

# Study on children's involvement in judicial proceedings – contextual overview for administrative justice – Latvia

**July 2014** (Research carried out  
between July 2013 and January 2014)

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## Abbreviations

|       |  |
|-------|--|
| ACMCN | Law on Application of Compulsory Measures of a Correctional Nature |
| APL   | Administrative Procedure Law                                       |
| CA    | Competent Authority  |
| CoE   | Council of Europe  |
| EC    | European Commission  |
| EU    | European Union   |
| LAVC  | Latvian Administrative Violations Code                             |
| LOC   | Law on Orphans' Courts   |
| LPRC  | Law on Protection of the Rights of the Child                       |
| MACR  | Minimum Age of Criminal Responsibility                             |
| UNCHR | United Nations Convention of Human Rights                          |
| UNCRC | United Nations Convention on the Rights of the Child               |

# Introduction

## Introduction and context

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty of Lisbon has put further emphasis. This report is part of a study 'to collect data on children's involvement in judicial proceedings in the EU' which supports the implementation of the Commission Communication of 15 February 2011 '[An EU Agenda for the rights of the child](#)', which identified the lack of reliable, comparable and official data on the situation of children in the Member States (MS). This deficiency is a serious obstacle to the development and implementation of evidence-based policies and is particularly evident in the context of child friendly justice and the protection of children in vulnerable situations. Making the justice system more child friendly in Europe is a key action of the EU Agenda. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation. Improved data is crucial to the framing of such legislation.

The objective of this study is:

- to establish statistics and collect data based on structural, process and outcome indicators on children involved in administrative judicial proceedings for the years 2008-2010 (and 2011 if available) for all 28 EU Member States;
- to provide a narrative overview of children's involvement in administrative judicial proceedings in the EU. The report describes the situation in each Member State as at 1 June 2012.

This report examines the safeguards in place for children involved in **administrative judicial proceedings**. The [Council of Europe Guidelines on child-friendly justice](#) serve as a basis for the analysis of the provisions affecting children in civil judicial proceedings in each Member State.

## Structure and scope

This report describes the national administrative justice system insofar as children's involvement is concerned. The scope of this report is **limited to judicial proceedings**, which include proceedings before judicial or other authorities competent to judicially decide on the matter. The rules applicable to proceedings before administrative authorities do not fall within the scope of this study. In addition to general administrative judicial proceedings, this report reviews the safeguards in place for children in seven specific sectors:

- General rules applying to administrative judicial proceedings including judicial proceedings reviewing administrative authorities' decisions;
- Judicial proceedings in the sector of asylum;
- Judicial proceedings in the sector of migration;
- Judicial proceedings in the sector of education;
- Judicial proceedings in the sector of health;
- Judicial proceedings in the sector of placement into care;
- Judicial proceedings in the sector of administrative sanctions;
- Judicial proceedings regarding offences committed by children below the age of criminal responsibility (MACR).

Depending on the Member State, judicial proceedings in those seven sectors may be dealt with by different courts through administrative, civil or criminal judicial proceedings. For example, in one Member State, decisions in the health sector may be dealt with by juvenile courts through civil judicial proceedings while in another Member State such decisions may be dealt with by administrative courts through administrative judicial proceedings. However, for the sake of clarity and completeness, and consistency from one country report to another, the rules applying to the judicial proceedings

falling within the sectors mentioned above will be described in this administrative justice overview no matter whether they are dealt with through civil or administrative judicial proceedings.

**Chapter 1** provides an overview of the Member State's approach to children in administrative judicial proceedings and judicial proceedings in the above sectors. It includes a description of the competent authorities and services.

**Chapter 2** of this report is divided into sections (2.1, 2.2, etc.) according to the different safeguards examined (e.g. the right to be heard, the right to information, etc.). Each of these sections is divided into subsections describing the different rules applying to children involved in those judicial proceedings. The first subsection describes the general rules applying to judicial proceedings (including judicial proceedings reviewing administrative authorities' decisions).

**NOTE:**

**If specific rules exist for children involved in judicial proceedings in one of the seven specific sectors, e.g. asylum, migration, education, those rules will be described in further separate subsections. On the contrary, if no specific rules exist in those sectors, the general rules described in the first subsection will be the only rules described.**

According to each Member State's legislation, there might be **cross references between civil procedural rules and administrative procedural rules**. Therefore it should be noted that:

- General rules and principles codified in a substantive or procedural law code (e.g. Civil Code, Civil Procedural Code, Judicial Code) may apply to any proceeding before any court (e.g. rules concerning procedural capacity are likely to be described in the Civil Procedural Code, however those rules also apply to administrative judicial proceedings). These general rules and principles may be supplemented by sector specific procedural or substantive rules.
- Specific sections of Civil, Civil Procedural and Judicial Code may include rules specifically regulating administrative judicial proceedings or proceedings before other authorities competent to judicially decide on the matter (e.g. Chapter X of Civil Procedural Code laying down provisions on judicial review of administrative decisions).
- Specific Administrative Code, Administrative Procedural Code or administrative procedural laws may apply to administrative judicial proceedings or proceedings before other authorities competent to judicially decide on the matter.

The table below summarises the relevant proceedings and competent court in the sectors mentioned above. For the sake of completeness, the table includes the relevant judicial proceedings and the competent court in the field of family law and employment law, which are described in the [overview for civil justice](#).

| Type of judicial proceedings and court competence per sector <sup>1</sup> |  |                                       |  |  |  |  |  |  |  |
|---|--|---------------------------------------|--|--|--|--|--|--|--|
|   | Contextual overview for civil justice <sup>2</sup> | Contextual overview for civil justice | Contextual overview for administrative justice | Contextual overview for administrative justice | Contextual overview for administrative justice | Contextual overview for administrative justice | Contextual overview for administrative justice | Contextual overview for administrative justice     | Contextual overview for administrative justice     |
| Sectors:  | Family   | Employment                            | Asylum   | Migration                                      | Education                                      | Health   | Placement in care                              | Administrative sanctions                           | Offences < MACR <sup>3</sup>                       |
| Type of proceeding applying in the sector                                 | Civil Judicial proceedings                         | Civil judicial proceedings            | Administrative judicial proceedings            | Administrative judicial proceedings            | Administrative judicial proceedings            | Administrative judicial proceedings            | Administrative judicial proceedings            | Quasi criminal proceedings                         | Quasi criminal proceedings                         |
| Competent Court(s)  | Civil courts                                       | Civil courts                          | Administrative courts                          | Administrative courts                          | Administrative courts                          | Administrative courts                          | Administrative courts                          | General criminal courts (or municipal authorities) | General criminal courts (or municipal authorities) |

<sup>1</sup> This table provides an indicative summary of competent courts and relevant proceedings. However, please check [Section 1](#) for a complete overview of the competent courts or sections/divisions within the competent courts.

<sup>2</sup> This study on Children's involvement in judicial proceedings is composed by three contextual overviews i.e. contextual overview for criminal justice, contextual overview for civil justice, contextual overview for administrative justice. The rules applying to judicial proceedings in the sectors of family and employment are described in the contextual overview for civil justice.

<sup>3</sup> (MACR) Minimum Age of Criminal Responsibility – see [Table 3.1 of the EU Summary of contextual overviews on children's involvement in criminal judicial proceedings](#) on MACR in EU28 as at 1 June 2012.



# 1 Overview of Member State's approach to children in administrative Judicial proceedings and specialised services dealing with such children

## 1.1 Brief description of judicial system and institutions

### Legal framework

The basic rights for both adults and children are guaranteed by the [Constitution of Latvia](#) (*Satversme*)<sup>4</sup>. The main principles and rules on the protection of children are established by the [Law on Protection of the Rights of the Child](#) (LPRC) adopted on 19 June 1998<sup>5</sup>. Under the [LPRC](#), all public administrative authorities are required to perform their duties with due respect to children's rights and best interests according to the principles and protection measures contained in this law.

Judicial power in Latvia is vested in district (city) courts, regional courts, the Supreme Court. These are general courts which deal with criminal and civil cases, and general administrative courts, which deal with cases concerning public administration<sup>6</sup>. Additionally, a separate constitutional court has exclusive jurisdiction to review compliance of statutory law with the [Constitution of Latvia](#)<sup>7</sup>. However, there are no special family or youth courts in Latvia and all matters concerning adults or children are dealt with by the general courts. The legal status of administrative courts is set by the [Constitution](#) and the [Law on Judicial Power](#)<sup>8</sup>. Administrative decisions are reviewed in the first instance by the administrative district court, in the appeal instance by the administrative regional court. The Department of Supreme Court Senate of Administrative Matters is the cassation instance.

In Latvia, administrative courts operate on the principle of objective investigation (*objektīvās izmeklēšanas princips*). That is, they have wide powers to *ex officio* investigate any matters and gather evidence if parties in disputes have not provided the courts with all the necessary information to ensure objective and fair adjudication of the cases<sup>9</sup>. Since one of the parties generally represents the State and can better defend his/her position due to access to financial means and specialist advice, the court therefore takes an active role in administrative judicial proceedings to ensure a higher level of legal protection to an individual challenging a decision of a public authority<sup>10</sup>.

Procedure before the administrative court is determined by the [Constitution](#) and the [Administrative Procedure Law](#) (APL)<sup>11</sup> adopted on 25 October 2001. The [APL](#) relates to all administrative judicial proceedings regardless of the subject matter. As a general rule, before seeking judicial review a person must exhaust all available administrative remedies. According to the [APL](#), if this has not been done, the judge has to refuse the application<sup>12</sup>. Such remedies usually include challenging the disputed decision before a higher administrative authority<sup>13</sup>. This allows the person concerned to protect his/her rights in a low-cost, accessible and efficient manner outside of judicial proceedings. In the same way, the public administration has an opportunity to verify its decision and amend it if necessary. If the individual is not happy with the administrative review, he/she may file an application to the court. Information about the appeal-filing period is provided in the administrative decision. The deadline to appeal the decision before the court is usually one month from the date on which the reviewed decision entered into force<sup>14</sup>.

<sup>4</sup> [Constitution of Latvia](#) (*Satversme*), 1922.

<sup>5</sup> [Law on Protection of the Rights of the Child](#) (*Bērnu tiesību aizsardzības likums*), 1998.

<sup>6</sup> Information available on the website of [Latvian courts](#).

<sup>7</sup> Chapter VI of the [Constitution](#).

<sup>8</sup> Article 7 of the [Law on Judicial Power](#) (*Likums 'Par tiesu varu'*), 1992.

<sup>9</sup> Articles 103(2), 107 and 150 of the [APL](#).

<sup>10</sup> Judgement of the Constitutional Court, 11 June 2010, in [case Nr. 2010-11-01](#).

<sup>11</sup> [Administrative Procedure Law](#) (APL), (*Administratīvā procesa likums*), 2001.

<sup>12</sup> Article 191(5) of the [APL](#).

<sup>13</sup> Not all decisions by public administrative authorities may be challenged in an administrative way – some decisions may only be challenged before the courts, i.e. if there is no supervising authority, or the law allows direct access to the court. See Article 76(1) of the [APL](#).

<sup>14</sup> Article 188(2) of the [APL](#).

As mentioned above, decisions of public administrative authorities **regardless of the subject matters in question** – thus including the fields of **asylum and migration, citizenship, education, health care** (mental health and medical treatment) and **placement of children into care**, are reviewed in administrative judicial proceedings before administrative courts. Judicial procedures before administrative courts are always governed by the **APL** applying equally to adults and children. It is possible, however, that laws governing specific areas provide for specific procedural rules. In such cases administrative courts apply the **APL** as *lex generalis* and the area-specific provisions as *lex specialis*. As a result, the general rules explained in this report cover all the sectors. If, in addition to the general rules, specific rules exist in a sector, then a separate heading will cover the specific rules. **Asylum Law** and **Immigration Law** apply to administrative decisions taken by the Office of Citizenship and Migration Affairs and the State Border Guard Service, in the field of asylum and migration. **Citizenship Law** applies to administrative decisions taken by the Office of Citizenship and Migration Affairs concerning citizenship matters. The **Education Law, General Education Law**, and other related laws, apply to administrative decisions of education authorities such as schools, exam boards, and others. The **Law on the Rights of Patients** and the **Medical Treatment Law** apply to administrative decisions made by health authorities like hospitals, specialised commissions or councils of doctors, and others on the provision of mental health care and medical treatment. The **Law on Orphan's Courts** applies to administrative decisions on the placement of children into care taken by child care authorities, i.e. the orphans' courts.

Treatment of **children below the minimum age of criminal responsibility** (MACR) who have committed criminal offences or administrative violations is specified in the **Law on Application of Compulsory Measures of a Correctional Nature** (ACMCN)<sup>15</sup> adopted on 31 October 2002. Whilst in Latvia the age of criminal and administrative responsibility is 14, the **ACMCN** foresees that children from the age of 11, and until they turn 18, may be subject to compulsory educational measures instead of criminal or administrative sanctions. The **ACMCN** is a special legal act and, in general, stipulates sanctions for children to facilitate their development rather than punishment. As explained in the Study to collect data on children's involvement in criminal judicial proceedings (Chapter 2.3.6), these measures vary from preventive, i.e. a warning, to punitive, i.e. placement of the child into an educational establishment for social correction. Measures for criminal offences are imposed by general jurisdiction courts under criminal proceedings. In contrast, administrative violations are dealt with by special commissions established by local authorities, in non-judicial proceedings. Due to the similarity in the substantive and procedural provisions of the **ACMCN** that apply to children who have committed criminal offences, and to those who have committed administrative violations, children below the MACR who have committed criminal offences will be referred to throughout this report in the context of decisions on administrative sanctions as described below.

Since 1 July 2012, **administrative violations** are dealt with, in general jurisdiction courts under criminal proceedings, by judges specialising in criminal matters<sup>16</sup>. Before this, it was the competence of administrative courts which mainly dealt with general administrative matters that differ considerably from the quasi-criminal administrative violations. For this reason, now only judges specialised in criminal matters deal with administrative violations. The relevant law, i.e. the **Latvian Administrative Violations Code** (LAVC)<sup>17</sup>, adopted on 7 December 1984, is also undergoing reform. However, it will continue provisionally, until 2016, to determine the procedure before the courts. The **LAVC** contains very few child-specific provisions and therefore it broadly applies to adults and children alike. All administrative sanctions set out in the **LAVC** may be fully applied to children who have reached the minimum age of administrative responsibility – 14 years of age. Nevertheless, as already explained above, children aged from 11 to 14, who have committed administrative violations, may only be subject to compulsory education measures according to the **ACMCN**. To access judicial reviews of measures imposed by public authorities according to the **LAVC**, e.g. to appeal penalties imposed by the Police for traffic offences, all available administrative remedies must be exhausted<sup>18</sup>. The measures imposed under the **ACMCN** by special commissions of local authorities may be appealed directly before the competent courts<sup>19</sup>.

Children below the age of 11 who have committed criminal offences or administrative violations, are usually dealt with by the social services, and thus outside of judicial proceedings. The social

<sup>15</sup> **Law on Application of Compulsory Measures of a Correctional Nature** (ACMCN), (*Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem*), 2002.

<sup>16</sup> Information on the **reform** of the **Latvian Administrative Violations Code**.

<sup>17</sup> **Latvian Administrative Violations Code** (LAVC), (*Latvijas administratīvo pārkāpumu kodekss*), 1984.

<sup>18</sup> Article 289<sup>3</sup>(3) of the **LAVC**.

<sup>19</sup> Article 28(2) of the **ACMCN**.

services, together with the child's parents or guardians, the Police, the orphans' courts, other relevant institutions and professionals, i.e. psychologists, work together to prevent future violations of law by children. In order to do that, the local social services prepare social assistance programmes which include measures adapted to the needs of every individual child<sup>20</sup>.

## Specialised institutions

The main institution entrusted with acting in the child's best interests is the **orphans' or parish court** (*Bāriņtiesa*). Orphans' courts are guardianship and trusteeship institutions established by municipality or city governments in all major regions of Latvia. They protect the rights and best interests of people, adults and children, who cannot take care of themselves. In relation to children, the main task of an orphan's court is to react and defend the child's personal and financial interests. When the child's parents have died, are missing, are seriously ill, or there are other circumstances when a child is in need of care and protection, the orphan's court appoints a guardian to the child<sup>21</sup>. If this court identifies violations of the child's rights, it can immediately remove the child from his/her family, with or without the consent of his/her parents/guardian<sup>22</sup>. Children may complain to the orphans' courts in their own right, including about their parents/guardians. The orphans' courts also play significant roles in court proceedings concerning children. They can initiate proceedings whenever it is necessary to ensure care and protection for children, e.g. to terminate parental rights<sup>23</sup>, or to provide their opinions to the courts on the circumstances of the cases in relation to the children. They give their opinions to the courts if required to do so by the law or the court in specific cases<sup>24</sup>. Furthermore, if asked by administrative courts, orphans' courts appoint special guardians to children when their best interests are in conflict with interests of their parents. The role and responsibilities of such guardians seem to be similar to those of guardians *ad litem*. That is, this type of guardian ensures the representation of a child only for the duration of the specific administrative judicial proceeding. However, the law does not provide any further details.

