an object, a tape recording, a computer printout or a photograph; “documentary evidence”¹³⁷ – a “document” is anything with writing on it, including paper, stone, a map, a plan, a

¹²⁸ For further information, see Injury Compensation Zone, ‘Child injury compensation claims’, available at: <http://www.injury-compensation.ie/child-personal-injury-claims>.

¹²⁹ See Criminal Justice Act 1951, section 7: “Paragraph 4 [which prescribes time limits for the making of complaints in cases of summary jurisdiction] of section 10 of the Petty Sessions (Ireland) Act, 1851, shall not apply to a complaint in respect of an indictable offence.” Available at: <http://www.irishstatutebook.ie/1951/en/act/pub/0002/sec0007.html>.

¹³⁰ See Ring, S., ‘Beyond the reach of justice’, *Judicial Studies Institute Journal*, 2009, available at: [http://www.jsijournal.ie/html/Volume_9_No._2/9\[2\]_Ring_Child_sexual_abuse.pdf](http://www.jsijournal.ie/html/Volume_9_No._2/9[2]_Ring_Child_sexual_abuse.pdf).

¹³¹ See *DPP v. Logan* [1994] 3 IR 254; and *S v. DPP* (Supreme Court, unreported, 19 December 2000), as referred to in *Ibid*.

¹³² Statute of Limitations (Amendment) Act 2000, and Statute of Limitations 1957. See also *NC v DPP* [1991], where Barr J. found that an unexplained delay of more than nine years in making a complaint about alleged sexual abuse of a minor was unreasonably long.

¹³³ See Citizens Information, ‘Time limitations for the commencement of criminal proceedings’, 29 September 2008, available at:

http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/time_limitations.html.

¹³⁴ Rules of the Superior Courts, Order 84, rule 21(1).

¹³⁵ *Ibid*, rule 21(3).

¹³⁶ Citizens Information, ‘Real evidence’, 6 January 2014, available at:

http://www.citizensinformation.ie/en/justice/evidence/real_evidence.html.

¹³⁷ Citizens Information, ‘Documentary evidence’, 24 December 2013, available at:

http://www.citizensinformation.ie/en/justice/evidence/documentary_evidence.html. Also see the Criminal Evidence Act 1992, which covers the rules regarding the admissibility of documentary evidence in criminal proceedings.

computer disc etc.; “circumstantial evidence”¹³⁸ – evidence of facts from which inferences can be drawn; “visual identification evidence”¹³⁹; and “DNA evidence”¹⁴⁰ – when this is introduced in court, it is always explained by an expert witness. Some evidence may be relevant and it may be admissible, but if it is “privileged evidence”¹⁴¹ it cannot be introduced. Other evidence may be admissible but may be “suspect evidence”¹⁴² so that certain safeguards have to be put in place to protect the accused.

In civil and criminal proceedings, courts can accept evidence from a child under the age of 14 without the child taking an oath, so long as the child is “capable of giving an intelligible account of events”.¹⁴³ However, the child will still be guilty of an offence if he/she knowingly gives false or untrue evidence. In cases where a child under 14 years is offered as a witness by the prosecution, a judge will often request to speak with the child in private prior to the child giving evidence to assess the child’s capacity.¹⁴⁴ Children over 14 must make the oath or affirmation before being permitted to give evidence.

Under the Criminal Evidence Act 1992, child witnesses under 18 years can give evidence in criminal proceedings by means of a live television link. The Children Act 1997 also provides for the taking of evidence in this manner in any civil proceedings concerning the welfare of a child. In such cases, the child witness gives evidence by way of a live television link from a room which is remote from the actual courtroom. Where appropriate, questions may be put to the child in age-appropriate language through a competent intermediary. In cases not involving such an intermediary, neither the judge nor barristers are permitted to wear a wig or gown.¹⁴⁵

Under the Children Act 1997, a statement made by a child may be admissible as evidence of any fact contained in it of which oral evidence would be admissible, where the court considers that the child is unable to give evidence by reason of age, or the giving of oral evidence by the child, either directly or by television link, would not be in the interest of the welfare of the child. A court may, however, decide not to admit such a statement in evidence if it would result in unfairness to any of the parties to the proceedings.¹⁴⁶

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

The court rules in Ireland do not provide guidelines on time periods during which cases should be resolved. Information and statistics on the typical time periods for claims to

¹³⁸ Citizens Information, ‘Circumstantial evidence’, 24 December 2013, available at: http://www.citizensinformation.ie/en/justice/evidence/circumstantial_evidence.html.

¹³⁹ Citizens Information, ‘Identification evidence’, 6 January 2014, available at: http://www.citizensinformation.ie/en/justice/evidence/identification_evidence.html.

¹⁴⁰ Ibid.

¹⁴¹ Citizens Information, ‘Privileged evidence’, 6 January 2014, available at: http://www.citizensinformation.ie/en/justice/evidence/privileged_evidence.html.

¹⁴² Citizens Information, ‘Suspect evidence’, 6 January 2014, available at: http://www.citizensinformation.ie/en/justice/evidence/suspect_evidence.html.

