

Ton Liefwaard · Jaap E. Doek *Editors*

Litigating the Rights of the Child

The UN Convention on the Rights of the
Child in Domestic and International
Jurisprudence

 Springer

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Ton Liefwaard
Department of Child Law
Leiden Law School
Leiden University
Leiden
The Netherlands

Jaap E. Doek
Faculty of Law
VU University
Amsterdam
The Netherlands

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Foreword

Relatively little has been written about children’s rights litigation or the obligations of States parties under the Convention on the Rights of the Child (CRC), notwithstanding that it is a binding agreement on 194 countries around the world. In this vein, I sometimes have the impression, when speaking to governments either in Geneva or in follow-up missions abroad, that the view is that because the CRC deals with children’s rights, it can be applied *à la carte* and that the proposed menu itself is no more than a ‘*Kid’s menu*’—one offering small meals, and small rights, for the little customers and little persons.

Nevertheless, it is clear from human rights theory that the CRC belongs to the human rights family and that the principles which apply to all international human rights treaties are equally applicable to ‘our’ Convention. The rights enshrined in it amount to more than just an exhaustive list; they also enumerate the obligations that States parties have towards children from the moment at which they ratified the CRC, because the act of ratification expresses the commitment of states to accept these very obligations.

It is worth mentioning, then, that we are in a unique position with the CRC, which is the only convention to have achieved nearly universal ratification, given that 194 states have agreed to be bound by obligations towards all persons under 18 years of age. Moreover, this is the first time in modern history when all states are speaking the same language when dealing with children.

We should recall that Article 4 of the CRC clearly establishes the obligations incumbent on states, which are required to ‘undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention’. The same provision further requires that ‘with regard to economic, social and cultural rights, States parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation’. In addition to the obligations to ensure the full enjoyment of the rights of the child, States parties are obliged to submit regular reports on their achievements and challenges in implementing the CRC to the UN Committee on the Rights of the Child (Article 44).

The CRC is a uniquely broad instrument safeguarding children’s civil, political, economic, social and cultural rights, many of which are not covered by provisions in the International Covenants or other international instruments. Some articles in the CRC mirror guarantees established for ‘everyone’ in other instruments, thereby underlining the fact that these rights apply equally to children. By the same token, however, there are many provisions in the Convention that provide unique rights for children.

As such, it seems important to highlight a selection of rights (and concomitant obligations on States parties) that are specific to children and which are **not** found under other treaties:

- The obligation to protect the child from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of his or her parents, guardians or family members; the CRC also adds disability and ethnic origin as specifically prohibited grounds for discriminating against children (Article 2).
- The obligation to respect the right of the child to have his or her best interests taken as a primary consideration in all actions [Article 3(1)].
- The obligation to respect the principle of evolving capacities (Article 5).
- The obligation to ensure the maximum survival and development of the child (Article 6).
- The right of the child to know and be cared for by his or her parents (Article 7).
- The obligation to preserve the child’s identity (Article 8).
- The obligation not to separate children from parents unless it is in the children’s best interests; if it is deemed so, this decision is in turn subject to judicial review (Article 9).
- The obligation to give due weight to children’s expressed views in all matters affecting them; children must also be given an opportunity to be heard in any judicial or administrative proceedings that affect them (Article 12).
- Obligations to support parents in their child-rearing responsibilities, including by means of providing child-care services; in addition, the child’s best interests should be a basic concern for parents (Article 18).
- A special obligation to protect the rights of children deprived of family environment (Article 20), including adoption (Article 21).

It should be underlined as well that the two Optional Protocols to the CRC—on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict—stipulate further unique rights and safeguards.

The recent entry into force of the third Optional Protocol on Individual Communications (OPIC) will add a new dimension to the reality that states have obligations towards children. As subjects of this new right, children will be in a position to complain before the UN CRC Committee in cases of non-compliance with, or violation of, their rights. This is certainly an important step towards better implementation of the CRC, but it will also pave the way for the notion of establishing domestic bodies where children may lodge complaints. OPIC therefore

stands to have a direct effect on children's ability to litigate at the national level, and even possibly the international one.