Although called 'courts', orphans' courts only perform judicial functions occasionally. Decisions taken by the orphans' courts are usually administrative decisions and thus may be appealed according to the [APL](#)<sup>25</sup> – their tasks and procedures are set out in the [Law on Orphans' Courts](#) (LOC). The work of orphans' courts is overseen by the State Inspectorate for Protection of Children's Rights<sup>26</sup>, as explained below.

The **State Inspectorate for Protection of Children's Rights** is a State institution which operates under the supervision of the Minister of Welfare and is responsible for monitoring and ensuring compliance with the laws and regulations aimed at protecting the rights and best interests of children – including the [LPRC](#), by public authorities, non-governmental organisations, and legal and private persons. The inspectorate reviews complaints submitted by private individuals<sup>27</sup>, including those from children in their own right<sup>28</sup>. Moreover, officials from the inspectorate have the right to question children without the presence of their parents/guardians<sup>29</sup>. Based on the complaints received, the inspectorate performs investigations. The inspectorate has the right to access all information regardless of whether or not it is held by public authorities or private individuals. In certain situations, e.g. when physical or emotional violence has been committed against children, the inspectorate has the right to impose administrative sanctions<sup>30</sup>. In relation to child-friendly materials, the inspectorate provides information in a child-friendly language on its website about children's rights<sup>31</sup>. It also operates a child helpline (116111) where they are provided with advice and psychological support. Finally, an online application allows children to send e-mails concerning any issues, including

<sup>20</sup> Article 58 of the [LPRC](#). See also information on social assistance programmes on the website of the [State Inspectorate for Protection of Children's Rights](#).

<sup>21</sup> Article 26(1) of the [LOC](#).

<sup>22</sup> Articles 23 and 35 of the [LOC](#).

<sup>23</sup> Article 17(8) of the [LOC](#).

<sup>24</sup> Article 17(3) of the [LOC](#).

<sup>25</sup> Article 49(2) of the [Law on Orphans' Courts](#) (LOC) (*Bāriņtiesu likums*), 2006.

<sup>26</sup> Article 5 of the [LOC](#).

<sup>27</sup> [By-law of the State Inspectorate for Protection of Children's Rights](#) (*Valsts bērnu tiesību aizsardzības inspekcijas nolikums*), 2005.

<sup>28</sup> Articles 13 and 57(2) of the [LPRC](#).

<sup>29</sup> Article 65<sup>1</sup> of the [LPRC](#).

<sup>30</sup> Article 172<sup>2</sup> of the [LAVC](#).

<sup>31</sup> Information in a language adapted to children is available on the website of the [State Inspectorate for Protection of Children's Rights](#).

those of a legal nature, and to receive answers from qualified specialists within three business days (*E-konsultēšana*).

There is no special children's ombudsman in Latvia, but at the Latvian **Ombudsman's Office** with general competence to promote and safeguard human rights, there is a department specialising in children's rights. The Ombudsman's tasks and procedures are set out in the **Law on Ombudsman**<sup>32</sup>. The **LPRC** specifies the Ombudsman's role in relation to children which, amongst other roles, include reviewing complaints on violations of children's rights by State or local government institutions and their employees. Children can submit complaints in their own right<sup>33</sup> and the Ombudsman has the right to hear the views of the children without the presence of their parents, guardians, or employees of education and child care institutions<sup>34</sup>. After examination of complaints, if necessary, the Ombudsman provides the institutions concerned with recommendations and opinions regarding the lawfulness and effectiveness of their activities, and on their compliance with the principles of good administration. On the basis of information at his/her disposal, the Ombudsman has the right to inform other competent institutions in order to initiate relevant judicial proceedings. Besides complaints, adults or children may also use online applications provided by the Ombudsman (*Jautājums tiesībsargam*) to ask questions about their rights. The Ombudsman has to consult anyone who has asked for consultation concerning human rights<sup>35</sup>.

## 1.2 General approach towards children under administrative law: evolving capacities, best interests of the child, principle of non-discrimination

### The definition of 'child'

The definition of 'child' is set out in the **Civil Law** adopted in 1937. It states that persons below the age of 18 are considered as children. Until then, children's parents/guardians are responsible for all matters concerning them<sup>36</sup>. The legal obligation of adults with parental responsibilities to ensure the welfare of children until they turn the age of 18, is also specified by the **LPRC** – the framework law for the protection of children's rights in Latvia<sup>37</sup>.

### Main principles/objectives

There is no provision in Latvian law defining the main principles or objectives for children's involvement in administrative judicial proceedings. However, the **Constitution of Latvia** and the **LPRC** guarantee that children's rights are respected by everyone. State and local government institutions, including justice and law enforcement institutions, and private and legal persons, must ensure that, in matters concerning children, protection of their rights and best interests takes priority<sup>38</sup>.

### Child's best interests

The **Constitution** and the **LPRC** ensure that the child's best interests are a primary consideration in all activities undertaken by public authorities, be they courts, law enforcement institutions or social services. In all matters concerning children, the protection of children's rights takes priority<sup>39</sup>. The **LPRC** as a framework law requires that due account is taken of all child's best interests at stake and requires the child to be involved in the decision-making in all matters concerning him/her. Thus, the child should also be involved in assessing what his/her best interests would be. There are, however, no regulations, checklists or protocols in Latvia on how to determine the best interests of a child. In general, the State authorities must comply with the obligation to respect fundamental rights and freedoms as set out in the **Constitution** and specifically children's rights as stipulated by the **LPRC**.

<sup>32</sup> **Law on Ombudsman** (*Tiesībsarga likums*), 2006.

<sup>33</sup> Articles 13 and 57(2) of the **LPRC**.

<sup>34</sup> Article 13(4) of the **Law on Ombudsman**.

<sup>35</sup> Article 12(9) of the **Law on Ombudsman**.

<sup>36</sup> Article 219 of the **Civil Law** (*Civillikums*), 1937.

<sup>37</sup> Article 3(1) of the **LPRC**.

<sup>38</sup> Article 6 of the **LPRC**.

<sup>39</sup> Article 6(2) of the **LPRC**.

Furthermore, when taking decisions which might restrict children's rights, all authorities must assess whether or not such restrictions are reasonable, necessary and proportionate<sup>40</sup>.

The two main laws regulating the procedure before courts in administrative matters, i.e. **APL** and **LAVC**, do not contain any provisions requiring that the child's best interests are a primary consideration. These are framework laws and contain rather few child-specific provisions in general. Therefore, there are no provisions in the **APL** or the **LAVC** on how to decide what the best interests of the child would be, nor is there any requirement to involve the child in assessing his/her best interests. There are no provisions requiring the relevant authorities to take due account of all interests at stake, including the psychological and physical well-being and legal, social and economic interests of the child. It is not specified in the law that where more than one child is involved in the same procedure or case, the best interests of each child should be assessed separately. However, it should be noted that a judicial authority is obliged to apply the **LPRC** and ensure that due account is taken of all the child's best interests at stake and that the child is involved in all matters relevant to him/her. Other than this, there are no measures in place to ensure that the child's best interests are a primary or paramount consideration.

## Evolving capacity

To ensure respect for a child's evolving capacity in the context of proceedings before the administrative authority, and judicial proceedings, the **LPRC** stipulates that a child must be given the opportunity to voice his/her opinion. Depending on the circumstances, the child must either be heard him/herself or through a legal representative or a competent institution, e.g. the orphan's court<sup>41</sup>. There are no statutory age limits for expressing views, i.e. there is no age limit to examine if the child is mature enough to express his/her own views – if the child is able to formulate his/her opinion, then he/she will be heard regardless of age<sup>42</sup>. It is up to the relevant administrative or judicial authority to decide whether or not the child is mature enough to express his/her views. In order to assess the child's maturity, the court may request the opinion of the orphan's court<sup>43</sup>.

## Protection from discrimination

The **Constitution** guarantees general protection from discrimination to everyone – adults and children alike<sup>44</sup>. The **LPRC** further states that all children have the same rights and freedoms regardless of their race, nationality, gender, language, religious convictions, national, ethnic or social background, place of residence, financial or health condition, birth or other circumstances of the children or their families<sup>45</sup>. The laws regulating procedures before the public administrative authorities, and courts in administrative matters, ensure that everyone is treated equally<sup>46</sup>. There are no provisions on preventing any form of discrimination – including age and capacity, specifically against children. Children who feel that they have been discriminated against in the context of judicial proceedings, have the right to file a complaint in their own right to the State Inspectorate for Protection of Children's Rights or the Ombudsman. Both institutions have the right to investigate complaints and where they are upheld, issue recommendations. However, the primary responsibility to evaluate and promote compliance with principles of good administration by public authorities, e.g. lawfulness, non-discrimination, proportionality, objectivity and impartiality, lies with the Ombudsman<sup>47</sup>.

There are no special measures in place to provide special protection and assistance in the context of judicial proceedings to more vulnerable children, such as the very young, migrant children, refugee and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in the care of the State including residential institutions. Any child in need of care and protection will receive the necessary assistance from the social services and the orphan's court according to the **LPRC** and other relevant laws.

<sup>40</sup> Article 17(1) of the **LOC**.

<sup>41</sup> Article 20(3) of the **LPRC**.

<sup>42</sup> For instance, Ministry of Welfare, Methodological guidelines for the orphans' courts on the protection of property interests of a child (*Metodiskie ieteikumi Bāriņtiesām*), 2008.

<sup>43</sup> Article 12(9) of the **Law on Ombudsman**.

<sup>44</sup> Article 91 of the **Constitution**.

<sup>45</sup> Article 3 of the **LPRC**.

<sup>46</sup> Article 6 of the **APL** and Article 240 of the **LAVC**.

<sup>47</sup> Article 11 of the **Law on Ombudsman**.

## 1.3 Monitoring mechanisms, multidisciplinary approach and training

### Monitoring mechanisms

Both the State Inspectorate for Protection of Children's Rights which is a Government institution, and the Ombudsman's Office – an independent human rights institution, have the competence to monitor legislation, policies and practice to ensure their compatibility with international standards set forth in human rights instruments such as the United Nations [Convention of Human Rights](#)<sup>48</sup> (UNCHR) and [Convention on the rights of the child](#)<sup>49</sup> (UNCRC). Both institutions have the right to issue recommendations for the improvement of laws and regulations in the field of protection of the rights of the child regardless of the subject matter<sup>50</sup>. Both institutions prepare their annual reports where they explain the trends in the complaints received, the outcome of investigations undertaken, recommendations issued and research undertaken. These reports highlight outstanding issues and propose measures to address them<sup>51</sup>. Additionally, the Ombudsman has wide powers to monitor different kind of institutions, inter alia, places of detention and imprisonment in Latvia. This competence relates to all closed facilities, thus including facilities for children<sup>52</sup>.

If the Ombudsman identifies legislation that is not compatible with International standards, the Ombudsman recommends the responsible authority to amend it. If the authority in question has not initiated legislative amendments in the time period allowed by the Ombudsman, the Ombudsman has the right to initiate proceedings before the Constitutional Court<sup>53</sup>. Other institutions, such as the orphans' courts also have the rights to initiate constitutional proceedings if they believe that certain legislation goes against International standards. Besides, any individual who considers that a provision of law violates his/her fundamental rights, can submit a complaint before the Constitutional Court<sup>54</sup>. Before turning to the Constitutional Court, the person must exhaust all available remedies for the protection of his/her rights. If the complaint is upheld by the court, it may declare the disputed legislation unconstitutional and annulled from the moment the decision is announced<sup>55</sup>.

### Multidisciplinary approach

According to the general principles embedded in the [LPRC](#), all State and local administrative authorities working with, or for children, must ensure close cooperation in order to protect children's rights and best interests. At national level, according to the [LPRC](#), the Ministry of Welfare is responsible for organising and coordinating compliance with the laws and regulations aimed at protecting children's rights<sup>56</sup>. At regional level, local governments develop and implement programmes for the protection of children's rights<sup>57</sup>.

Specifically in relation to court proceedings, there are some formalised cooperation procedures in relation to children involved in administrative judicial proceedings. Such procedures usually involve the courts' rights to seek advice from, or involvement of, other authorities, e.g. the orphans' courts. For instance, in proceedings concerning administrative violations, the orphans' courts are involved in representing the best interests of child victims when violations are committed by persons with parental responsibilities<sup>58</sup>. In a general administrative proceeding, the court may involve the orphan's court by asking its opinion about who to appoint as the child's representative, i.e. a relative or other person close to the child, in case of conflict between the child and his/her parents, or by asking the

<sup>48</sup> In force from 4 May 1990.

<sup>49</sup> In force from 14 May 1992.

<sup>50</sup> Article 12 of the [Law on Ombudsman](#) and Article 2.5. of the [By-law of the State Inspectorate for Protection of Children's Rights](#).

<sup>51</sup> According to the [Law on Ombudsman](#), the Ombudsman submits its annual report to the Parliament and President. According to the [By-law of the State Inspectorate for Protection of Children's Rights](#) the Inspectorate reports to the Ministry of Welfare, which is their supervising authority.

<sup>52</sup> Article 13 of the [Law on Ombudsman](#).

<sup>53</sup> Article 17 of the [Law of Constitutional Court](#).

<sup>54</sup> Article 19<sup>2</sup> of the [Law of Constitutional Court](#).

<sup>55</sup> Article 32 of the [Law of Constitutional Court](#).

<sup>56</sup> Article 62 of the [LPRC](#).

<sup>57</sup> Article 66 of the [LPRC](#).

<sup>58</sup> Article 262<sup>1</sup> of the [LAVC](#).



orphan's court itself to appoint a special guardian for the child<sup>59</sup>. The special guardian has to represent the child's best interests in the specific case<sup>60</sup>. The orphans' courts oversee the activities of all guardians – see [Section 1.1](#) for further details on guardians, and may suspend or dismiss guardians who fail to protect and represent the best interests of children<sup>61</sup>. The orphans' courts, in general, may be required to provide their opinions or participate in all kinds of proceedings to ensure the protection of children's rights<sup>62</sup>.

Other than specific measures illustrated above, there are no general measures in place to obtain a comprehensive understanding of the child, and assess his/her legal, psychological, social, emotional, physical and cognitive situation with full respect for the child's right to private and family life. Nor is there any legal obligation on the part of the court to obtain such multi-disciplinary understanding of the child. There are no common assessment frameworks for professionals working with, or for children in civil and administrative proceedings – including lawyers, psychologists, physicians, immigration officials, social workers and mediators.

## Interactions between criminal, civil and/or administrative judicial proceedings

It is possible that a child is involved in several judicial proceedings at the same time. However, there are no formalised operational cooperation procedures to facilitate the interactions between the relevant authorities involved in criminal, civil and/or administrative judicial proceedings. If such situations arise, it will be dealt with on a case-by-case basis according to the specific circumstances of the case.

## Training and vetting requirements

According to the [LPRC](#), all professionals working with, and for, children should receive necessary training on the rights and needs of children. With recent amendments<sup>63</sup>, the [LPRC](#) now lists professionals who are required to undergo such training. Amongst the professionals mentioned, there are those who most often have direct contact with children, such as social workers, representatives from the orphans' courts, Police officers, judges, prosecutors, pedagogues and many others. Nevertheless, the list is not exhaustive. The law specifies that anyone whose duties may involve work with, or for a child, and especially someone who, as part of his/her duties may adopt an administrative decision concerning the rights and best interests of the child, must undergo special training. To ensure gradual compliance with this requirement, the law introduced a transition period until 1 January 2015<sup>64</sup>. Thus, professionals who do not yet have the required knowledge have the possibility to obtain it.