¹⁴³ Children Act 1997, section 28; Criminal Evidence Act 1992, sections 27 and 28.

¹⁴⁴ For further information, see Citizens Information, ‘Competence of a witness’, 20 December 2013, available at: http://www.citizensinformation.ie/en/justice/witnesses/competence_of_a_witness.html.

¹⁴⁵ ‘Response by Ireland to Council of Europe request for examples of good national practices’, September 2009, pp. 5-6, available at:

<http://www.coe.int/t/dghl/standardsetting/childjustice/Ireland%20good%20practices.pdf>.

¹⁴⁶ Children Act 1997, section 23.

reach trial and to reach resolution in the Irish court system do not appear to be publicly available.

However, there has been some concern voiced as to how long it takes for courts to come to decisions in Ireland. The issue was raised in the *Oireachtas* for debate in December 2011. At that time, parties were waiting for between three and six months in nine cases in the High Court and one case in the Supreme Court. In a further 15 cases in the High Court and 19 in the Supreme Court, parties were waiting in excess of six months. Three cases in the High Court had been waiting for over 12 months and seven cases in the Supreme Court had awaited judgment for over 12 months. Fifty cases in the High Court and four cases in the Supreme Court had waited for less than three months for final judgment.

In the debate, Deputy Marcella Kennedy noted, “I do not think it is acceptable that the public should have to wait so long for a judgment.”¹⁴⁷ Deputy Alan Shatter was concerned that such long delays could run the risk of being held to be in violation of the European Convention on Human Rights,¹⁴⁸ which enshrines the “right to a fair trial. . . within a reasonable time.”¹⁴⁹

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

In civil cases an affected party may apply to the appropriate appellate court to have a judgment or order discharged. The time limits under which appeals must be brought are as follows:

- District Court to Circuit Court: 14 days from the judgment or order;
- Circuit Court to High Court: 10 days from the date of the order;
- Master’s Court to High Court: 6 days from the date of perfection of the order;
- High Court to Supreme Court: 21 days from the date of perfection of the order.¹⁵⁰

The Supreme Court acts as the court of final appeal in civil matters.

Criminal appeals are governed by the Rules of the Superior Courts, Order 86 (Court of Criminal Appeal).¹⁵¹ The Court of Criminal Appeal hears appeals from people convicted on indictment in the Circuit or Central Criminal Court where the appellant has obtained a certificate from the trial judge that the case is a fit one for appeal. A further appeal to the Supreme Court is available but only where the Court of Criminal Appeal itself or the Attorney General certifies that a point of law of exceptional public importance needs to be resolved.¹⁵²

¹⁴⁷ Houses of the Oireachtas, ‘Topical issues debate - courts service’, 15 December 2011, available at: <http://debates.oireachtas.ie/dail/2011/12/15/00015.asp>.

¹⁴⁸ Ibid.

¹⁴⁹ European Convention on Human Rights, Article 6(1). Transcripts of the debate are available at Ibid. and the Department of Justice and Equality, ‘Topical issues debate - the length of time it is taking to deliver court judgments’, 15 December 2011, available at: <http://www.justice.ie/en/JELR/Pages/SP11000260>.

¹⁵⁰ For further information, see European Justice, ‘Procedures for enforcing a judgment - Ireland’, 9 July 2013, available at: https://e-justice.europa.eu/content_enforcing_a_judgment_in_the_same_member_state-52-ie-en.do.

¹⁵¹ Available at: <http://www.courts.ie/rules.nsf/8652fb610b0b37a980256db700399507/779814d2928193bc80256d2b0046b3bf?OpenDocument>.

¹⁵² See Supreme Court of Ireland, ‘Jurisdiction of the Court’, available at:

As judicial review proceedings commence in the High Court, the only route of appeal is to the Supreme Court. There may be some restrictions on the right to appeal in certain types of judicial review proceedings, and a certificate from a High Court judge giving leave to appeal should be obtained in certain circumstances, for instance for applications relating to immigration/asylum cases.

- 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 Irish legal system is a common law system that places a high value on judicial precedent, with decisions of higher courts binding the courts below. Consequently, a negative decision may likely have a long-lasting impact.¹⁵³

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

In civil cases, the enforcement process in the Irish legal system is established and secure. An enforcement action must usually be sanctioned by the court prior to it being carried out, and the court which granted the judgment must usually grant an authorisation in order to enforce the judgment. For some actions, an application to court is not required, and authorisation by the court office concerned will be sufficient.