Implementation of the Convention should mean that the provisions of the CRC can be directly invoked before the courts, applied by all national authorities, and done so in such a manner that the Convention prevails in the event of conflict with national legislation or practice. This was clearly pointed out by the General Comment No. 5 (2003)¹ on measures to implement the Convention, but in reality the incorporation of children's rights is often weak or incomplete, and while it is possible in theory to invoke the CRC's principles and articles before judicial or administrative authorities, in practice lawyers ignore this possibility and judges and magistrates are reluctant to justify their decisions on the basis of the provisions of the Convention.

It is important, therefore, to reiterate what the General Comment No. 5 mentions in paragraph 24 in relation to the meaning of the phrase '[to] have rights':

For rights to have meaning, effective remedies must be available to redress violations. [...] So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.

It is a notable area in which states have delayed their implementation of the CRC. This book by our colleagues, Professors Ton Liefwaard and Jaap Doek, comes hence as a clear and timely reminder of these obligations, showing that while examples of good practice are to be found, there is still a very long way to go before children are fully recognised as bearers and agents of human rights.

So thanks are due to the two initiators of this work for having taken up the challenge and to all the authors for their encouraging contributions. May this book then inspire legislators, the judiciary, administrative decision-makers, lawyers and all other relevant professionals in their daily practice!

Jean Zermatten
Former Chair
UN Committee on the Rights of the Child

¹ CRC/GC/2003/5.

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Leiden, July 2014

Ton Liefwaard
Jaap E. Doek

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Acronyms

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
INGO	International Non-Governmental Organisation
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions
OAS	Organization of American States
OPAC	Optional Protocol on the Involvement of Children in Armed Conflict
OPIC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Pornography
UNCAT	Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment

About the Authors

Anant Kumar Asthana is a New Delhi based lawyer who specialises in children related laws, particularly juvenile justice. Prior to litigating in the Delhi High Court and Supreme Court of India, he practised juvenile justice law for four years before various Juvenile Justice Boards in New Delhi and as a panel lawyer for Delhi State Legal Services Authority. He has represented thousands of juveniles so far. In addition to litigation, he travels across the Country to impart technical trainings on juvenile justice, anti-trafficking and child sexual offences laws to police, judicial officers, lawyers, teachers, law students and activists associated with various civil society organisations. Since 2009, he has been serving as Convener of Delhi High Court Appointed Committee for Supervision of Observation Homes. He drafted national guidelines for training of juvenile welfare officers and also guidelines for legal aid in Juvenile Justice Boards, which were issued by the National Legal Services Authority for nation-wide application. He compiled India's first ever compendium of significant orders of Juvenile Justice Boards, which was published by HAQ: Centre for Child Rights as a book titled "Juvenile Justice: Law and Practice". He is also an active public interest lawyer. He was counsel for HAQ: Centre for Child Rights in eight writ petitions in the Supreme Court of India (known as Salil Bali Case) in which he successfully argued to defend constitutional validity of India's Juvenile Justice Act, which had come under challenge after 16 December 2012 Gang Rape incident in Delhi.

Prof. Dr. Mariëlle Bruning lectures on child law, children's rights and juvenile justice at Leiden University, Leiden Law School, where she is director of the Child Law Department. She is also director of the LL.M Programme on Child Law, a Dutch Master's programme (2012) designed to provide specialism to those working with and for children in the legal field. She regularly publishes on various topics in the area of children's rights and family and child law. Her research focuses on the legal position of the child and the triangle between rights and duties of parents, children and the state, with particular attention for child protection, youth care and welfare, children in alternative care, information sharing and privacy issues, legal aspects of child abuse and neglect and child abduction from an international perspective.

She supervises several Ph.D. students on various issues relating to child law and children's rights, including the rights of children in foster care, children in closed youth care and the rights of children in the context of international commercial surrogacy. She collaborates in projects with partners such as Defence for Children International-ECPAT in the Children's Rights House in Leiden, KidsRights and the Dutch Children's Ombudsman and acts as a consultant on various projects concerning child law and children's rights. Mariëlle Bruning is furthermore a (part-time) juvenile judge in the District Court of Amsterdam.