Until the recent amendments in the [LPRC](#), training requirements for professionals working with, and for children, and content for such training, were determined by a regulation of 2005<sup>65</sup>. Currently, there is no regulation in force and work is still ongoing for proposals of a new regulation. According to the information available<sup>66</sup>, the new regulation will not significantly alter the current training system. As before, the new regulation will require that professionals undergo 40 academic hours of training in the period of one year after taking up relevant positions. Within five years, professionals will be required to repeat a similar training of 24 academic hours. The training programmes will likely include lectures on how to ensure inter-institutional cooperation in order to protect the rights of children, and about children in the context of administrative violation proceedings, civil and criminal proceedings. Currently, professionals working with, and for children are not subjected to regular vetting to ensure their suitability to work with children, and it is not clear whether or not the new regulation will contain such a requirement.

<sup>59</sup> Article 21(2) of the [APL](#).

<sup>60</sup> The wording of [APL](#) in Article 21(2) suggests that a special guardian is similar in its role and responsibilities to a guardian ad litem. Namely, this type of guardian ensures the representation of a child only for the duration of the specific administrative judicial proceedings.

<sup>61</sup> Article 32 of the [LOC](#).

<sup>62</sup> Articles 17(1) and (3) of the [LOC](#).

<sup>63</sup> The relevant amendments to the [LPRC](#) were adopted on 30 May 2013.

<sup>64</sup> Article 5<sup>1</sup> of the [LPRC](#).

<sup>65</sup> Regulation regarding procedures for the acquisition of special knowledge in the field of protection of the rights of the child and the content of such knowledge (*Noteikumi par speciālo zināšanu bērnu tiesību aizsardzības jomā apguves kārtību, šo zināšanu saturu un apjomu*), 2005.

<sup>66</sup> Initial assessment for the [proposal](#) for regulation regarding procedures for the acquisition of special knowledge in the field of protection of the rights of the child and the content of such knowledge (*„Noteikumi par speciālo zināšanu bērnu tiesību aizsardzības jomā apguves kārtību, šo zināšanu saturu un apjomu” sākotnējās ietekmes novērtējuma ziņojums (anotācija)*), 2013.

## 2 Child-friendly justice in administrative judicial proceedings

### 2.1 The child as an actor in administrative judicial proceedings

Latvian law specifies the age at which a child can participate in judicial proceedings. In general, as stated in the [Civil Law](#), children may not appear before the courts in their own right until they attain the age of 18. The law foresees two exceptions: when the child's parents testify that the child is mature enough to take full responsibility of his/her matters and when the child is married. In both cases, children have to be at least 16 years of age. Then, granted procedural capacity by the courts, they obtain the right to make appeals and participate in proceedings in their own right. Besides these general rules, certain area specific laws may provide different ages at which a child may appeal against specific administrative decisions. This is, however, more an exception rather than the norm. Most of the time, if a child wishes to challenge a decision of an administrative authority before the court, he/she may only do so through his/her parents/guardian. The presence of children in judicial proceedings is not usually required.

#### 2.1.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education and placement into care

The general rules described below apply to judicial proceedings including the sectors of asylum, migration, health, education and placement of children into care. However, if there are rules in the specific areas that differ from the general rules, these are explained under special headings below. Furthermore, in relation to a child as an actor some areas are not covered by the general rules, i.e. administrative sanctions and offences committed by children below MACR. These are also described under special headings below.

#### The child as a plaintiff

A child may not bring a case before the court in his/her own right until the age of 18. However, as of the age of 15, children can be involved in administrative judicial proceedings<sup>67</sup>. This means that children, who are 15 and older, may be invited by the courts to participate in the proceedings alongside their legal representatives, i.e. parents/guardians. The [APL](#) does not specify who can be a child's legal representative. According to the law, any adult over the age of 18, with procedural capacity, not deprived of the right to represent the person, and not in conflict of interests<sup>68</sup>, may be a representative on behalf of an adult or child before the administrative court. According to Latvian law, the judge, or the court, does not have discretionary power to grant dispensation as to the minimum age at which a child may participate in an administrative judicial proceeding. It is not clear what happens in practice when a child attains the age of 18 during an administrative judicial proceeding, or any other judicial proceeding. Children, in all matters, are represented by their legal representatives, and thus, it can be presumed that, after attaining the age of 18, children may either continue participating in the proceedings in their own right, or through their legal representatives.

In cases of conflict between children and their parents, the courts on their own motions may either appoint other persons as representatives of the children – after receiving opinion from the orphans' courts, or ask the orphans' courts to appoint a special guardian for the child<sup>69</sup>, see [Section 1](#). The special guardian ensures the representation of a child only for the duration of the specific administrative judicial proceedings. Therefore, in his/her role and responsibilities, such a guardian is similar to a guardian *ad litem*. Notwithstanding this, children may request – in their own right – the orphans' courts to provide them with support and assistance regardless of their status in judicial proceedings<sup>70</sup>.

<sup>67</sup> Article 21(1) of the [APL](#).

<sup>68</sup> Articles 35 to 37 of the [APL](#).

<sup>69</sup> Article 21(2) of the [APL](#).

<sup>70</sup> Article 17(7) of the [LOC](#).



## The child as a defendant

A child may only participate in administrative judicial proceedings as a defendant in the second instance proceedings. The public administrative authority is the defendant in the first instance proceedings. The same rules described above for a child plaintiff also apply to a child defendant. Namely, children may not appear before the courts in their own right until the age of 18 and they may only do so by acting through parents/guardians. If the child has reached the age of 15, he/she may be invited by the court to participate in the proceedings alongside his/her legal representative<sup>71</sup>.

## The child as a witness

The law specifies that children below the age of seven may not be invited and questioned as witnesses<sup>72</sup>. The law does not make provision for the judge or the court to have a discretionary power to grant dispensation as to the minimum age at which a child can be a witness in administrative judicial proceedings. Furthermore, children, regardless of their age, may not be examined about facts which might be potentially used against their parents, grandparents, siblings and other close relatives<sup>73</sup>.

## The child as a subject of proceedings

The **APL** does not contain any provisions in relation to children, or adults, as the subjects of proceedings. However, it is possible that a child is involved in administrative judicial proceedings as a **third party**. A third party is someone whose rights or legal interests may be violated or affected by the administrative decision or the subsequent court's judgement<sup>74</sup>. The third party has similar rights to the plaintiff/defendant. The court takes a decision to grant the status of third party at its own initiative, or upon the request of the person who believes that the decision or judgement at stake can affect his/her rights and best interests<sup>75</sup>. There are no rules specific to children as third parties in the **APL**<sup>76</sup>. For this reason, the general rules apply as explained above.

### 2.1.2 Procedural rules applicable to children involved in citizenship proceedings

#### The child as a plaintiff/defendant/subject of proceedings

In general, administrative judicial proceedings are governed by the **APL** which states that children may not bring cases before the courts until they reach the age of 18. However, the **APL** foresees the possibility of exceptions. Such exceptions are allowed if a child, according to a sector-specific law, is permitted to make a submission to an administrative public authority in his/her own right. If so, the child is also allowed to appeal decisions of this authority in his/her own right according to the rules of **APL**<sup>77</sup>. This is also the case with citizenship, since the **Citizenship Law** allows a child, who is 15 years of age, to apply for citizenship in his/her own right<sup>78</sup>. Therefore, the child him/herself also has the right to appeal decisions on citizenship<sup>79</sup>. The court may invite the child's legal representatives to support him/her through judicial proceedings<sup>80</sup>. Neither the **Citizenship Law**, nor the **APL** contains specific provisions on how children may make appeals. There are also no relevant guidelines or recommendations<sup>81</sup>.

<sup>71</sup> Article 21(1) of the **APL**.

<sup>72</sup> Article 163(5) of the **APL**.

<sup>73</sup> Article 163(3) of the **APL**.

<sup>74</sup> Article 28(2) of the **APL**.

<sup>75</sup> Article 28(3) of the **APL**.

<sup>76</sup> Article 146 of the **APL**.

<sup>77</sup> Article 21(4) of the **APL**.

<sup>78</sup> Article 2 of the **Citizenship Law** (*Pilsonības likums*), 1994.

<sup>79</sup> The granting of citizenship in Latvia involves two subsequent decisions. The first decision is taken by the naturalisation services who examine if the applicant qualifies for citizenship (administrative decision). The second and final decision is taken by the Government (political decision). Only the administrative decision is subject to appeal (see the **case-law** of the Supreme Court of Latvia).

<sup>80</sup> Article 21(4) of the **APL**.

<sup>81</sup> Information approved through consultation with national stakeholders – Ministry of Justice, orphan's court.

## The child as a witness

No rules were identified on the child as a witness in citizenship proceedings and therefore the general **APL** provisions apply as explained above.

### 2.1.3 Procedural rules applicable to children involved in health proceedings

#### The child as a plaintiff/defendant/subject of proceedings

In health proceedings, including mental health and medical treatment, a child from the age of 14 may give his/her own consent to treatment<sup>82</sup>. Except in emergency situations when the child's life is in immediate danger, treatment of a child younger than 14 is permissible only with the consent of the child's legal representative<sup>83</sup>. If the child's legal representative does not consent, or it is not possible to ask for their permission, e.g., their whereabouts are unknown, the permission for medical treatment on the basis of a motivated submission of the physician, may be given by the orphan's court<sup>84</sup>. This implies that a child under the age of 14 may not act in his/her own right to challenge the court decision adopted in this field – whilst a child, who is 14 years old and older may, on his/her own behalf, take procedural steps such as appealing an administrative decision in a health proceeding.

#### The child as a witness

No rules were identified on the child as a witness in health proceedings and therefore the general **APL** provisions apply as explained above.

### 2.1.4 Procedural rules applicable to children involved in proceedings for placement into care

#### The child as a plaintiff/defendant/subject of proceedings

Decisions of placement of children into care are taken by the orphans' courts according to the **Law on Orphans Courts** (LOC). Such decisions are administrative decisions and are thus reviewed according to the general **APL** provisions. As explained above, children may not act on their own behalf until they are 18 years of age and therefore, in judicial proceedings, may only participate through their legal representatives. In case of conflict between the child and his/her legal representatives, the court appoints the child another representative after considering the opinion of an orphan's court or asks the orphan's court to appoint the child a special guardian<sup>85</sup>.

According to the **LPRC**, a child may only be separated from his/her family if: (a) the child's life, health or development is seriously endangered because of lack of care, or circumstances at home, i.e. social surroundings; (b) the child seriously endangers his/her own health or development using alcohol, drugs or toxic substances; (c) the child has committed a criminal offence. In child protection cases – (a) and (b), the child may only be separated from his/her family if it is impossible to change or prevent the circumstances harming the child's welfare whilst staying with his/her family. In such a case, the child may be provided with out-of-home care by a guardian, a foster-family or a children's care institution. When choosing the type of out-of-home care for the child, the child's views must be heard and taken into consideration<sup>86</sup>.

The main decision-maker in a child protection case is the orphan's court. According to the **LOC**, the orphan's court may take three measures to protect the rights and best interests of a child, acting *ex officio* or based on a request from the child, his/her relatives or other members of public. Such measures include:

1. immediate removal of the child from his/her family as a matter of urgency;
2. termination of parents' rights to take care of the child as a temporary measure;

<sup>82</sup> Article 13 of the **Law on the Rights of Patients**.

<sup>83</sup> Article 7 of the **Law on the Rights of Patients**.

<sup>84</sup> Article 14 of the **Law on the Rights of Patients**.

<sup>85</sup> Article 21(2) of the **APL**.

<sup>86</sup> Article 27 of the **LPRC**.

3. initiation of legal proceedings for the termination of parental rights – considered a long-term measure.

The first measure concerns the immediate decisions that an orphan's court may take to remove the child from his/her family in situations of danger or crisis, e.g. the child lives in conditions that are dangerous to his/her health or life. In such cases, the child is taken to either a crisis centre, a foster family, an institution for long-term social care and social rehabilitation, a hospital or another safe place. This decision is valid for 15 days when the orphan's court must reassess the circumstances and decide whether or not to return the child to his/her family<sup>87</sup>.

The second measure is of a temporary nature and it involves a decision to terminate the parents' rights to take care of their child in the following instances:

- in circumstances not allowing the parents to provide care to the child, e.g. due to illness;
- when a child is in danger due to his/her parents' neglect;
- if the parents do not ensure care and supervision of the child;
- when there are reasonable grounds to believe that the child is being abused by his/her parents.

The child care rights of parents are reinstated immediately once the circumstances for removing them have ceased to exist<sup>88</sup>.

The third measure is a measure of potentially long-term consequence, namely, the orphan's court may initiate legal proceedings before a civil court for the termination of the parental rights if:

- the parents abuse the child;
- the parents do not ensure sufficient care and supervision of the child and this may endanger his/her welfare and development<sup>89</sup>.

## The child as a witness

No rules were identified on the child as a witness in placement for care proceedings and therefore the general [APL](#) provisions apply as explained above.

### 2.1.5 Procedural rules applicable to administrative sanctions relevant to children and to children below the age of MACR committing offences

#### The child as a plaintiff/defendant

A child may participate in judicial proceedings in relation to administrative violations and sanctions as of the age of 14, which is the minimum age of administrative and criminal responsibility in Latvia<sup>90</sup>. However, the [LAVC](#) specifies that instead of administrative sanctions children from the age of 14 may be subject to compulsory educational measures according to the [ACMCN](#)<sup>91</sup>. The competent authority may decide to declare the child guilty for the violation but not to impose an administrative sanction<sup>92</sup>. Then, instead of court proceedings, the case is sent to an administrative commission of the local authority of the child's residence to decide on compulsory education measures. Children, aged from 11 to 14, may only be imposed compulsory education measures and no administrative sanctions can be imposed on them. Decisions of these commissions may further be appealed before the competent courts<sup>93</sup>. Since children, in general, lack procedural capacity, children may take formal legal steps only through their legal representatives in these proceedings.

<sup>87</sup> Article 24 of the [LOC](#).

<sup>88</sup> Articles 22(1) and (2) of the [LOC](#).

<sup>89</sup> Article 22(3) of the [LOC](#).

<sup>90</sup> Article 12 of the [LAVC](#).

<sup>91</sup> Article 12<sup>1</sup> of the [LAVC](#).

<sup>92</sup> Article 274 of the [LAVC](#).

<sup>93</sup> Article 28 of the [ACMCN](#).

## The child as a victim

In the sector of judicial proceedings related to administrative violation, a child, like an adult, may be a victim of administrative violation. To acquire the status of victim, the person should file a request to the relevant authority, or to the court<sup>94</sup>. As a victim of an administrative violation the child has the right to participate in proceedings, to receive information, make claims, appeal the administrative decision or the court's judgement imposing sanctions, or deciding on other issues such as compensation<sup>95</sup>. Since children, in general, lack procedural capacity, they participate in proceedings through their legal representatives. If the violation is committed by a legal representative, the child is represented by the orphan's court<sup>96</sup>.

## The child as a witness

There are no child-specific provisions in the **LAVC** on witnesses, therefore the same rules apply to adults and children alike. Consequently, the minimum age at which a child may be summoned to the court as a witness is not specified. The **LAVC** does not require any permission from the child's parents/guardian for the child to be questioned as a witness. The child will be summoned to the court him/herself to provide testimony in his/her own right. Considering that these are quasi-criminal proceedings, it is likely that, by analogy to criminal proceedings, certain protection measures are employed during interviews and when giving testimony. That is, in criminal proceedings a child witness under the age of 14 may only be questioned in the presence of a specialised psychologist or pedagogue and in a child-friendly procedure<sup>97</sup>.

## The child as a subject of proceedings

Considering the nature of these proceedings, the question of a child as the subject of proceedings does not arise in this context.

## 2.2 Provision of information

### 2.2.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education, placement into care, administrative sanctions and offences committed by children below MACR

The general rules described below apply to administrative proceedings including the sectors listed above – asylum, migration, health, education, placement of children into care, administrative sanctions and offences committed by children below MACR.

## The child as a plaintiff/defendant/witness/subject of proceedings

The main procedural laws, **APL** and **LAVC**, do not cover provision of information to children. However, the rights guaranteed by the **LPRC** apply to children involved in judicial proceedings, including children's rights to receive information in all matters affecting them when they enter into contact with the courts, law enforcement institutions or social services. The **LPRC** states that children have the right to receive all information that concerns their rights and best interests and thus also any information relevant to administrative or judicial proceedings. The law, however, does not mention what kind of information must be provided to children, who is responsible for providing it, or when it must be provided to the children. Therefore, it is not clear whether or not provision of such information includes specific rights – including social and civil rights, the systems and procedures involved, consequences of the procedure, time and place of the court procedures, general progress and outcome of the procedure – including communication of court rulings, review of decisions affecting

<sup>94</sup> Article 261 of the **LAVC**.