Orders will usually state the length of time the party concerned has to comply with the terms of the order. A judgment is usually valid for a period of 12 years, although some of the enforcement measures that may be granted have special time limits set out in Court Rules or in legislation. For example, a High Court execution order is valid for one year from its issue.¹⁵⁴

Common means of enforcing civil judgments include: Execution, Registration, Judgment Mortgage Affidavit, Instalment Orders/Committal Orders, Attachment of Earnings, Garnishee Order and “Receiver y Equitable” Execution.¹⁵⁵

Direct enforcement of judicial review decisions is often not possible. Judicial review considers whether or not the decisions of public bodies are lawful. Consequently, if the court finds that a public body was acting *ultra vires* (i.e. beyond its powers), it will quash the existing decision (rather than replace the decision with one of its own, which would need to be enforced), and usually send the matter back to the public body so that the decision-making process can be conducted again in a lawful manner. Sometimes this will not be appropriate, in which case the court may merely quash the decision and declare it to be void and of no legal force or effect. The public body and other persons involved would then have to take measures to deal with the situation accordingly.¹⁵⁶

<http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/pagecurrent/9034466B2045E5EC8025743200511625?opendocument&l=en>.

¹⁵³ For an illustration of the importance of the doctrine of precedent in Irish law, see *Kelly v. Bon Secours* [2012] IEHC 21.

¹⁵⁴ Rules of the Superior Courts, Order 42(20), available at:

<http://www.courts.ie/rules.nsf/8652fb610b0b37a980256db700399507/c719dc0b50b52de780256d2b0046b3d0?OpenDocument>.

¹⁵⁵ For further information, see European Justice, ‘Procedures for enforcing a judgment - Ireland’.

¹⁵⁶ For further information, see Michel, N., ‘A quick guide to judicial review - Ireland’, 26 June 2013, available at:

<http://www.mondaq.com/x/247162/trials+appeals+compensation/A+Quick+Guide+to+Judicial+Review+>

Cases that involve breaches of the European Convention on Human Rights Act 2003 do not automatically alter a law found to violate a party's human rights. Section 5 of the Act grants courts the power to make a declaration that the law in question is incompatible with the Convention. Such a declaration obliges the *Taoiseach* (Prime Minister) to bring any such declaration to the attention of both chambers of the Irish Parliament, who in practice will then attempt to revise the offending provision.¹⁵⁷ Litigants who are granted a declaration of incompatibility may receive monetary compensation in accordance with the principles of just satisfaction under Article 41 of the Convention, but the award of such compensation is entirely within the discretion of the Government.¹⁵⁸

In general, government bodies in Ireland try to comply with decisions issued against them and instigate necessary procedural changes. Recent evidence of this is the Protection of Life During Pregnancy Act 2013, which finally implemented the decision of the Supreme Court in the *X* case regarding abortion.¹⁵⁹ The Irish Prime Minister publicly emphasised that the Government must comply with the Constitution as interpreted by the Supreme Court.¹⁶⁰

V. Additional factors

Irish law has a distinct stance on the rights of the unborn child, which is different from the position in the rest of the European Union. Despite the recent passage of the Protection of Life During Pregnancy Act 2013, abortion is still only permitted where pregnancy endangers the woman's life, including by risk of suicide. Consequently, positive decisions pushing the boundaries of this stance are likely to give rise to a great deal of political debate and possible backlash. Positive decisions concerning the rights of the newborn/infant/minor are unlikely to cause any political backlash.¹⁶¹

Provisions of the Irish Constitution have been frequently seen as being at odds with the provisions of the CRC, because they give precedence to the family unit over the rights of the individual child.¹⁶² However, recent proposed amendments to the Constitution, which were passed and signed into law in 2015, reflect to some extent the general principles of the CRC. In particular, Article 42A.1 provides that the State "recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights". Article 42A.4 requires the best interests of the child to be "the paramount consideration" and recognises the child's

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¹⁵⁷ European Convention on Human Rights Act 2003, section 5.

¹⁵⁸ *Ibid.*, section 3.

¹⁵⁹ *Attorney General v. X*, [1992] IESC 1; [1992] 1 IR 1; see also the later judgment of the ECtHR in *A, B and C v. Ireland* [2010] ECHR 2032.

¹⁶⁰ For further information, see Breaking News, 'Taoiseach: I cannot pick and choose when it comes to Constitution', 1 July 2013, available at: <http://www.breakingnews.ie/ireland/taoiseach-i-cannot-pick-and-choose-when-it-comes-to-constitution-599098.html>.

¹⁶¹ For further information relating to Ireland's commitments to upholding the rights of the child, see Children's Rights Alliance, 'Ireland and the Convention on the Rights of the Child', 18 June 2013, available at: <http://www.childrensrights.ie/content/ireland-and-convention-rights-child>.

¹⁶² Constitution of Ireland, Articles 41 and 42, available at: <http://www.irishstatutebook.ie/en/constitution/index.html>. For further information, see Law Society's Law Reform Committee, 'Rights-based child law', December 2005, available at: <http://www.lawsociety.ie/documents/committees/lawreform/pg1.pdf>; Kilkelly, *Children's Rights in Ireland: Law, Policy and Practice*, Tottel publishing, 2008.

right to be heard, but only in selected cases.¹⁶³

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

¹⁶³ For commentary, see <http://humanrights.ie/children-and-the-law/the-childrens-referendum-and-the-convention-on-the-rights-of-the-child/>.