Meda Couzens LL.M is a Romanian lawyer currently working as a Senior Lecturer at the School of Law, University of KwaZulu-Natal, Durban, South Africa, where she teaches child rights-related subjects, Constitutional law and Human rights. She has published on a variety of child rights topics, such as child participation, child-headed households, inter-country adoptions, local authorities and children, the best interests of the child, independent human rights institutions and the rights of children, and children of incarcerated parents. Her latest international publications are 'The contribution of the South African Constitutional Court to the jurisprudential development of the best interests of the child' (forthcoming chapter in Diduck, A., Peleg, N. and Reece, H. *Law and Michael Freeman* (Brill Publishers 2014)) and 'Exploring public participation as a vehicle for child participation in governance: A view from South Africa' *International Journal of Children's Rights* 2012 (20) 4, 674. Meda publishes both in English and Romanian. She is currently reading, as an external candidate, for a Ph.D. with Leiden Law School, investigating the role of national courts in applying the UN Convention on the Rights of the Child.

Prof. Dr. Alfred de Zayas is a retired senior lawyer with the Office of the UN High Commissioner for Human Rights, where he was Chief of the Petitions Section and Secretary of the UN Human Rights Committee. Since 2012 he is UN Independent Expert for the Promotion of a Democratic and Equitable International Order, and reports annually to the Human Rights Council and UN General Assembly. He has taught as full Professor of Law and as guest lecturer inter alia at the Universities of British Columbia (Vancouver), DePaul (Chicago), Graduate Institute (Geneva), and Universidad de Alcalá de Henares (Madrid). At present he lectures at the Geneva School of Diplomacy and International Relations, where he also supervises masters and doctoral students. He has published nine books on international law and historical topics, including a *Handbook on the Case Law of the UN Human Rights Committee* (together with Judge Jakob Th. Möller), N.P. Engel, 2009. He was President of PEN International, Centre Suisse romand from 2006 to 2010 and is again its President since 2013.

Prof. Dr. Jaap E. Doek is an Emeritus Professor in Family and Juvenile Law at the VU University of Amsterdam and an extraordinary Professor in Children's Rights at the Anton de Kom University of Suriname. He is the special legal advisor of ECPAT and is a member of the board of various international NGO's, e.g. the African Child Policy Forum and Child Helpline International. He regularly serves as a consultant for UNICEF country offices. He was a member of the UN Committee on the

Rights of the Child from 1999 until 2007 and the chairperson of that committee from 2001 until 2007. He was Dean of the Law Faculty at the VU University of Amsterdam from 1988 to 1992. He has been a juvenile court judge in the District Courts of Alkmaar and The Hague (1978–1985) and a deputy justice in the Court of Appeal of Amsterdam (2005–2012). He wrote or edited books and contributed to many books. Examples of books are: *The Rights of the Child in International Law. Rights of the Child in a Nutshell and in Content: All About Children's Rights*. Bern: Stampfli Publishers 2012 (together with Nevena Vukcovic-Sahovic and Jean Zermatten); *Child Poverty: African and International Perspectives*. Antwerp/Oxford/Portland: Intersentia 2009 (together with A.K. Shiva Kumar, David Mugawe and Shimetis Tsegaye). Examples of contributions to books: 'The Child's Right to Freedom from Violence. The UN Convention on the Rights of the Child and UN CRC General Comment 13' (together with Kim Svevo), in: Jon Conte (ed.), *Child Abuse and Neglect Worldwide*. Volume 1 Understanding, Defining and Measuring Child Maltreatment, Santa Barbara, Denver, Oxford: Praeger 2014; and 'The CRC: Dynamics and Directions of Monitoring its Implementation', in: Antonella Invernizzi and Jane Williams (eds), *The Human Rights of Children from Vision to Implementation*, Farnham/Burlington: Ashgate Publishers 2011.