<sup>95</sup> Article 261 of the **LAVC**.

<sup>96</sup> Article 262<sup>1</sup> of the **LAVC**.

<sup>97</sup> Judgement of the Regional Administrative Court, 30 April 2013, in case **Nr.142077510** together with the Judgement of the Constitutional Court, 20 June 2002, in case **Nr. 2001-17-0106**.

the child, rights of remedy for violations of rights, availability of support services and access to documents. Furthermore, there is no guidance available for court authorities, law-enforcement agents, or defence counsels, to ensure that children are informed of the availability of support services, such as health, social, legal advice, interpretation and translation, and of other organisations that can provide support measures and advice on how to effectively access them.

Latvian legislation requires that the addressees of administrative decisions are provided with all relevant information both before administrative authorities and before the courts. Since children may not act in their own right until they turn 18, all information is primarily provided to the children's legal representatives, i.e. parents/guardians. Whilst the child who is the addressee of an administrative decision – also in relation to placement into care, has the right to receive information about his/her rights to appeal against an administrative decision. These rights can only be exercised through the child's legal representative. No statutory provision, however, requires that parents, guardians, legal representatives and lawyers are informed on all aspects of judicial proceedings and, when information is provided, it is not clear if parents and children receive the same type of information. In cases of conflict between children and their parents, the courts on their own motions may appoint other representatives for children, or ask the orphans' courts to appoint special guardians for the children<sup>98</sup>.

Information services that provide information and advice to children about their rights and available support services, in a manner adapted to their age and maturity, are provided by several institutions. Principally, the State Inspectorate for Protection of Children's Rights provides information on its website on children's rights in child-friendly language<sup>99</sup>. It also operates a child helpline telephone service (116111) where children are provided with advice and psychological support. Online applications allow children to send e-mails concerning any issues, including those of a legal nature, and to receive answers from qualified specialists within three business days (*E-konsultēšana*). Additionally, an online application is provided by the Ombudsman (*Jautājums tiesībsargam*). This application is not specifically adapted to children and anyone may use it to ask questions about his/her rights – it is the Ombudsman's duty to consult anyone who has asked for a consultation on human rights issues<sup>100</sup>. Finally, a child may always, in his/her own right, request support or assistance from the orphan's court, including providing him/her with information on judicial proceedings and his/her rights in such proceedings<sup>101</sup>.

Since the persons primarily involved in judicial proceedings are the children's parents/guardians, laws regulating administrative judicial proceedings contain rather few child-specific provisions. For this reason, there are also no rules that require the courts, or other relevant authorities, to explain to children the consequences of participating in judicial proceedings and making their opinions heard. There are no provisions to ensure that information is effectively delivered to the child in a child-friendly manner, in a language the child understands, or taking into account the age, maturity, gender and cultural sensitivity of the child. There are no specific codes of conduct or policy guidelines that are given to the professionals concerned to ensure that children effectively receive information.

There are no provisions in Latvian legislation to ensure that children receive information on the available special arrangements to protect their best interests if they are residents in different Member States.

<sup>98</sup> Article 21(2) of the APL.

<sup>99</sup> Information in a language adapted to children is available on the official webpage of the [State Inspectorate for Protection of Children's Rights](#).

<sup>100</sup> Article 12(9) of the [Law on Ombudsman](#).

<sup>101</sup> Article 17(7) of the [LOC](#).

## 2.3 Protection of the child's private and family life

### 2.3.1 Right to privacy

#### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education, placement into care, administrative sanctions and offences committed by children below MACR

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education, placement of children into care, administrative sanctions and offences committed by children below MACR. However, if there are rules in the specific areas that differ from the general rules, these are explained under special headings below.

#### *The child as a plaintiff/defendant/subject of proceedings*

The right to privacy for children is guaranteed by the [LPRC](#)<sup>102</sup>. The provision on children's rights to privacy must be protected by all public administrative authorities and the courts in all types and stages of proceedings. There are no specific exceptions to the rule on protecting the child's identity/privacy/personal data. The same exceptions relate to adults and children alike. Namely, State authorities must comply with the obligation to respect fundamental rights and freedoms as set out in the [Constitution](#) and specifically children's rights as stipulated by the [LPRC](#). When taking decisions which might restrict children's rights, including the right to privacy, all authorities must assess whether or not such restrictions are reasonable, necessary and proportionate<sup>103</sup>.

As a general rule, all judicial proceedings in Latvia are held in public. However, there are two general exceptions when the courts are obliged to hold hearings behind closed doors. Such cases relate to adoption of children and information classified as State secrets<sup>104</sup>. In other cases, the courts have the right to hold closed hearings in order to protect information which is classified as 'restricted access information' according to the [Law on Freedom of Information](#). Access is restricted to information that concerns a person's private life<sup>105</sup>. For this reason, the court has considerable discretion as to when to proceed with a court hearing behind closed doors.

Information revealed during a public trial is accessible to all. However, when court officials issue information to others, they have the duty to hide any details which disclose the identities of persons, children or adult, involved in proceedings<sup>106</sup>. This rule also applies in cases when court judgements are published online. Any information that may lead to identification of an individual involved in the proceeding, e.g. name, identity number, or address, is disguised. Also, information that is classified as a State secret, or to which access is restricted, e.g. information concerning a person's private life, is replaced by a short explanation on why the information is not available, e.g. 'State secret'<sup>107</sup>.

In administrative judicial proceedings all case materials, and thus personal records and data therein, are only available to the parties of disputes – adults or children, and their legal representatives. However, as described in [Section 2.1](#), the court may also grant special 'third party' status to those who are not directly concerned, but their rights and best interests are, or potentially might be, affected by administrative decisions or the subsequent judgements of the courts<sup>108</sup>. Still, the courts may always decide not to disclose certain information to anyone, including parties – it may do so on its own motion, or at the request of one of the parties. Such restriction must be justified for the purpose of protecting a person's private life, or State, commercial, professional or adoption secret<sup>109</sup>. The court might also decide to keep the restriction in force after announcing the judgement. In this

<sup>102</sup> Article 9 of the [LPRC](#).

<sup>103</sup> Article 17(1) of the [LOC](#).

<sup>104</sup> Article 108(2) of the [APL](#).

<sup>105</sup> Article 5(4) of the [Law on Freedom of Information](#) (*Informācijas atklātības likums*), 1998.

<sup>106</sup> Article 28<sup>2</sup> of the [Law on Judicial Power](#).

<sup>107</sup> Article 12 of the [Regulation on publication of courts' information on the internet](#) (*Noteikumi par tiesu informācijas publicēšanu mājaslapā internetā un tiesu nolēmumu apstrādi pirms to iznīgšanas*), 2009.

<sup>108</sup> Article 146(3) of the [APL](#).

<sup>109</sup> Article 145(4) of the [APL](#).

case, the party interested has the right to ask permission to access information only according to the general procedure prescribed by the [Law on Freedom of Information](#). That is, like any other person who is not a party to the proceedings, they must provide justification for requesting this information and, if granted, use this information solely for the purposes for which it was requested. If access to information is granted or disclosed unlawfully, the responsible person may face disciplinary measures or criminal sanctions<sup>110</sup>. There are no remedies for children whose privacy rights have been violated. However, any individual whose rights to privacy have been violated may bring a claim for compensation before the competent court according to the [Civil Law](#) and [Civil Procedure Act](#). As children, in general, lack procedural capacity, these rights are usually exercised by their legal representatives.

In relation to children, the State Inspectorate for Protection of Children's Rights has issued [guidance](#) to the orphans' courts that they should inform the courts if they believe that sharing certain information would be harmful to children's welfare, or their development. According to this [guidance](#) the orphans' courts must carefully assess every case and its circumstances in order to ensure the best protection of children's rights and best interests. The decision on whether or not to follow the advice from the orphans' courts is left at the discretion of the courts. The orphans' courts themselves are obliged not to disclose any information that might harm the children now, or in the future<sup>111</sup>.

### *The child as a witness*

The [APL](#) foresees the possibility for the court to question a child witness behind closed doors. The court has the right to decide who may be present in such a hearing. If necessary, the court may ask even the parties to proceedings to leave the court room. If a party to proceedings was asked to leave the court room, the court afterwards informs the person of the child's testimony<sup>112</sup>.

## **Procedural rules applicable to administrative sanctions relevant to children and to children below the age of MACR committing offences**

### *The child as a plaintiff/defendant*

The [LAVC](#) does not contain specific rules on the protection of a child's private and family life except that proceedings concerning administrative violations are always held behind closed doors if the plaintiff or defendant is a child<sup>113</sup>. Likewise, proceedings on the application of compulsory education measures to children as young as 11 are held behind closed doors according to the [ACMCN](#)<sup>114</sup>. In relation to other privacy issues, the general [LPRC](#) rules apply as described above.

### *The child as a victim*

In the sector of judicial proceedings related to administrative violation, a child, like an adult, may be a victim of an administrative violation. Judicial proceedings in relation to administrative sanctions are also held behind closed doors if a child is the victim<sup>115</sup>.

### *The child as a witness*

No specific provisions were identified on the right of privacy of children as witnesses and therefore the general [LPRC](#) rules apply.

### *The child as a subject of proceedings*

Considering the nature of these proceedings, the question of a child as the subject of proceedings does not arise in this context.

<sup>110</sup> Article 16(3) of the [Law on Freedom of Information](#).

<sup>111</sup> Article 17(6) of the [LOC](#).

<sup>112</sup> Article 230(2) of the [APL](#).

<sup>113</sup> Article 289<sup>6</sup> of the [LAVC](#).

<sup>114</sup> Article 25 of the [ACMCN](#).

<sup>115</sup> Article 289<sup>6</sup> of the [LAVC](#).



## 2.3.2 Protection of personal data

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education, placement into care, administrative sanctions and offences committed by children below MACR

The general rules described below apply to administrative proceedings including the sectors listed above – asylum, migration, health, education, placement of children into care, administrative sanctions and offences committed by children below MACR.

#### *The child as a plaintiff/defendant/witness/subject of proceedings*

Principles for the protection of personal data in Latvia are embedded in the **Personal Data Protection Law**<sup>116</sup> which transposes the **EU Data Protection Directive 95/46/EC**. This law does not contain any child-specific provisions and therefore generally applies to adults and children alike. It requires anyone who is processing personal data, including a public administrative authority and the court, to process data for legitimate purposes only and under strict conditions. Compliance with requirements of the **Personal Data Protection Law** of persons or authorities which collect and manage personal data is supervised by the **Data State Inspectorate**. The inspectorate supervises the operation of personal data processing systems and has the right to review complaints regarding protection of personal data, impose administrative fines for violations of the **Personal Data Protection Law** and initiate relevant court proceedings<sup>117</sup>.

## 2.3.3 Obligation of confidentiality

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education, placement into care, administrative sanctions and offences committed by children below MACR

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education, placement of children into care, administrative sanctions and offences committed by children below MACR.

#### *The child as a plaintiff/defendant/witness/subject of proceedings*

The **LPRC** imposes a general obligation of confidentiality on anyone who is employed by a State or local authority, and works with, or for children. Employees are obliged to keep confidential all information obtained in their professional capacity, concerning children. Furthermore, judges have a special obligation to preserve the confidentiality of any information they have obtained when exercising their duties<sup>118</sup>. The duty of confidentiality also applies to the employees of orphans' courts. Employees of orphans' courts are bound by this duty even after the termination of their employment contracts<sup>119</sup>. For breach of the confidentiality rule, a person may be subject to disciplinary or other measures<sup>120</sup>.

<sup>116</sup> **Personal Data Protection Law** (*Fizisko personu datu aizsardzības likums*), 2000.

<sup>117</sup> Articles 29 and 30 of the **Personal Data Protection Law**.

<sup>118</sup> Article 89 of the **Law on Judicial Power**.

<sup>119</sup> Article 78 of the **LOC**.

<sup>120</sup> Article 71 of the **LPRC**.



### 2.3.4 Self-regulatory measures of the media

#### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education, placement into care, administrative sanctions and offences committed by children below MACR

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education, placement of children into care, administrative sanctions and offences committed by children below MACR.

#### *The child as a plaintiff/defendant/witness/subject of proceedings*

There is no legislation in Latvia that regulates the rights and responsibilities of the media in relation to children in administrative judicial proceedings. Nevertheless, there are general rules of the LPRC and the **Law of the Press and other Mass Media** that prohibit dissemination of information regarding a child – if such information could harm the child. It is also prohibited to interview a child and publish information concerning any child who is a victim, or witness of crime, or has violated the law him/herself. Exceptionally, if the child has expressed an explicit wish for the information to be published and his/her legal representatives agree with it<sup>121</sup>, the information is allowed to be published. The law does not specify the age at which a child may express such a wish.

There are no self-regulatory measures identified that are applied by the media specifically to protect the child's right to privacy. However, there are some codes of ethics adopted by groups of journalists and certain media that broadly refer to the protection of child's rights<sup>122</sup>, or the protection of a person's private life<sup>123</sup>. There does not seem to be any independent organisation entrusted with the responsibility to monitor the existing self-regulatory measures applied by the media.

The Ombudsman's Office, in close collaboration with the Latvian Association of Journalists, has prepared **special guidelines** on how the media should report on issues involving children<sup>124</sup>. The guidelines state that media professionals should pay particular attention to the rights and best interests of children involved in family conflicts, and to always remember that the children's rights and best interests must take priority over the public interest when disclosing any facts of the cases. Furthermore, before visualising judicial proceedings or other conflicting events, journalists should ensure that the use of children's images does not violate the rights and best interests of the children and does not affect their welfare.

### 2.3.5 Conflicts between the child and his/her family during judicial proceedings

#### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education, placement into care, administrative sanctions and offences committed by children below MACR

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education, placement of children into care, administrative sanctions and offences committed by children below MACR.

<sup>121</sup> Article 71 of the LPRC.

<sup>122</sup> **Code of Ethics** of the Latvian Association of Journalists.

<sup>123</sup> **Code of Ethics** of the newspaper 'Diena'. See also **Code of Ethics** of the Latvian Press, Radio and TV Association.

<sup>124</sup> Ombudsman's **guidelines** to professionals on how to speak with and about children in the media, 2012.

### *The child as a plaintiff/defendant/subject of proceedings*

There are no provisions identified to avoid conflicts between the child and his/her family during judicial proceedings. There are no specific guidance and support measures available for children and their families by specialised services to avoid adverse consequences of the judicial proceedings on family relations.

If the court is aware that there is a conflict between the child and his/her parents/guardian, it may involve the orphan's court by asking its opinion about whom to appoint as the child's representative, or by asking the orphan's court to appoint a special guardian<sup>125</sup>, see [Section 1](#). The orphans' courts oversee the activities of all guardians and may suspend or dismiss guardians who fail to protect and represent the best interests of children<sup>126</sup>. The orphans' courts, in general, may be required to provide their opinions, or participate in any kind of proceedings, to ensure protection of the children's rights, especially in very conflictual situations<sup>127</sup>. Furthermore, if there are reasonable grounds to believe that disclosing information to the parents/guardian might harm the child's welfare or his/her development, both the court and orphan's court has the right not to disclose such information, e.g. the expert opinion of a psychologist<sup>128</sup>. According to the [guidance](#) issued by the State Inspectorate for Protection of Children's Rights, the orphan's court should inform the court if it believes that sharing certain information would be harmful to the child's welfare or his/her development. According to this [guidance](#), the orphans' courts must carefully assess every case and its circumstances in order to ensure the best protection for children's rights and best interests.

### *The child as a witness*

In order to avoid the risk of adverse consequences in their family lives, witnesses – both children and adults, have the right to refuse to testify against close relatives<sup>129</sup>. There are no specific guidance and support measures, by specialised services, available for children and their families to avoid adverse consequences of the judicial proceedings on family relations.

## **2.4 Protection from harm during proceedings and interviews and ensuring a child friendly process**

### **2.4.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education and placement into care**

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education and placement of children into care. However, if there are rules in the specific areas that differ from the general rules, these are explained under special headings below. Furthermore, some areas are not covered by the general rules, i.e. administrative sanctions and offences committed by children below MACR. These are also described under special headings below.

### **The child as a plaintiff/defendant/subject of proceedings**

Laws and regulations in Latvia, in general, do not provide any specific time limits for the adjudication of cases. Latvian courts are bound by the principle of procedural economy which requires that any dispute is settled as fast as possible<sup>130</sup>. However, the [LPRC](#) requires that any matter dealt with by administrative or judicial authorities, that may potentially affect a child's rights or best interests, must take priority<sup>131</sup>. Other than prioritisation, no other measures were identified to ensure that decisions are made and proceedings take place without undue delay. It is not clear how this prioritisation

<sup>125</sup> Article 21(2) of the [APL](#).

<sup>126</sup> Article 32 of the [LOC](#).

<sup>127</sup> Articles 17(1) and (3) of the [LOC](#).

<sup>128</sup> Article 145(4) of the [APL](#) and Article 17(6) of the [LOC](#).

<sup>129</sup> Article 164 of the [APL](#).

<sup>130</sup> Article 28<sup>4</sup> of the [Law on Judicial Power](#).

<sup>131</sup> Articles 6(1) and 20(3) of the [LPRC](#).

takes place in practice, and there does not seem to be any mechanism to monitor its implementation in respect of proceedings involving children.

Latvian legislation does not ensure that the premises and places where children are involved in proceedings are non-intimidating and child-friendly, e.g. child-friendly waiting rooms in the courts. However, in practice, it is unlikely that a child will be required to participate at the hearing. Although there are no specific provisions on avoiding the need for the child's presence in the proceedings, it is a general practice that a child is represented by his/her legal representative. If it is necessary to obtain the child's views on the issue at stake, the court may ask the orphan's court to hear the child and provide the child's opinion to the court<sup>132</sup>. Additionally, audio-visual equipment is generally available in a court and the judge may hear a child's testimony by video link<sup>133</sup>. It is left at the discretion of the court to decide on how to proceed.

Since, most of the time, children are not involved in administrative judicial proceedings, there are no special laws or regulations in place to ensure that interviews, court sessions and other actions during the administrative procedures are adapted to the child's pace and attention span, and any communication difficulties the children may have. The number of interviews is not limited, and there is no provision on assisting the child in communications during proceedings. In addition, it is not required to take into account the child's age and maturity, or any communication difficulties, or to ensure that the child understands the proceedings, decisions and rulings. However, it stems from the general **LPRC** provisions that only those professionals who have special knowledge in dealing with children may work with children. This means that, theoretically, professionals know how to communicate with children and how to ensure that their needs are met in administrative and judicial proceedings. There is no guidance for professionals to ensure that child-friendly measures are applied in judicial proceedings.

There are no specific materials available to provide support/guidance to children involved in judicial proceedings. There are also no specific support services, such as psychological, practical, or social support services, that exist to help the child cope with the proceedings. Children, however, may apply in their own right for support and guidance to local social services<sup>134</sup>, the orphans' courts<sup>135</sup>, or other institutions specialised in the protection of children's rights, e.g. the State Inspectorate for Protection of Children's Rights, or the Ombudsman. Children are informed of their rights in diverse information campaigns – among others, on TV and internet sites.

The law does not contain any provision specifically allowing or requiring the parents, guardian or other trusted person to accompany the child during the proceedings. Nevertheless, children may not take any formal steps in judicial proceedings themselves. Therefore, the presence of the child's legal representative or another person representing the child before the court, e.g. the guardian appointed by an orphan's court, is implicit.

Considering that children would not normally be present in judicial proceedings, there are no rules in place as to how children are protected during the proceedings from images or information that can be harmful to their welfare. However, it is, in general, prohibited to show or promote information which encourages cruel behaviour, violence, pornography and which also pose threats to the psychological development of a child. This material may not be accessible to a child, irrespective of the form of expression or devices through which it may be displayed, or its location<sup>136</sup>. It is not further specified in law or policy guidance as to how, and when, professionals should evaluate the impact of potentially harmful information on the children, and how to ensure that children are protected from such information.

## The child as a witness

In relation to child witnesses, the law specifies that children below the age of seven may not be invited and questioned as witnesses<sup>137</sup>. Thus, information/evidence gathered from children below the

<sup>132</sup> Article 17(3) of the **LOC**.

<sup>133</sup> Within the framework of the Swiss-Latvian cooperation programme 'Modernisation of Courts in Latvia, 47 courts in Latvia and 12 detention facilities were equipped with video and audio equipment.

<sup>134</sup> Article 26(2) of the **LPRC**; Articles 12(1) to (3) of the **Social Services and Social Assistance Law** (*Sociālās pakalpojumu likums*), 2003.

<sup>135</sup> Article 18(3) of the **LOC**.

<sup>136</sup> Articles 50(1) and (2) of the **LPRC**.

<sup>137</sup> Article 163(5) of the **APL**.

age of seven is inadmissible in the courts. The law does not make provision for the judge or the court to have a discretionary power to grant dispensation as to the minimum age at which a child can be a witness in administrative judicial proceedings. Furthermore, children, regardless of their age, may not be examined about facts which might potentially be used against their parents, grandparents, siblings and other close relatives<sup>138</sup>.

The **APL** regulates that examination of a witness may be conducted in the presence of his/her representative, a specialist in children's rights, a psychologist or a teacher<sup>139</sup>. The law allows the court to choose whom to invite to accompany a child in his/her interviews. For instance, if there is a family conflict, the court may invite a specialist to accompany the child rather than his/her legal representatives.

If necessary, the court may decide to examine the child without the presence of other participants of the administrative proceeding. Such participants are afterwards informed of the testimony of the child witness and are given the opportunity to ask their questions<sup>140</sup>. There are no further details specified as to the exact procedure to follow and no other guidelines or recommendations.

## 2.4.2 Procedural rules applicable to children involved in proceedings for placement into care

### The child as a plaintiff/defendant/subject of proceedings

As explained in **Section 2.1**, the main decision-makers in child protection cases are the orphans' courts rather than administrative or civil courts. According to the **LOC**, the orphans' courts may take three measures to protect the rights and best interests of children. As mentioned in **Section 2.1**, such measures include immediate removal of the child from his/her family as a matter of urgency, termination of parents' rights to take care of the child as a temporary measure, and initiation of legal proceedings for the termination of parental rights, considered as a long-term measure. Anyone may submit a complaint to the local orphan's court, including a child, another family member, or a member of the community alleging abuse or neglect in the family, and may ask the orphan's court to impose protective measures. There is no minimum age at which a child has the right to instigate protective measures in his/her own right.

### The child as a witness

No rules were identified on the child as a witness in placement for care proceedings and therefore the general **APL** provisions apply as explained above.

## 2.4.3 Procedural rules applicable to administrative sanctions relevant to children and to children below the age of MACR committing offences

### The child as a plaintiff/defendant/witness

The **LAVC** does not contain any provisions for protection of children from harm during proceedings concerning administrative violations and ensuring child-friendly process in interviews. According to case-law, when there is a legal gap in the **LAVC**, provisions of the **Criminal Procedure Act** may apply due to the similarity of administrative violations and criminal proceedings<sup>141</sup>. The **ACMCN** regulating application of compulsory educational measures, does not provide any rules in this regard. It is not clear whether or not, in the absence of specific rules in the **ACMCN**, professionals and judges may apply rules from the **Criminal Procedure Act**.

The **Criminal Procedure Act** prescribes certain rules that must be observed when questioning children. As described in the Study to collect data on children's involvement in criminal judicial proceedings (Chapter 3.1.4), children under the age of 14 must be interviewed in the presence of a teacher

<sup>138</sup> Article 163(3) of the **APL**.

<sup>139</sup> Article 230(1) of the **APL**.

<sup>140</sup> Article 230(2) of the **APL**.

<sup>141</sup> Judgement of the Regional Administrative Court, 30 April 2013, in case **Nr.142077510**.

or a specialist who has acquired special psychological knowledge<sup>142</sup>. If the specialist believes that a face-to-face interview may adversely affect the child's physical and emotional well-being, the interview takes place with the help of audio-visual equipment. The procedure is explained and questions are asked and adapted to the age and maturity of the child. The law limits the length of the interview to a maximum of six hours a day, but the number of questioning sessions is not limited. The psychologist, however, may advise to avoid multiple questioning. It is also possible to use audio-visual equipment, thus not requiring the child to attend a court hearing and protecting the child from any harm. Notwithstanding this, it is not clear whether or not, and to what extent public administrative authorities and the courts follow these child-friendly principles when deciding on administrative violations.

## The child as a subject of proceedings

Considering the nature of these proceedings, the question of a child as the subject of proceedings does not arise in this context.

## 2.5 Right to be heard and to participate in administrative judicial proceedings

### 2.5.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education, placement into care, administrative sanctions and offences committed by children below MACR

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education, placement of children into care, administrative sanctions and offences committed by children below MACR. However, if there are rules in the specific areas that differ from the general rules, these are explained under special headings below.

## The child as a plaintiff/defendant/subject of proceedings

The **LPRC**, which is the umbrella law for protection of children's rights, stipulates that children as individuals must be heard i.e. can be interviewed, provide evidence, and give testimony, either in their own right, or through legal representatives, or a competent institution, in all judicial or administrative proceedings that may affect them<sup>143</sup>. However, the law does not specify the child's right to intervene in proceedings. The **LPRC** and other relevant laws do not contain any further details on the child's right to be heard. Consequently, it is not required by law that children are consulted in the manner in which they wish to be heard. There are also no specific provisions on allowing children to enforce their legal rights, as their rights, in general, are enforced through their legal representatives.

Latvian legislation does not provide any specific provision to remove obstacles for children to accessing the courts. Nevertheless, children may always apply for support and assistance to local social services<sup>144</sup>, the orphans' courts<sup>145</sup>, or other institutions specialised in the protection of children's rights, e.g. the State Inspectorate for Protection of Children's Rights, or the Ombudsman. These institutions, amongst others, may consult the children and provide legal advice in their judicial proceedings. The orphans' courts have a general obligation to protect children's personal and financial interests and initiate judicial proceedings in child protection cases<sup>146</sup>. The Ombudsman has the right to defend the rights and best interests of individuals before the courts if violations of human rights have been established, and that going before the courts has broader public interest<sup>147</sup>.

<sup>142</sup> Articles 152 and 153 of the **Criminal Procedure Act**.

<sup>143</sup> Article 20(3) of the **LPRC**.

<sup>144</sup> Article 26(2) of the **LPRC**; Articles 12(1) to (3) of the **Social Services and Social Assistance Law (Sociālās pakalpojumu likums)**, 2003.

<sup>145</sup> Article 18(3) of the **LOC**.

<sup>146</sup> Article 17 of the **LOC**.

<sup>147</sup> Article 13(9) of the **Law on Ombudsman**.

Due to the inquisitorial powers of administrative courts in Latvia, it is presumed that there is no general need to be represented before the courts, or consulted by qualified lawyers during proceedings. It also relates to children since, in Latvia, they are usually represented by their adult representatives. For this reason, the [Law on Legal Aid](#) does not foresee the possibility for adults or children to ask for legal aid to cover costs for legal assistance in administrative judicial proceedings. The only exception relates to **asylum and immigration proceedings**, where a person of foreign nationality has the right to access legal aid in an appeal proceeding concerning a voluntary return decision or a removal order<sup>148</sup> – see below. Despite the fact that in administrative judicial proceedings individuals do not have access to legal aid, in a highly difficult case, the administrative authority whose decision is being challenged, or the court, may decide that legal assistance to a person who does not have sufficient means for such assistance is covered by the State – see [Section 2.6](#). The legal representatives usually make such requests of behalf of the children.

There are no general exceptions from the obligation to pay court fees because proceedings concern children. The law foresees that anyone, adults and children alike, may be exempt from the payment of fees, or the fees can be reduced, if the persons do not have sufficient financial means to cover the fees<sup>149</sup> – see [Section 2.9](#). Since children, in general, do not have procedural capacity, such requests on behalf of children are usually made by their legal representatives. It is up to the courts to decide whether or not the fees will be fully covered by the State, or if the children/representatives are to pay the costs in reduced amounts.

Access to interpretation and translation services are provided free of charge to all parties of proceedings, including children, who do not have knowledge of the Latvian language, which is the official language used by all public authorities and the courts<sup>150</sup>.

## The child as a witness

In relation to child witnesses, the [APL](#) provides that children under the age of seven may not be summoned to the courts and examined as witnesses<sup>151</sup>. As of the age of seven, children may testify in the presence of their legal representatives, specialists in children's rights, psychologists or teachers. It is for the court to decide who will accompany the child during an interview. Witnesses have the right not to testify about their close relatives.

As explained above under general rules, there are no provisions to remove obstacles to access courts, for children. However, witnesses do not pay any court fees and their expenses related to giving testimonies, i.e. travel and other expenses are reimbursed by the State<sup>152</sup>. The [APL](#) does not regulate provision of interpretation and translation services to support child witnesses to be heard.

## 2.5.2 Procedural rules applicable to children involved in asylum and migration proceedings

### The child as a plaintiff/defendant/subject of proceedings

In asylum and migration proceedings, the same principles govern the child's right to be heard as described by the [LPRC](#) and the [APL](#). Whilst Latvian legislation does not provide any specific provisions to remove obstacles to access courts for children, it does remove certain obstacles to access courts for foreign nationals, children or adults. To start with, in all legal and financial matters, unaccompanied children are represented by the orphans' courts, guardians appointed free of charge by the orphans' courts, or the heads of child care institutions where the children are accommodated<sup>153</sup>. Secondly, foreign nationals, according to the [Asylum Law](#), do not pay court fees in proceedings related to requesting asylum<sup>154</sup>. Furthermore, the [Law on Legal Aid](#) provides that in asylum and migration proceedings, children and adults of foreign nationality have the right to access legal aid in appeal proceedings concerning granting of asylum, voluntary return decisions or removal orders<sup>155</sup>.

<sup>148</sup> Article 15 of the [Law on Legal Aid](#).

<sup>149</sup> Article 128(3) of the [APL](#).

<sup>150</sup> Article 110(4) of the [APL](#).

<sup>151</sup> Article 163 of the [APL](#).

<sup>152</sup> Article 18(3) of the [APL](#).

<sup>153</sup> Article 5(5) of the [Asylum Law](#) and Article 50.<sup>9</sup>(2) of the [Immigration Law](#).

<sup>154</sup> Article 30(4) of the [Asylum Law](#).

<sup>155</sup> Article 15 of the [Law on Legal Aid](#).



Such aid covers costs for legal consultations, drafting of procedural documents and representation in the courts<sup>156</sup>. Finally, interpretation and translation services in asylum and migration proceedings – the same as in general administrative proceedings, are provided free of charge to support a person's right to be heard.

### The child as a witness

No specific rules were identified on a child witness in asylum and migration proceedings and therefore the general **APL** provisions apply as explained above.

## 2.5.3 Procedural rules applicable to children involved in health proceedings

### The child as a plaintiff/defendant/subject of proceedings

Besides the general rules on the child's right to be heard in all matters relevant to him/her, there is also a specific provision in the **Law on the Rights of Patients** emphasising that a child patient has the right to be heard, and according to his/her age and maturity, to participate in decision making in relation to his/her medical treatment<sup>157</sup>.

### The child as a witness

No specific rules were identified on a child witness in health proceedings and therefore the general **APL** provisions apply as explained above.

## 2.5.4 Procedural rules applicable to administrative sanctions relevant to children and to children below the age of MACR committing offences

### The child as a plaintiff/defendant

In administrative violation proceedings, the same principles apply to the child's right to be heard as described by the **LPRC**, explained above. Nevertheless, due to the similarity of administrative violations to criminal offences, persons who have been imposed administrative sanctions are exempt from paying court fees to ensure their access to justice<sup>158</sup>. The **Law on Legal Aid** does not foresee the possibility for adults or children to ask for legal aid to cover costs for legal assistance in administrative violation proceedings. Nevertheless, it seems that to ensure a person's right to fair trial in accordance with **European Convention of Human Rights**, in a case where the punishment for administrative violation would be similar to a punishment for a criminal offence, i.e. fines or arrest, a person should have access to legal assistance if he/she does not have sufficient means to pay for legal assistance<sup>159</sup>.

### The child as a witness

Besides the general rules on the child's right to be heard in all matters relevant to him/her, there are no specific provisions for a child witness in the **LAVC**. This implies that, in relation to child witnesses, the **Criminal Procedure Act** rules may apply<sup>160</sup>. That is, child witnesses who are below the age of 14 are heard in the presence of teachers, or specialists who have acquired special psychological knowledge<sup>161</sup>. The **ACMCN** regulating application of compulsory educational measures also does not provide any rules in this regard. It is not clear whether or not in absence of specific rules in the **ACMCN**, professionals and judges may apply child-friendly rules from the **Criminal Procedure Act**.

<sup>156</sup> Article 16 of the **Law on Legal Aid**.

<sup>157</sup> Article 13(1) of the **Law on the Rights of Patients**.