Prof. Bernardine Dohrn is a retired Clinical Associate Professor at the Northwestern University School of Law, and was the founding director of the Children and Family Justice Center. The Center represents young people in court, and is a national policy center for the comprehensive needs of adolescents and their families, matters associated with the administration of justice, and the preparation of professionals who advocate for children. Dohrn is an author and co-editor of three books: "Race Course: Against White Supremacy (2009); "A Century of Juvenile Justice" (2002); and "Resisting Zero Tolerance: A Handbook for Parents, Teachers and Students" (2001) and the author of 'I'll Try Anything Once: Using the Conceptual Framework of Children's Human Rights Norms in the U.S.', *Univ. of Mich. Journal of Law Reform* (2007); 'Something's Happening Here: Children and Human Rights Jurisprudence in Two International Courts', *UNLV L. Rev.* Summer 2006; and 'All Ellas: Girls Locked Up in Feminist Studies' (Summer 2004). She serves of the boards of Human Rights Watch's Children's Rights Division; the W. Haywood Burns Institute; and the Campaign for the Fair Sentencing of Youth. She teaches, writes and lectures on international human rights law, children in conflict with the law, racism and youth justice, school law, and torture. Dohrn taught at Northwestern, was visiting professor at Leiden University, Leiden Law School and at the VU University of Amsterdam in the Netherlands, and is currently a lecturer at the University of Chicago.

Mónica Feria-Tinta LL.M. (with merit) (London), Diploma of the Hague Academy of International Law (2000), is a practising international lawyer specialising in public international law. She has represented victims before the Inter-American organs of protection of human rights since 1997. Her work as legal counsel litigating cases before the Inter-American system created landmarks in international justice including, groundbreaking jurisprudence on the protection of children in times of war. She is the

author of *The Landmark Rulings of the Inter-American Court of Human Rights on the Rights of the Child* (Martinus Nijhoff 2008) and lectures regularly at the Master of Advanced Studies in Children's Rights Programme of the Institut Universitaire Kurt Bösch (IUKB) and University of Fribourg, Switzerland. Ferial-Tinta was awarded the Inge Genefke International Award for her work as an international lawyer in 2006 and was co-recipient of the Gruber Justice Prize 2007, for her contributions advancing the cause of justice as delivered through the legal system. She is a member of Middle Temple (Inn of Court), England.

Prof. Dr. Kamel Filali teaches at the Law School of the University of Constantine (Algeria). He teaches courses on international human rights law particularly the protection of children's rights at the international and regional level. He received a Ph.D. in international law from the University of Miami (FL, USA) and was a Director of Studies at the International Institute of Human Rights in Strasbourg (France). Dr. Filali was a Member of the UN committee on the Rights of the Child and its Vice Chair from 2007 to 2011. He is currently a member of the International Board of Trustee of the African Child Policy Forum (ACPF) and member of the African Union Commission of International Law. At the national level, he is a member of the National Consultative Commission on the promotion and protection of human rights. He also contributed as a professor to the training of Algerian juvenile judges on the meaning and the use by the judiciary of the Convention on the Rights of the Child. He supervises a number of Masters and Ph.D. students on various issues relating to human and children's rights, such as on the international and African Union system of protection of children's rights. Dr. Filali has written several articles and given numerous presentations on the CRC and its Optional Protocols. Among his recent publication are: 'Regional child rights instruments on the African continent: The African Charter on the rights and welfare of the Child', *AUCIL Journal of International law*, 2013, No. 1; 'Une Magna Carta en faveur des enfants' *El Watan*, Algeria 19 December 2013; 'SOS enfants en danger' in *le Soir* Algeria. 19 March 2013. Furthermore, Dr. Filali is a practicing lawyer and international human rights expert involved in pleading cases before Algerian Tribunals and Courts and providing legal consultations to individuals, private and public institutions.

Prof. Dr. Ursula Kilkelly holds a Chair in Law at the School of Law, University College Cork, Ireland where she is also Dean. She teaches children's rights, child law and juvenile justice and has published widely on the implementation of children's rights. Some of her key publications are: *The Child and the ECHR* (Ashgate 1999); *Children's Rights in Ireland* (Tottel 2008) and journal articles in *Youth Justice*, *the Child and Family Law Quarterly*, *the Human Rights Quarterly* and the *International Journal of Children's Rights*. Recent publications include commissioned research for UNICEF UK on the legal implementation of the UN Convention on the Rights of the Child (with L. Lundy et al. 2013), on child-friendly healthcare for the (Irish) Ombudsman for Children (with E. Savage 2013) and a children's rights study of European Constitutions for the Council of Europe Venice Commission (with C. O'Mahony 2014). She is currently conducting a 2 year study of children's rights advocacy, with L. Lundy in Queen's University Belfast, for the

Atlantic Philanthropies. At Cork, she directs the Child Law Clinic, which provides student-led legal research services to lawyers litigating children's issues and developed the LL.M. in Child and Family Law. She was appointed to the Board of Management of Ireland's Children Detention School by the Minister for Children and Youth Affairs in 2012, reappointed in 2014, and is co-founder and chairperson of the Law Centre for Children and Young People in Dublin.