<sup>158</sup> Judgement of the Constitutional Court, 6 January 2005, in case **Nr.2004-16-01**.

<sup>159</sup> Article 6(3)(c) of the **European Convention of Human Rights**. See also decision from the Latvian Commission on Judicial Discipline, 23 November 2012, in case **Nr. D7/2012**.

<sup>160</sup> Judgement of the Regional Administrative Court, 30 April 2013, in case **Nr.142077510**.

<sup>161</sup> Articles 152 and 153 of the **Criminal Procedure Act**.

## The child as a subject of proceedings

Considering the nature of these proceedings, the question of a child as the subject of proceedings does not arise in this context.

## 2.6 Right to legal counsel, legal assistance and representation

### 2.6.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education and placement into care

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education and placement of children into care. However, if there are rules in the specific areas that differ from the general rules, these are explained under special headings below. Furthermore, some areas are not covered by the general rules, i.e. administrative sanctions and offences committed by children below MACR. These are also described under special headings below.

### The child as a plaintiff/defendant/subject of proceedings

Children, in general, may only bring cases before the courts and participate in judicial proceedings through their legal representatives – their parents/guardians. The [APL](#) does not specify who can be a child's legal representative. According to the law, any adult of 18 years and over, with procedural capacity, not deprived of the right to represent the person, and not in conflict of interests with the person represented<sup>162</sup>, may be a representative of an adult or child before the administrative court. Consequently, there are no provisions regulating a child's right to choose his/her own lawyer or preventing or allowing a child to waive his/her right to legal assistance. Usually, legal assistance to the child is ensured by the child's legal representative.

In case of conflict between children and their parents/guardians, the courts on their own motions, after receiving opinions from the orphans' courts, may appoint other persons as representatives of the children, or ask the orphans' courts to appoint the children special guardians<sup>163</sup> – see [Section 1](#). The orphan's court ensures, with specific criteria set by law, the suitability of a person to be a special guardian<sup>164</sup>. There are no legal provisions or guidelines that specify the rights and obligations of such guardians. Appointment of guardians is monitored by the State Inspectorate for Protection of Children's Rights<sup>165</sup>. The quality of service provided by guardians to children involved in judicial proceedings is monitored by the courts and the orphans' courts. The orphans' courts oversee the activities of the guardians and may suspend or dismiss guardians who fail to protect and represent the best interests of children<sup>166</sup>.

The presence of a lawyer in administrative judicial proceedings is not mandatory. If the child and his/her parents/guardian decide that they need legal assistance, they may either pay for it themselves or ask the judge to exempt them from paying for legal assistance. This, however, is only possible in highly challenging cases if the family does not have sufficient means to cover these costs<sup>167</sup>. The right of the judge to exempt a person from paying for legal assistance is not related to legal aid provided by the Legal Aid Administration to people who, otherwise, are unable to afford it. In fact, the [Law on Legal Aid](#) does not foresee the possibility for adults or children to ask for legal aid in administrative judicial proceedings.

<sup>162</sup> Articles 35 to 37 of the [APL](#).

<sup>163</sup> Article 21(2) of the [APL](#).

<sup>164</sup> According to Article 29 of [LOC](#) orphans' courts are required to evaluate, among others: 1) motivation to become a guardian; 2) mutual relations with the members of the family; 3) employment; 4) living conditions; 5) ability to act on behalf of a child in personal and property relations.

<sup>165</sup> Article 5 of the [LOC](#).

<sup>166</sup> Article 32 of the [LOC](#).

<sup>167</sup> Article 18(4) of the [APL](#).



Free of charge legal consultations are provided by the State Inspectorate for Protection of Children's Rights, the Ombudsman, the University of Latvia, the Business School *Turība* and, in relation to EU law, the EC Permanent Representation in Latvia<sup>168</sup>. No guidelines were identified for lawyers who consult or represent children to ensure that they treat children as a fully-fledged clients whose opinions are taken into account.

### The child as a witness

Legal representation for child witnesses is not required.

## 2.6.2 Procedural rules applicable to children involved in asylum and migration proceedings

### The child as a plaintiff/defendant/subject of proceedings

Unaccompanied children are represented by the orphans' courts in legal and financial matters, guardians appointed free of charge by the orphans' courts, or the heads of child care institutions where the children are accommodated<sup>169</sup>. As a result, decisions to hire a lawyer, or seek other legal assistance, is up to the child's legal representative. The presence of a lawyer in administrative judicial proceedings is not mandatory. Nevertheless, according to the **Law on Legal Aid** in asylum and migration proceedings, children and adults of foreign nationality have the right to access legal aid in appeal proceedings concerning the granting of asylum, voluntary return decisions or removal orders<sup>170</sup>. Such aid covers costs for legal consultations, drafting of procedural documents and representation in the courts<sup>171</sup>. On behalf of a child, application for legal aid is made by his/her legal representative. Application is usually given to the authority who has taken the decision concerning the voluntary return decision or removal order, which it then forwards to the State Legal Aid Administration.

### The child as a witness

Legal representation for child witnesses is not required.

## 2.6.3 Procedural rules applicable to children involved in health proceedings

### The child as a plaintiff/defendant/subject of proceedings

In relation to mental health proceedings and detention of a person, adult or child, the law foresees the person's right to legal assistance. If the patient does not have a legal representative or it has not been identified, the judge without delay, requests the Latvian Bar Association to appoint a lawyer to represent the patient<sup>172</sup>. The lawyer is paid by the State Legal Aid Administration according to rules that apply to legal assistance in civil proceedings. This covers legal consultation, representation before the psychiatric care authority and drafting of a complaint to the head of the court to appeal the decision on detention of a patient<sup>173</sup>.

### The child as a witness

Legal representation for child witnesses is not required.

<sup>168</sup> Information available on the website of Latvian Legal Aid Administration.

<sup>169</sup> Article 5(5) of the **Asylum Law** and Article 50.8(2) of the **Immigration Law**.

<sup>170</sup> Article 15 of the **Law on Legal Aid**, Article 10(3) of the **Asylum Law** and Article 50<sup>2</sup> of the **Immigration Law**.

<sup>171</sup> Article 16 of the **Law on Legal Aid**.

<sup>172</sup> Articles 68(7) of the **Medical Treatment Law**.

<sup>173</sup> Article 61.1 of the **Medical Treatment Law**.

## 2.6.4 Procedural rules applicable to administrative sanctions relevant to children and to children below the age of MACR committing offences

### The child as a plaintiff/defendant

The presence of a lawyer in administrative violations proceedings is not mandatory. The defendant is free to either represent him/herself or invite another adult representative who is not deprived of procedural capacity. Children are usually represented by their legal representatives or other persons invited by them<sup>174</sup>. As explained in [Section 2.5](#), the [Law on Legal Aid](#) does not foresee the possibility for adults or children to ask for legal aid to cover costs for legal assistance in administrative violation proceedings. Nevertheless, it seems that to ensure a person's right to fair trial in accordance with [European Convention of Human Rights](#)<sup>175</sup>, in cases where the punishment for administrative violation would be similar to a punishment for a criminal offence, i.e. fines or arrest, a person should have access to legal assistance free of charge, if he/she does not have sufficient means to pay for it<sup>176</sup>.

The [ACMCN](#) regulating application of compulsory educational measures provides that measures for criminal offences are imposed by general jurisdiction courts under criminal proceedings. In contrast, administrative violations are dealt with by special commissions established by local authorities in non-judicial proceedings. Whilst the [ACMCN](#) does not provide any rules on the representation of a child, in a criminal case it does foresee the mandatory presence of a lawyer. Furthermore, if a lawyer is not hired by the child's legal representative, the presence of a lawyer is ensured by the court<sup>177</sup>. In an administrative case before the administrative commission, the law does not require the presence of a lawyer. The law states that at the hearing the child, his/her legal representative, a professional specialised in protection of children's rights and a Police officer must be present<sup>178</sup>. Furthermore, the administrative commission may also invite other institutions, e.g. social services, to ensure that the compulsory education measures imposed are in the best interests of the child.

### The child as a victim

In the sector of judicial proceedings related to administrative violation, a child, like an adult, may be a victim of an administrative violation. Since children, in general, lack procedural capacity, in proceedings concerning administrative violations children participate through their legal representatives. If the violation is committed by a person with parental responsibility, the child is represented by the orphan's court<sup>179</sup>. Neither the [LAVC](#), the [ACMCN](#), nor the [Law on Legal Aid](#), contain any provisions on access to legal assistance by a child victim or an adult representative on the child's behalf.

### The child as a witness

Legal representation for child witnesses is not required and presence of lawyers in administrative judicial proceedings is not mandatory.

### The child as a subject of proceedings

Considering the nature of these proceedings, the question of a child as the subject of proceedings does not arise in this context.

## 2.7 Restrictions on liberty

In general administrative judicial proceedings, the law does not provide for the possibility to restrict a person's liberty. However, there are provisions allowing for the detention of a person, both adult and

<sup>174</sup> Articles 260 and 262 of the [LAVC](#).

<sup>175</sup> Article 6(3)(c) of the [European Convention of Human Rights](#). See also decision from the Latvian Commission on Judicial Discipline, 23 November 2012, in case [Nr. D7/2012](#).

<sup>176</sup> For instance, see decision from the Latvian Commission on Judicial Discipline, 23 November 2012, in case [Nr. D7/2012](#).

<sup>177</sup> Article 23 of the [ACMCN](#).

<sup>178</sup> Article 21(2) of the [ACMCN](#).

<sup>179</sup> Article 262<sup>1</sup> of the [LAVC](#).

child, in the area specific laws concerning **migration, asylum and mental health** – see below. As explained in [Section 1](#), use of detention is monitored by the Ombudsman.

### 2.7.1 Procedural rules applicable to children involved in migration proceedings

#### The child as a plaintiff/defendant/subject of proceedings

According to [Immigration Law](#), it is allowed to detain children, from the age of 14, for the purposes of extradition. Detention is only possible in limited circumstances, i.e. if there are reasonable grounds to believe that the individual, adult or child, will try to avoid extradition. The grounds that justify detention are listed in the law. The same time limit for detention applies to adults and children alike. That is, there are no child-specific provisions on the use of detention as a measure of last resort, for the shortest possible time, or setting maximum time limits that a child may be held in detention. The law only requires, in general, that authorities dealing with children ensure protection of the child's rights and best interests.

A person may be kept in detention for up to 10 days. Anyone, adult or child, has the right to appeal such an administrative decision<sup>180</sup>. Since the child may not act in his/her own right, an appeal can only be brought by his/her legal representative, i.e. parents/guardian. If the child is unaccompanied, the relevant authority informs the orphan's court who can either represent the child before the authority and court, or appoint the child a guardian<sup>181</sup>. Any detention beyond these 10 days must be approved by the court<sup>182</sup>.

Any person detained for the purpose of extradition has the right to legal assistance and access to interpretation and translation services free of charge<sup>183</sup>.

#### The child as a witness

The question of detention of witnesses does not arise in the context of migration proceedings according to the [Immigration Law](#).

### 2.7.2 Procedural rules applicable to children involved in asylum proceedings

#### The child as a plaintiff/defendant/subject of proceedings

According to the [Asylum Law](#), all asylum seekers – adults or children, may be detained for up to seven days, but only in limited circumstances when, for example, it is necessary to identify persons<sup>184</sup>. The law further states that detention and appeal rights can be exercised as prescribed in the [Immigration Law](#) explained above.

#### The child as a witness

The question of detention of witnesses does not arise in the context of asylum proceedings according to the [Asylum Law](#).

### 2.7.3 Procedural rules applicable to children involved in health proceedings

#### The child as a plaintiff/defendant/subject of proceedings

The [Medical Treatment Law](#) provides that any person can be detained without his/her consent in circumstances involving a threat to a person's life or health if a medical specialist has reasonable

<sup>180</sup> Article 54(1) of the [Immigration Law](#).

<sup>181</sup> Article 54(6) of the [Immigration Law](#).

<sup>182</sup> Article 54(2) of the [Immigration Law](#).

<sup>183</sup> Articles 50<sup>2</sup> and of 56(3) the [Immigration Law](#).

<sup>184</sup> Article 9 of the [Asylum Law](#).

grounds to believe that the person suffers from a mental disorder<sup>185</sup>. There are no child-specific provisions in the law on the use of detention as a measure of last resort, for the shortest possible time, or setting a maximum time limit that a child can be held in detention. The same time limit applies both to adults and children.

Both adults and children may be detained up to 72 hours for the purpose of assessment for mental illness<sup>186</sup>. If, after the assessment, a council of psychiatrists decide that the person must receive psychiatric treatment, and thus must be kept in detention, the council immediately informs the patient, the patient's legal representative and sends their decision to a district court for approval<sup>187</sup>. The decision of a council of psychiatrists is an administrative decision and may be reviewed according to the [APL](#). However, the decision of the judge to approve detention is taken in civil proceedings and thus may further be appealed according to the [Civil Procedure Act](#).

The judge deciding on whether or not to approve a person's detention without any delay, requests the Latvian Bar Association to appoint a lawyer to represent the patient if the patient does not have a legal representative<sup>188</sup>. Such a lawyer is provided free of charge. From the moment the judge has received the council's decision for the use of detention, it has 72 hours either to approve detention for a period of two months or quash the decision<sup>189</sup>. An appeal of the decision can be made within 10 days to the head of the court<sup>190</sup>. Since the child may not act in his/her own right, the appeal is brought by his/her legal representative, i.e. parents/guardian, or a lawyer invited by the judge.

The judge deciding on detention of a patient also has the duty to inform the Public Prosecutor's Office<sup>191</sup>. The public prosecutor participates in the proceedings and is authorised to act in order to protect the rights and best interests of patients in cases of violations of law<sup>192</sup>. Prosecutors have the right to protest any administrative or judicial decision by submitting their protests to the authorities that issued the decisions, or the supervisory authorities<sup>193</sup>. In mental health proceedings, prosecutors have the right to submit their applications on identified violations to the heads of the courts which approved the detentions. The prosecutor's protest is an additional guarantee for the protection of the patient's rights and best interests.

## The child as a witness

The question of detention of witnesses does not arise in the context of administrative violations according to the [Medical Treatment Law](#).

### 2.7.4 Procedural rules applicable to administrative sanctions relevant to children and to children below the age of MACR committing offences

#### The child as a plaintiff/defendant/witness

The [LAVC](#) foresees that detention in the form of full confinement may only be applied to adults, and only in exceptional cases. This measure may be applied, if approved by the court, for a duration of up to 15 days<sup>194</sup>. Children may not be detained, but their freedom to move can be restricted for up to four hours. It is not stated in the law that this measure can be applied only as a measure of last resort and only for the shortest time possible. Nevertheless, a child can be brought to a Police station and kept there for a maximum period of four hours for the purposes clearly listed in the [LAVC](#), e.g. in order to stop the violation immediately and to identify the person<sup>195</sup>. Once a child is taken to a

<sup>185</sup> Article 68(1) of the [Medical Treatment Law](#).

<sup>186</sup> Article 68(3) of the [Medical Treatment Law](#).

<sup>187</sup> Articles 68(4) and (5) of the [Medical Treatment Law](#).

<sup>188</sup> Articles 68(7) of the [Medical Treatment Law](#).

<sup>189</sup> Articles 68(10) of the [Medical Treatment Law](#).

<sup>190</sup> Articles 68(15) of the [Medical Treatment Law](#).

<sup>191</sup> Articles 68(6) of the [Medical Treatment Law](#).

<sup>192</sup> Articles 68(11) of the [Medical Treatment Law](#).

<sup>193</sup> Article 19 of the [Law on Prosecutor's Office \(Prokuratūras likums\)](#), 1994.

<sup>194</sup> Article 31 of the [LAVC](#).

<sup>195</sup> Article 252 of the [LAVC](#).

Police station, the Police immediately have to inform the child's legal representative, i.e. parents/guardian<sup>196</sup>. Since this measure can only be used for up to four hours, there is no right to appeal.

### The child as a witness

The question of detention of witnesses does not arise in the context of administrative violations according to the [LAVC](#).

### The child as a subject of proceedings

Considering the nature of these proceedings, the question of a child as the subject of proceedings does not arise in this context.

## 2.8 Remedies or compensation for violation of rights and failure to act

### 2.8.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education, placement into care, administrative sanctions and offences committed by children below MACR

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education, placement of children into care, administrative sanctions and offences committed by children below MACR.