Prof. Dr. Ton Liefwaard holds the UNICEF Chair in Children's Rights at Leiden University, Leiden Law School. He teaches children's rights, child law and juvenile justice and has published widely on the UN Convention on the Rights of the Child and its meaning for children at the national level. Some of his key publications are: *Deprivation of Liberty of Children in Light of International Human Rights Law and Standards* (Intersentia 2008); 'Juveniles in transition from juvenile justice to adult criminal justice' (in: R. Loeber et al. (eds.). *Persisters and Desisters in Crime from Adolescence into Adulthood: Explanation, Prevention and Punishment*. Ashgate 2012); 'Child Soldiers: Towards A Rights Based Imagery' (in: C. Brants et al. (eds.). *Transitional Justice. Images and Memories*. Ashgate 2013); and 'Juveniles' Right to Counsel during Police Interrogations. An Interdisciplinary Analysis of a Youth Specific Approach, with a Particular Focus on the Netherlands', *Erasmus Law Review* 2014 (with Y. van den Brink). He supervises Ph.D. research on various children's rights issues and regularly advises governments and international organisations (UN, Council of Europe, European Union, INGO's), on issues related to children's rights, juvenile justice, child friendly justice, child protection and alternative care, and violence against children. Ton Liefwaard is furthermore a deputy juvenile judge at the District Court of Amsterdam and a member of the State Commission advising the Dutch Government on changing parental relationships and the position of children.

Manuela Limbeek LL.M works as a lecturer at the Child Law Department of Leiden University. She studied law at the University of Amsterdam and finished her Master's in Private Law with a thesis focusing on the child's guardian ad litem. During her studies, she worked at the Child and Youth Law Centre in Amsterdam (Kinder—en Jongerenrechtswinkel Amsterdam), first as a volunteer and later as project manager/advisor. Also, she has worked as student—assistant of Dr. J.H. de Graaf, University of Amsterdam. After her Masters, she remained affiliated with the Centre for Children's Rights Amsterdam as a researcher. Manuela Limbeek is one of the authors of J.H. de Graaf et al. *De toepassing van het Internationaal Verdrag inzake de Rechten van het Kind in de Nederlandse rechtspraak*. Nijmegen: Ars Aequi Libri 2012.

Ivana Savić LL.M is Executive Director of the Centre for Human Rights and Development Studies (CHRDS), an organisation focused on advancing global, regional and national policies in the areas of human rights, especially of the rights of the child and youth rights, and sustainable development. Since 2009, she has been one of the Organising Partners for the United Nations Major Group for Children and Youth (MGCY) with a mandate to coordinate and facilitate young

people's participation in the international sustainability negotiations, namely the UN Commission on Sustainable Development, Rio+20 and the post-2015 process, the UN High Level Political Forum on Sustainable Development and the Open Working Group for Sustainable Development Goals. Ivana Savić is also a member of the UNDP Civil Society Advisory Committee, and CIVICUS Youth Advisory Group. Additionally, she has been involved in different youth initiatives worldwide and has been internationally recognized as expert in the field of the rights of the child, youth rights, human rights and environment, sustainable development and young people's participation. Ivana Savić holds an LLM degree in the Rights of the Child and is a Doctoral candidate in the Rights of the Child at the Union University, Faculty of Law in Belgrade, Serbia. Some of Ivana Savić's key published work are: Savić, I., Loftus, S. et al. *Rio+20 Participation Guide—An introduction for children and youth*. Brussels: Rioplustwenties, 2011; Savić, I. 'Youth Participation in Environmental Activities', in: Institut international des Droits de l'Enfant, *Climate Change: Impacts on Children and on their Rights*, Sion 2012, 162–170; Savić, I., 'Best practices in youth engagement with intergovernmental organisations: a case study from the Rio+20 process', in: CIVICUS State of Civil Society Report 2014; Savić, I., 'Partnering with and catalysing young innovators', in: *The Challenges of Climate Change: Children on the front line*. UNICEF Office of Research/Innocenti (in print).

Prof. Dr. Ann Skelton is the Director for Child Law at the University of Pretoria in South Africa. She obtained her doctorate in law in 2005, which was on restorative justice and children. She continues to publish in these areas of interest—some of her recent publications are 'The South African Constitutional Court's restorative justice jurisprudence' 2013 1(1) *Restorative Justice: An International Journal* 122–145 and 'The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law' 2013 46(1) *De Jure* 1–23. She is an internationally recognised expert in child law, and frequently attends UN expert meetings. She supervises doctoral and masters students on a range of subjects relating to child law and human rights. She is an advocate who regularly appears in the superior courts of South Africa, including the Constitutional Court, arguing prominent children's rights matters. In 2012 she was presented with the honorary World's Children's Prize by Queen Silvia of Sweden. In 2013 she was appointed into the University of Pretoria's UNESCO Chair: Education law in Africa.

Prof. Dr. Julia Sloth-Nielsen is a senior professor at the Faculty of Law, University of the Western Cape. She also holds the Chair on Children's Rights in the Developing World at Leiden University, Leiden Law School. She teaches children's rights, child law and juvenile justice and has published widely on both the UN Convention on the Rights of the Child and the regional treaty the African Charter on the Rights and Welfare of the Child. She has worked on child law reform at national level in South Africa, Mozambique, Kenya, Botswana, South Sudan, Tanzania, Zanzibar and Namibia to name a few examples of regional work. Some of her key publications are *Children's Rights in Africa: A Legal Perspective* (Ashgate 2009), and

Trials and tribulations, tends and triumphs (with Z du Toit; Juta and Co, Cape Town). She supervises a number of Ph.D. students on various issues relating to children's rights in African context, including birth registration, kinships care, the rights of children with disabilities to early childhood education, and implementation of the rights of children with disabilities to education in Kenya and South Africa. Prof. Sloth-Nielsen was elected to the African Committee of Experts on the Rights and Welfare of the Child by the Heads of State of the African Union in January 2011 and currently serves as second vice chair. She currently enjoys a rating as an internationally recognised researcher with South Africa's National Research Foundation.

Prof. Dr. Helen Stalford is Professor of Law at the University of Liverpool and is founding director of the European Children's Rights Unit. Her work for the past 15 years or so has focused on examining the status and experiences of children under European law, and particularly under EU law. An important part of this work has been to develop mechanisms to measure the impact of European law on children's lives and she has led projects on behalf of the EU Fundamental Rights Agency, UNICEF and the Council of Europe in developing children's rights indicators. To complement this, she has worked directly with children and young people on a number of empirical projects, to explore their experiences of the law in the context of migration, family violence, education and access to justice. Key publications include the books 'A Community for Children?: Children, Citizenship and Migration in the European Union' (Ashgate 2004); and 'Children and the European Union: Rights Welfare and Accountability' (Hart 2012).

Enakshi Ganguly Thukral is a human rights activist and child rights advocate, researcher and trainer for the past three decades, working on wide-ranging socio-legal issues, such as development induced displacement, women in the unorganised sector, reproductive health, child labour, child trafficking, laws and policies governing women and children, education and violence. Since co-founding HAQ: Centre for Child Rights, in 1998, she has been working in focused manner on children's rights. She has been part of drafting committees of laws, policies and plans of the government of India, including the for the government's 5 Year Plans. She is currently the president of Society for Rural and Tribal Initiatives (SRUTI), Delhi, on the board of among others, the National Gender Centre of the Lal Bahadur Shastri Academy of Administration, Government of India; member of the Editorial Board of "Children, Youth and Environments", A Journal of Research, Policy and Applications, University of Colorado, the thematic group for the World Congress on Juvenile Justice, Geneva, 2015, Scientific Committee of the sixth IJJO International Conference, Brussels 2014. She has authored and co-authored a number of books, articles, manuals and handbooks on a wide range of issues; she has been invited as a technical expert on issues related to children, presented papers at various national and international meets, worked closely with the UN system, is connected with child rights experts around the world. She has been awarded the Ashoka Fellowship in 2002 in recognition of HAQ's work on children.