### The child as a plaintiff/defendant/subject of proceedings

In Latvia, children, in general, do not have procedural capacity to appeal against administrative or judicial decisions, therefore there are no legislative provisions enabling a child to appeal against the court's decision. Any submissions and appeals are normally made by the child's legal representative and procedural laws do not specify if such steps, on behalf of a child, should be made with the child's consent. However, the [LPRC](#) as a framework law, requires that due account is taken of all the child's best interests and that the child is involved in the decision-making on all matters concerning him/her<sup>197</sup>. Whilst according to the law, the child should be involved in deciding on any submissions and appeals on his/her behalf, in practice however, it is up to the legal representative as to whether or not to involve the child in any decision-making.

In cases of conflict between children and their parents/guardians, the courts, after receiving opinions from the orphans' courts, appoint on their own initiatives, other persons as guardians, or asks the orphans' courts to appoint the children special guardians<sup>198</sup> – see [Section 1](#). The quality of service provided by guardians to children involved in judicial proceedings is monitored by the courts and the orphans' courts. The orphans' courts oversee the activities of guardians and may suspend or dismiss guardians who fail to protect and represent the best interests of children<sup>199</sup>. There does not seem to be any other support to the child in order to access an appeal mechanism.

Child care authorities, i.e. the orphans' courts, have wide powers to defend children's personal and financial interests. Children may complain to the orphans' courts in their own right, including about their parents/guardians. The orphan's court has the right to initiate judicial proceedings on behalf of the child who is in need of care and protection<sup>200</sup>. In such cases, the child care authority as a party to proceedings, has the right to appeal against a court decision involving a child. The law does not specify if the child care authority may intervene in ongoing proceedings and make an appeal on the child's behalf – the authority not being a party to the proceedings.

<sup>196</sup> Article 253 of the [LAVC](#).

<sup>197</sup> Article 20(3) of the [LPRC](#).

<sup>198</sup> Article 21(2) of the [APL](#).

<sup>199</sup> Article 32 of the [LOC](#).

<sup>200</sup> Article 17(8) of the [LOC](#).

There are no child-specific provisions to ensure that a child can claim compensation for damages caused by violation of his/her rights. In line with the [Constitution](#), anyone – child or adult, whose rights have been violated or restricted without legal justification, has the right to compensation<sup>201</sup>. Thus, anyone who has suffered damages from unlawful or unjustified actions carried out on behalf of the State, may request compensation as prescribed by law<sup>202</sup>. However, there is no specific legal obligation on a judicial authority to secure the rights of a child involved in judicial proceedings to claim compensation for damages caused by violation of his/her rights.

Latvian legislation provides clear periods of prescription, i.e. sets the maximum time after an event, that legal proceedings based on that event, may be initiated. However, only in criminal proceedings is there a specific provision in relation to children. Namely, for the most serious criminal offences committed against children, such as sexual abuse, this period of prescription is 20 years after the event<sup>203</sup>.

## The child as a witness

Witnesses, in general, do not have appeal rights or the rights to claim compensation.

## 2.9 Legal costs

### 2.9.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education and placement into care

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education and placement of children into care. However, if there are rules in the specific areas that differ from the general rules, these are explained under special headings below. Furthermore, some areas are not covered by the general rules, i.e. administrative sanctions and offences committed by children below MACR. These are also described under special headings below.

### The child as a plaintiff/defendant

The court fee to initiate proceedings in the administrative court is EUR 28.46. In order to further appeal the court's decision, the person must pay a court fee of EUR 56.91. To submit a cassation claim, the court fee is EUR 71.14<sup>204</sup>. Court fees are fully or partially reimbursed if the case is fully or partially settled in the applicant's favour. The court orders these costs to be covered by the defendant, which in most cases is the State or local authority<sup>205</sup>.

There are no statutory provisions allowing the court fees to be waived in cases concerning children, and thus the court does not have discretionary powers to waive the court fees in the case of a child. There are general exceptions<sup>206</sup>, but none of them are child-specific. Furthermore, in highly challenging cases the courts may always exempt persons who do not have sufficient means, from the obligation to pay fees, or reduce the amount of such fees<sup>207</sup>. The law does not specify whether or not such application should be submitted by the person concerned, or if the court on its own motion may apply exemptions. An application to exempt children from the obligation to pay court fees is submitted by the legal representative. The right of the judge to exempt a person from paying court fees is not related to legal aid provided by the State Legal Aid Administration according to the [Law](#)

<sup>201</sup> Article 92 of the [Constitution](#).

<sup>202</sup> [Law on Compensation for Damages Caused by the State Authorities](#) (*Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums*), 2005.

<sup>203</sup> Article 56 of the [Criminal Law](#) (*Krimināllikums*), 1998.

<sup>204</sup> Article 124 of the [APL](#).

<sup>205</sup> Article 126(1) of the [APL](#).

<sup>206</sup> For instance, general exemptions are provided in area-specific laws such as the [Asylum Law](#). Besides that, according to Article 128(1) of the [APL](#), there is no obligation to pay a court fee to appeal administrative decisions denying a person access to legal aid.

<sup>207</sup> Article 18(4) of the [APL](#).

**on Legal Aid.** Furthermore, this law does not foresee the possibility for adults or children to ask for legal aid in administrative judicial proceedings.

Other costs incurred due to judicial proceedings, such as costs for services provided by a lawyer, or travel costs to participate in the proceedings, must be covered by the person him/herself, and on behalf of a child by his/her legal representative. Individuals who do not have sufficient means to pay for services provided by a lawyer may ask the judge to exempt him/her from paying fees for legal assistance. This, however, is only possible in a case when the family does not have sufficient means to pay the lawyer and the case is considered by the court as highly challenging<sup>208</sup>; see **Section 2.6**. As explained previously, the right of the judge to exempt a person from paying for legal assistance is not related to legal aid provided by the State Legal Aid Administration according to the **Law on Legal Aid** which does not foresee legal aid in administrative judicial proceedings.

If the court has ruled an administrative decision unlawful, the person who is the addressee of this decision has the right to claim compensation for any damage and loss, thus also any legal or other costs incurred due to participation in administrative proceedings<sup>209</sup>. Such a claim must be submitted to the administrative authority whose decision was quashed by the court. This is usually done by his/her legal representative on behalf of a child.

### The child as a witness/subject of proceedings

Witnesses do not pay court fees. Additionally, expenses, e.g. travel, incurred by witnesses giving testimonies, are reimbursed by the State<sup>210</sup>.

## 2.9.2 Procedural rules applicable to children involved in asylum and migration proceedings

### The child as a plaintiff/defendant/subject of proceedings

Foreign nationals, according to the **Asylum Law**, do not pay court fees in proceedings related to requesting asylum<sup>211</sup>. In relation to other costs, according to the **Law on Legal Aid**, legal aid is available in asylum and migration appeal proceedings concerning the granting of asylum, voluntary return decisions or removal orders<sup>212</sup>. Such aid covers costs for legal consultations, drafting of procedural documents and representation in the courts<sup>213</sup>. Furthermore, as explained above, if the court has ruled the administrative decision unlawful, the person concerned has the right to claim compensation for any damage and loss incurred due to participation in judicial proceedings<sup>214</sup>. Such a claim must be submitted to the administrative authority whose decision was quashed by the court. On behalf of unaccompanied children, it is usually done by the orphans' courts, guardians appointed by them, or the heads of the child care institutions accommodating the children.

### The child as a witness

Witnesses do not pay legal costs. Furthermore, their expenses for participation in judicial proceedings are reimbursed by the State<sup>215</sup>.

<sup>208</sup> Article 18(4) of the APL.

<sup>209</sup> Law on Compensation for Damages Caused by the State Authorities.

<sup>210</sup> Article 267 of the LAVC.

<sup>211</sup> Article 30(4) of the Asylum Law.

<sup>212</sup> Article 15 of the Law on Legal Aid, Article 10(3) of the Asylum Law and Article 50<sup>2</sup> of the Immigration Law.

<sup>213</sup> Article 16 of the Law on Legal Aid.

<sup>214</sup> Law on Compensation for Damages Caused by the State Authorities.

<sup>215</sup> Article 18(3) of the APL.



### 2.9.3 Procedural rules applicable to administrative sanctions relevant to children and to children below the age of MACR committing offences

#### The child as a plaintiff/defendant

There are no court fees in administrative violations proceedings. Due to the quasi-criminal nature of these proceedings, obligation to pay court fees in order to appeal administrative sanctions would violate a person's right to fair trial guaranteed by the [Constitution](#)<sup>216</sup>. Other costs, such as costs for services provided by a lawyer, travel costs to participate in proceedings, must be covered by the person him/herself and on behalf of a child by his/her legal representative. As explained in [Section 2.5](#) and [2.6](#), the [Law on Legal Aid](#) does not foresee the possibility for adults or children to ask for legal aid to cover costs for legal assistance in administrative violation proceedings. Nevertheless, it seems that to ensure a person's right to fair trial in accordance with [European Convention of Human Rights](#)<sup>217</sup>, in a case where the punishment for administrative violation would be similar to a punishment for a criminal offence, i.e. fines or arrest, a person should have access to legal assistance free of charge if he/she does not have sufficient means to pay for it<sup>218</sup>. Additionally, if the court has ruled the administrative decision imposing administrative sanction as unlawful, the person concerned has the right to claim compensation for any damage and loss incurred due to participation in judicial proceedings<sup>219</sup>. Such a claim must be submitted to the administrative authority whose decision was quashed by the court. On behalf of a child, it is usually done by his/her legal representative.

#### The child as a witness

Witnesses do not pay court fees. Additionally, expenses, e.g. travel, incurred by witnesses giving testimonies, are reimbursed by the State<sup>220</sup>.

#### The child as a subject of proceedings

Considering the nature of these proceedings, the question of a child as the subject of proceedings does not arise in this context.

## 2.10 Enforcement of administrative court judgements

### 2.10.1 General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration, health, education and placement into care

The general rules described below apply to judicial proceedings including the sectors listed above – asylum, migration, health, education and placement of children into care. However, if there are rules in the specific areas that differ from the general rules, these are explained under special headings below. Furthermore, some areas are not covered by the general administrative rules, i.e. administrative sanctions and offences committed by children below MACR. These are also described under special headings below.

<sup>216</sup> Judgement of the Constitutional Court, 6 January 2005, in [case Nr. 2004-16-01](#).

<sup>217</sup> Article 6(3)(c) of the [European Convention of Human Rights](#). See also decision from the Latvian Commission on Judicial Discipline, 23 November 2012, in [case Nr. D7/2012](#).

<sup>218</sup> For instance, see decision from the Latvian Commission on Judicial Discipline, 23 November 2012, in [case Nr. D7/2012](#).

<sup>219</sup> [Law on Compensation for Damages Caused by the State Authorities](#).

<sup>220</sup> Article 267 of the [LAVC](#).



## The child as a plaintiff/defendant/subject of proceedings

There are no specific provisions in the **APL** requiring a child to be informed about the judgement, or decision<sup>221</sup>, of the administrative court, and the enforcement of such a judgement. Consequently, there are no requirements that the language used should be adapted to the child's level of understanding, nor are there any guidance/codes of conduct that are available to lawyers, guardians or other professionals to ensure that this information is communicated in a child-friendly manner. The law just states that all participants in the judicial proceedings, adults and children alike, are informed of the court judgements and usually in writing<sup>222</sup>. On behalf of children who do not have procedural capacity, the court judgements are issued to the children's legal representatives, see **Section 2.2**. Thus, it is up to them how they explain the judgements to children. Notwithstanding this, the framework law on children's rights in Latvia, states that children have the right to receive 'any information'<sup>223</sup>, thus including information on administrative judicial proceedings relating to their rights and best interests. Therefore, if a child has applied to a court in his/her own right to receive the judgement, the court cannot reject such a request.

No provisions have been identified that are specifically aimed at protecting the child from harm during enforcement of a court judgement in an administrative proceeding, or to suspend the enforcement of a judgement where a risk to the child has been identified. If there is a threat, there are general measures that can be taken to ensure the child's protection from harm. Namely, unless it is possible to isolate the person who can allegedly harm the child, the child can be separated from the family and provided with out-of-home or emergency care in a medical treatment institution, or assistance in a rehabilitation institution<sup>224</sup>.

There are no provisions to ensure that court judgements concerning children are directly or immediately enforceable. It is important to note, however, that all administrative decisions taken by the orphans' courts according to the **LOC**, such as placement of children into care, are directly and immediately enforceable<sup>225</sup>. The person whose rights and best interests are affected, has the right to appeal this decision according to the **APL**. Submission of an application to a court does not suspend the enforceability of the decision<sup>226</sup>.

Further in the judicial proceedings, any judgement whether or not it concerns children, may be declared directly or immediately enforceable upon the request of participants in the judicial proceedings<sup>227</sup>. Participants in the judicial proceedings – thus children and their legal representatives, have the right to request that the judgements are enforced immediately. Such requests can be made if there are reasons to believe that, unless enforced immediately, such judgements would no longer be enforceable or the participants would incur financial losses<sup>228</sup>.

There are no specific provisions on the use of force as measures of last resort in family cases where children are involved. However, according to the **LPRC**, in all activities regarding a child, if the use of force in a family case – or any other measure, can potentially affect the child's well-being, then ensuring the rights and best interests of the child must take priority<sup>229</sup>.

## The child as a witness

There is no requirement in the **APL** to inform child witnesses about the judgement of the administrative court and the enforcement of such a judgement. Judgements of administrative courts are however publicly available and anyone – theoretically including children, can access them.

<sup>221</sup> Courts take both judgements and decisions. Decisions relates to procedural matters that are dealt with in the course of judicial proceedings. See Article 146(1) of the **APL**.

<sup>222</sup> Article 258 of the **APL**.

<sup>223</sup> Article 13(1) of the **LPRC**.

<sup>224</sup> Article 27 of the **LPRC**.

<sup>225</sup> Article 41(1) of the **LOC**.

<sup>226</sup> Article 41(2) of the **LOC**.

<sup>227</sup> The **APL** also foresees a possibility that some specific laws may require judgements to be directly or immediately enforceable however it does not provide any further details. Thus, it depends on the substantive law applicable to the subject matter at stake.

<sup>228</sup> Article 265(1) of the **APL**.

<sup>229</sup> Article 6 of the **LPRC**.

## 2.10.2 Procedural rules applicable to asylum and migration relevant to children

### The child as a plaintiff/defendant/subject of proceedings

There are no child-specific provisions in the [Asylum Law](#) and the [Immigration Law](#) and thus no provisions requiring a child to be informed about the court's decision and the enforcement of such decision. Every person in asylum and migration proceedings, adult and child alike, has the right to receive all information that concerns him/her in a language he/she understands<sup>230</sup>. There are different rules on the enforceability of a court's decisions in the area of asylum and migration, but most of court's decisions in this field are directly and immediately enforceable<sup>231</sup>. However, this does not depend on whether or not this decision concerns a child, but on the subject matter of the decision.

### The child as a witness

There is no requirement in the [Asylum Law](#) and the [Immigration Law](#) to inform child witnesses about the decision of the judges and the enforcements of such judgements.

## 2.10.3 Procedural rules applicable to children involved in mental health proceedings

### The child as a plaintiff/defendant/subject of proceedings

There are no child-specific provisions in the [Medical Treatment Law](#) and thus no provisions requiring a child to be informed of the judge's decision and the enforcement of such decision. Every patient, including a child, has the right to be informed of any decision taken by a public administrative authority concerning him/her<sup>232</sup>. Consequently, there are no requirements that the language used should be adapted to the child's level of understanding and there are no guidance or codes of conduct for professionals involved to ensure that this information is communicated in a child-friendly manner.

All decisions on detention in mental health proceedings, concerning adults and children alike, are directly and immediately enforceable.

### The child as a witness

There is no requirement in the [Medical Treatment Law](#) to inform child witnesses about the decisions of the judges and the enforcements of such judgements.

## 2.10.4 Procedural rules applicable to administrative sanctions relevant to children and to children below the age of MACR committing offences

### The child as a plaintiff/defendant

There are no specific provisions in the [LAVC](#) requiring a child to be informed about the judgement or decision<sup>233</sup> of the court and the enforcement of such a judgement. Consequently, there are no requirements that the language used should be adapted to the child's level of understanding. The law simply states that all participants in judicial proceedings, adults and children alike, are informed of the courts' judgements and usually in writing<sup>234</sup>. On behalf of children who do not have procedural capacity, the courts' judgements are issued to their legal representatives – see [Section 2.2](#).

<sup>230</sup> Article 10(2) of the [Asylum Law](#) and Article 48(1) of the [Immigration Law](#).