Prof. Dr. Wouter Vandenhole teaches human rights and holds the UNICEF Chair in Children’s Rights—a joint venture of the University of Antwerp and UNICEF Belgium—at the Faculty of Law of the University of Antwerp (Belgium). He is the spokesperson of the Law and Development Research Group and chairs the European Research Networking Programme GLOTHRO. He has published widely on economic, social and cultural rights, children’s rights, transnational human rights obligations and human rights and development. Vandenhole is a founding member of the Flemish Children’s Rights Knowledge Centre and co-convenor of the international interdisciplinary course on human rights for development (HR4DEV). More information on www.uantwerp.be/wouter-vandenhole.

Prof. Dr. Nevena Vučković Šahović is Professor at the Law Faculty, UNION University in Belgrade, Serbia, teaching International Public Law with International Organizations and Family Law with Rights of the Child. She is the coordinator of the Master on the Rights of the Child. Nevena Vučković Šahović is the Founder and Director of Child Rights Centre—Belgrade, which was the first and the only organization in Serbia exclusively devoted to the promotion and implementation of the Convention on the Rights of the Child. She served on the Committee on the Rights of the Child (2003–2009). She is active in many countries in Europe, Asia and the USA, regarding human rights and the rights of the child. Nevena Vučković Šahović is the author of numerous articles, books and research. Some include: *Implementation of the General Measures of the CRC and the Role of Civil Society*, (WP, UNICEF Innocenti Research centre, Florence 2010, p. 61); *Measures to Implement the Convention on the Rights of the Child and Good Governance: the case of Serbia*, (in: Ganguly Thukral, Enakshi: “Every Right for Every Child”, Routledge Taylor and Francis Group, pp. 65–89, 2011); *ENOC Study Report on National Human Rights Institutions and Child/Juvenile Delinquency*, (ENOC/Council of Europe, Strasbourg, 2012, p. 61); *The Rights of the Child in International Law* (with Jaap Doek and Jean Zermatten), Bern: Stampfli Publishers, 2012.

Jane Williams MA, LL.M is an Associate Professor in the College of Law, Swansea University. She teaches public law, family law and children’s rights. Relevant publications include *The United Nations Convention on the Rights of the Child in Wales* (University of Wales Press, 2013) and, with Dr. Antonella Invernizzi, *Children and Citizenship* (Sage 2008) and *The Human Rights of Children: From Visions to Implementation* (Ashgate 2011). She supervises research students on issues relating to human rights implementation, including but not limited to human rights of children and young people. With Dr. Simon Hoffman, she co-directs the Wales Observatory on Human Rights of Children and Young People, based at Swansea University. She is a member of the Wales UNCRC Monitoring Group and of the Rights of the Child UK (ROCK) coalition.

Chapter 1

Litigating the Rights of the Child: Taking Stock After 25 Years of the CRC

Ton Liefwaard and Jaap E. Doek

Abstract The 1989 UN Convention on the Rights of the Child (CRC) is the guiding legal framework for the development and implementation of legislation and policies concerning the human rights of children in 194 countries. This human rights treaty has contributed to universalising children's rights globally and regionally. It has had significant impact on domestic legal systems throughout the world and on domestic legislation in particular. The CRC has also had an impact on domestic and international human rights jurisprudence, but due to the absence of global studies a clear picture of the extent and nature of this impact is lacking. This book is a first step in a process of systematically compiling and analysing international, regional and national jurisprudence concerning the rights of the child. This chapter presents the key findings and provides guidance on how to proceed from here.