<sup>231</sup> For instance, the court's decision reviewing lawfulness of detention previously approved by a judge is final and directly enforceable according to Article 54<sup>1</sup>(7) of the [Immigration Law](#).

<sup>232</sup> Article 68(14) of the [Medical Treatment Law](#).

<sup>233</sup> Courts take both judgements and decisions. Decisions relate to procedural matters that are dealt with in the course of judicial proceedings. See Article 289<sup>15</sup> of the [LAVC](#).

<sup>234</sup> Article 289<sup>13</sup> of the [LAVC](#).

Thus, it is up to them how they explain judgements to the children. Notwithstanding this, the **LPRC** states that children have the right to receive ‘any information’<sup>235</sup>, thus also information on judicial proceedings affecting their rights and best interests. Therefore, if a child has applied to a court to receive the judgement, the court cannot reject such request.

No provisions have been identified as specifically aimed at protecting the child from harm during enforcement of a court’s sanctions or to suspend the enforcement of a judgement where a risk to the child has been identified. Therefore, as explained above, if there is a real threat, there are general measures that can be taken to ensure the child’s protection from harm. Namely, unless it is possible to isolate the person who can allegedly harm the child, the child can be separated from the family and provided with extra-familial care, or emergency care in a medical treatment institution, or assistance in a rehabilitation institution<sup>236</sup>.

There are no provisions to ensure that courts’ judgements which concern children are directly or immediately enforceable. In general, judgements are enforceable once the time limit for lodging appeals has expired. Judgements on administrative sanctions are enforced by, or based on, the instructions of the institutions that took the administrative decisions, e.g. the Police for road traffic offences<sup>237</sup>. The court of first instance enforces a judgement that has been further appealed before the court of appeal instance<sup>238</sup>.

When administrative violations have been committed by children, the administrative authorities can decide that instead of administrative sanctions, children will be subject to compulsory educational measures according to the **ACMCN**. In this event, the authority takes a decision that the child is responsible for the administrative violation, but it does not apply an administrative sanction. Compulsory educational measures are applied by a special municipality commission in the municipality of the child’s residence. The law does not contain any provisions requiring a child to be informed about the decision or the enforcement of such a decision. There are no requirements that the language used should be adapted to the child’s level of understanding, nor are there any guidance/codes of conduct available to professionals involved in order to ensure that information is communicated in a child-friendly manner. The **policy guidelines** issued by the State Inspectorate for Protection of Children’s Rights on how to enforce such compulsory educational measures refer generally to the child’s best interests.

There are no specific provisions on the use of force as a measure of last resort in family cases where children are involved due to the fact that family matters are not regulated by the **LAVC**. In any case, according to the **LPRC**, in all activities regarding a child, ensuring the rights and best interests of the child must take priority<sup>239</sup>.

## The child as a witness

There is no requirement in the **LAVC** to inform child witnesses about the judgements of the courts and the enforcements of such judgements.

## The child as a subject of proceedings

Considering the nature of these proceedings, the question of a child as the subject of proceedings does not arise in this context.

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<sup>235</sup> Article 13(1) of the **LPRC**.

<sup>236</sup> Article 27 of the **LPRC**.

<sup>237</sup> Article 291 of the **LAVC**.

<sup>238</sup> Article 291 of the **LAVC**.

<sup>239</sup> Article 6 of the **LPRC**.

## Conclusions

### Overview of Member State's approach to children in administrative judicial proceedings and specialised services dealing with such children

The basic rights for both adults and children are guaranteed by the [Constitution of Latvia](#) (*Satversme*). The main principles and rules on the protection of children are established by the [Law on Protection of the Rights of the Child](#) (LPRC). Under the [LPRC](#), all public authorities, including the courts in any judicial proceedings before them, are required to perform their duties with due respect to children's rights and best interests according to the principles and protection measures contained in this law.

There are no special family or youth courts in Latvia and all matters concerning adults or children are dealt with by the general courts. There are general courts which deal with criminal and civil cases, and general administrative courts, which deal with cases concerning public administration. Administrative decisions are reviewed in the first instance by the administrative district court, in the appeal instance by the administrative regional court. The Department of Supreme Court Senate of Administrative Matters is the cassation instance.

Procedure before the administrative court is determined by the [Constitution](#) and the [Administrative Procedure Law](#) (APL). The [APL](#) relates to all administrative judicial proceedings regardless of the subject matter. Thus, all administrative decisions, including in the fields of **asylum and migration, citizenship, education, health care and placement of children into care**, are reviewed in administrative judicial proceedings before administrative courts.

It is possible, however, that laws governing specific areas provide for specific procedural rules. In such cases administrative courts apply the [APL](#) as *lex generalis* and the area specific provisions as *lex specialis* (e.g. [Asylum Law](#), [Immigration Law](#), [Medical Treatment Law](#) and the [Law on Orphan's Courts](#) in relation to placement of children into care).

Treatment of **children below the minimum age of criminal responsibility** (MACR) who have committed criminal offences or administrative violations is specified in the [Law on Application of Compulsory Measures of a Correctional Nature](#) (ACMCN). The age of criminal and administrative responsibility is 14, but the [ACMCN](#) foresees that children from the age of 11, and until they turn 18, may be subject to compulsory educational measures. Criminal measures are imposed by general jurisdiction courts under criminal proceedings. Administrative violations are dealt with in non-judicial proceedings by special commissions established by local authorities.

**Administrative violations** are dealt with, in general jurisdiction courts under criminal proceedings, by judges specialising in criminal matters. The relevant law, i.e. the [Latvian Administrative Violations Code](#) (LAVC), contains very few child-specific provisions and therefore it broadly applies to adults and children alike. All administrative sanctions set out in the [LAVC](#) may be fully applied to children who are 14 years of age. Children aged from 11 to 14 who have committed administrative violations may only be subject to compulsory education measures according to the [ACMCN](#).

The main institution entrusted with acting in the child's best interests is the **orphans' or parish court** (*Bāriņtiesa*). The main task of an orphans' court is to react and defend the child's personal and financial interests. Children may complain to the orphans' courts in their own right, including about their parents/guardians. The orphans' courts also play a significant role in court proceedings concerning children. They can initiate proceedings or provide their opinions to the courts and appoint special guardians to children when their best interests are in conflict with interests of their parents.

The **State Inspectorate for Protection of Children's Rights** is a State institution which is responsible for monitoring and ensuring compliance with the laws and regulations aimed at protecting the rights and best interests of children. The inspectorate reviews complaints submitted by private individuals, including those from children in their own right.

There is no special children's ombudsman in Latvia, but at the Latvian **Ombudsman's Office** there is a department specialising in children's rights. The Ombudsman's tasks and procedures are set out in the [Law on Ombudsman](#). The [LPRC](#) specifies the Ombudsman's role in relation to children which,

amongst other roles, include reviewing complaints on violations of children's rights by State or local government institutions and their employees.

## General approach towards children under administrative law: best interests of the child, evolving capacities, principle of non-discrimination

There is no provision in Latvian law defining the main principles or objectives for children's involvement in administrative judicial proceedings. However, the [Constitution of Latvia](#) and the [LPRC](#) guarantee that State and local government institutions, including justice and law enforcement authorities, make the protection of children's rights their priority.

The [Constitution](#) and the [LPRC](#) ensure that the child's best interests are a primary consideration in all activities undertaken by public authorities. There are, however, no regulations, checklists or protocols on how to determine the best interests of a child.

To ensure respect for a child's evolving capacity in the context of proceedings before the administrative authority, and judicial proceedings, the [LPRC](#) stipulates that a child must be given the opportunity to voice his/her opinion. Depending on the circumstances, the child must either be heard him/herself or through a legal representative or a competent institution, e.g. the orphan's court. There are no statutory age limits for expressing views.

## Monitoring mechanisms, multidisciplinary approach and training

Both the State Inspectorate for Protection of Children's Rights which is a Government institution, and the Ombudsman's Office – an independent human rights institution, have the competence to monitor legislation, policies and practice to ensure their compatibility with human rights instruments. Additionally, the Ombudsman has wide powers to monitor places of detention and imprisonment in Latvia. This competence relates to all closed facilities, thus including facilities for children.

According to the general principles embedded in the [LPRC](#), all State and local administrative authorities working with, or for children, must ensure close cooperation in order to protect children's rights and best interests. Some formalised cooperation procedures exist in relation to children involved in administrative judicial proceedings.

According to the [LPRC](#), all professionals working with, and for, children should receive necessary training on the rights and needs of children. With recent amendments<sup>240</sup>, the [LPRC](#) now enlists professionals who are required to undergo such training.

## The child as an actor in administrative judicial proceedings

A child may not bring a case before the court in his/her own right until the age of 18. However, in general administrative proceedings, i.e. not proceedings concerning administrative sanctions and offences committed by children below MACR, children can be involved in administrative judicial proceedings as of the age of 15. This means that children, who are 15 and older, may be invited by the courts to participate in the proceedings alongside their legal representatives, i.e. parents/guardians.

The [APL](#) foresees the possibility of exceptions. Such exceptions are allowed if a child, according to a sector-specific law, is permitted to make a submission to an administrative public authority in his/her own right. If so, the child is also allowed to appeal decisions of this authority in his/her own right according to the rules of [APL](#).

In judicial proceedings in relation to administrative violations and sanctions, children can participate as of the age of 14, which is the minimum age of administrative and criminal responsibility in Latvia. Children below MACR (aged from 11 to 14) may only be imposed compulsory education measures

<sup>240</sup> The relevant amendments to the [LPRC](#) were adopted on 30 May 2013.

according to the [ACMCN](#). In these proceedings children may take formal legal steps only through their legal representatives.

## Provision of information

The main procedural laws, [APL](#) and [LAVC](#), and other area-specific laws, do not cover provision of information to children. Therefore, children as participants to the proceedings generally receive the same information on their procedural rights as adults. A broader provision on the child's right to information is foreseen by the [LPRC](#). The [LPRC](#) states that children have the right to receive all information that concerns their rights and best interests and thus also any information relevant to administrative or judicial proceedings. The law, however, does not mention what kind of information must be provided to the child, who is responsible for providing it, and when it must be provided to the child.

## Protection of the child's personal and family life

The right to privacy for children is guaranteed by the [LPRC](#). The provision on children's rights to privacy must be protected by all public administrative authorities and the courts in all types and stages of proceedings. There are no specific exceptions to the rule on protecting the child's identity/privacy/personal data.

## Protection from harm during proceedings and interviews and ensuring a child-friendly process

Laws and regulations in Latvia, in general, do not provide any specific time limits for the adjudication of cases. The [LPRC](#) requires that any matter dealt with by administrative or judicial authorities, that may potentially affect a child's rights or best interests, must take priority. However, it is not clear how this prioritisation takes place in practice, and there does not seem to be any mechanism to monitor its implementation in respect of proceedings involving children.

Since, most of the time, children are not involved in administrative judicial proceedings, there are no special laws or regulations in place to ensure that interviews, court sessions and other actions during the administrative procedures are adapted to the children's paces and attention spans, and any communication difficulties the children may have. For the same reason, there are no rules in place as to how children are protected during the proceedings from images or information that can be harmful to their welfare.

## Right to be heard and participate in administrative judicial proceedings

The [LPRC](#), which is the umbrella law for protection of children's rights, stipulates that children as individuals must be heard, i.e. can be interviewed, provide evidence, and give testimony, either in their own right, or through legal representatives, or a competent institution, in all judicial or administrative proceedings that may affect them. However, the law does not specify the child's right to intervene in proceedings. The [LPRC](#) and other relevant laws also do not contain any further details on the child's right to be heard. Consequently, it is not required by law that children are consulted on the manner in which they wish to be heard. There are also no specific provisions on allowing children to enforce their legal rights, as their rights, in general, are enforced through their legal representatives.

## Right to legal counsel, legal assistance and representation

Children, in general, may only bring cases before the courts and participate in judicial proceedings through their legal representatives – their parents/guardians. The [APL](#) does not specify who can be a child's legal representative. In case of conflict between children and their parents/guardians, the courts on their own motions, after receiving opinions from the orphans' courts, may appoint other persons as representatives of the children, or ask the orphans' courts to appoint the children special guardians.

## Restrictions on liberty

In general administrative judicial proceedings, the law does not provide for the possibility to restrict a person's liberty. However, there are provisions allowing for the detention of a person, both adult and child, in the area specific laws concerning migration, asylum and mental health. Use of detention is monitored by the Ombudsman.

## Remedies and compensation for violation of rights and failure to act

In Latvia, children, in general, do not have procedural capacity to appeal against administrative or judicial decisions, therefore there are no legislative provisions enabling a child to appeal against the court's decision. Any submissions and appeals are normally made by the child's legal representative and procedural laws do not specify if such steps, on behalf of a child, should be made with the child's consent.

## Legal costs

There are no statutory provisions allowing the court fees to be waived in cases concerning children, and thus the court does not have discretionary powers to waive the court fees in the case of a child. In highly challenging cases the courts may always exempt persons who do not have sufficient means from the obligation to pay fees, or reduce the amount of such fees. The law does not specify whether or not such application should be submitted by the person concerned, or if the court on its own motion may apply exemptions. An application to exempt children from the obligation to pay court fees is submitted by their legal representatives. There are no court fees in court proceedings regarding administrative violations and offences committed by children below MACR.

## Enforcement of administrative court judgements

There are no specific provisions in the [APL](#) or the [LAVC](#) requiring a child to be informed about the decision of the administrative court, and the enforcement of such a judgement. There are also no provisions to ensure that court judgements concerning children are directly or immediately enforceable. The fact that judgements are directly or immediately enforceable depends on reasons unrelated to the participation of children in judicial proceedings.

## Strengths and gaps

Based on existing international and European standards, and in particular the [UNCHR](#) and [UNCRC](#), Latvia has adapted its legal system to specific rights, needs and best interests of children. The main law on the protection of children's rights, the [LPRC](#), addresses issues such as care and respect of children, protection and safety, participation, equal treatment, information, training for professionals working with, and for, children, as well as establishing mechanisms for supervising and controlling the compliance with regulatory enactments in the field of protection of the rights of children. The principles embedded in the [LPRC](#) apply to all public or private individuals and in matters concerning children regardless of the type of judicial or other proceedings.

As a framework law, however, the [LPRC](#) does not go into detail to regulate the child's involvement in any administrative or judicial proceedings. Being a law of general application, it provides overarching principles but does not clarify the status of a child, or his/her rights and needs in such proceedings. Considering that procedural laws governing administrative judicial proceedings do not provide any specific details, there seems to be a gap between children's rights in principle, and the implementation of these rights in practice. Although the [LPRC](#) clearly guarantees protection of children's rights, there are hardly any rules or guidelines that explain how exactly these rights can be fully and effectively ensured for children participating in administrative or any other judicial proceedings.



## List of legislation

- Administrative Procedure Law, (*Administratīvā procesa likums*), 2001.
- Citizenship Law (*Pilsonības likums*), 1994.
- Civil Law (*Civillikums*), 1937.
- Constitution of Latvia (*Satversme*), 1922.
- Criminal Law (*Krimināllikums*), 1998.
- Latvian Administrative Violations Code, (*Latvijas administratīvo pārkāpumu kodekss*), 1984.
- Law on Application of Compulsory Measures of a Correctional Nature, (*Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem*), 2002.
- Law on Compensation for Damages Caused by the State Authorities (*Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums*), 2005.
- Law on Freedom of Information (*Informācijas atklātības likums*), 1998.
- Law on Judicial Power (*Likums 'Par tiesu varu'*), 1992.
- Law on Ombudsman (*Tiesībsarga likums*), 2006.
- Law on Orphans' Courts, (*Bāriņtiesu likums*), 2006.
- Law on Prosecutor's Office (*Prokuratūras likums*), 1994.
- Law on Protection of the Rights of the Child (*Bērnu tiesību aizsardzības likums*), 1998.
- Personal Data Protection Law (*Fizisko personu datu aizsardzības likums*), 2000.
- Regulation on publication of courts' information on the internet (*Noteikumi par tiesu informācijas publicēšanu mājaslapā internetā un tiesu nolēmumu apstrādi pirms to izsniegšanas*), 2009.
- Regulation regarding procedures for the acquisition of special knowledge in the field of protection of the rights of the child and the content of such knowledge (*Noteikumi par speciālo zināšanu bērnu tiesību aizsardzības jomā apguves kārtību, šo zināšanu saturu un apjomu*), 2005.
- Social Services and Social Assistance Law (*Sociālās pakalpojumu likums*), 2003.

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