1 Children's Rights in Domestic and International Case Law

The 1989 UN Convention on the Rights of the Child (CRC) is the guiding legal framework for the development and implementation of legislation and policies concerning the human rights of children in 194 countries. This human rights treaty, which celebrated its twenty-fifth anniversary on 20 November 2014, has contributed to universalising children's rights globally and regionally. It has had

T. Liefwaard (✉)

Department of Child Law, Leiden Law School, Leiden University, Leiden, The Netherlands
e-mail: t.liefwaard@law.leidenuniv.nl

J.E. Doek

Faculty of Law, VU University, Amsterdam, The Netherlands
e-mail: jaap@jaapedoek.nl

significant impact on domestic legal systems throughout the world (Arts 2010; Stalford 2012) and on domestic legislation in particular (Sloth-Nielsen 2012; Arts 2010: 22 with reference to UNICEF 2007a, b). The CRC has also had an impact on domestic and international human rights jurisprudence (for example, see Kilkelly 1999; Ruitenbergh 2003; Fortin 2004; Van Bueren 2007; FERIA-TINTA 2008; Sloth-Nielsen and Mezmur 2008; Nolan 2011; De Graaf et al. 2012; Sloth-Nielsen and Kruuse 2013; Sandberg 2014), but due to the absence of global studies a clear picture of the extent and nature of this impact is lacking.

Regional human rights courts, such as the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights, increasingly refer to the CRC and related children's rights standards as the relevant legal framework in cases where the interests of children are at stake (Kilkelly 2001; Van Bueren 2007). The number of domestic court cases in which the CRC has been used as a significant and/or decisive legal framework to determine legal matters affecting children's interests seems to have increased as well (for example, see De Graaf et al. 2012). Some jurisdictions provide interesting examples of domestic courts using the international children's rights framework for the interpretation of domestic constitutional principles and/or legislation. The South African Constitutional Court, for instance, has issued several important judgments in which the international rights of the child were further explored and implemented within the domestic legal order. This 'domestication of the CRC in South African Jurisprudence' (Sloth-Nielsen and Mezmur 2008) has been instigated by the South African Constitution, which stipulates that courts must consider international law when interpreting the Bill of Rights and may consider foreign law [section 39(1)].

Nevertheless, there are also jurisdictions where courts either show reluctance to accept the CRC as the relevant human rights framework for children or do not reveal a clear child-rights-oriented approach, be it in general or in individual cases. It might happen that courts do not see the CRC as pertinent to cases involving children, or it could be that they dispute its potential supremacy over national law and jurisprudence. In this regard, what may be detrimental as well is the absence of national laws that have incorporated international children's rights instruments. Moreover, the justiciability of certain categories of children's rights may come into question.

Other relevant, but arguably more practical, factors concern awareness, knowledge and time. It seems crucial that courts and the professionals acting in and around them, such as lawyers, have sufficient knowledge of the CRC and its potential implications for, and applicability to, legal proceedings. Furthermore, courts may not recognise the self-executing force of at least some of the CRC provisions or may not be explicit and/or consistent in this regard. In addition, their judgments may not clarify the extent to which the CRC played a role in the decision-making process and—ultimately—in the rulings. The ECtHR, for example, often refers to relevant international treaties and standards, including the CRC, without indicating to what extent it actually used them in the interpretation and application of the provisions of the European Convention on Human Rights (ECHR; see Kilkelly in Chap. 12 of this book).

2 Functions, Challenges and Limitations of the CRC in Litigation

Despite the ambiguity in courts' attitudes towards the CRC as a relevant substantive and procedural human rights framework for children, it is fair to assume that attention to the CRC framework in domestic and international jurisprudence has increased since the CRC's entry into force in 1990; indeed, a growing body of case law exists to illustrate its potential for the rights of children in domestic jurisdictions. This is true even of the United States, one of the few countries not to have ratified the CRC (see Dohrn in Chap. 5 of this book).

At the same time, the practical experience of having litigated children's rights during the first 25 years of the CRC also sheds light on the challenges and limitations of the CRC and related international and regional children's rights instruments in legal proceedings at the domestic, regional and international level. These challenges and limitations are related to a variety of factors, including the nature of the (domestic) legal order; the presence or absence of a domestic constitution in which children's rights have been embedded or on the basis of which international law is regarded as the higher law; the legal tradition (for example, civil law, common law or Islamic law); and the existence or not of strategic-litigation initiatives, including education and training of legal professionals.

This book aims to study these jurisprudential developments and provide insight into the possible functions, challenges and limitations of using the CRC in litigation. Its core objective is to examine the CRC's potential impact on domestic and international human rights jurisprudence in order to foster better understanding of how the CRC functions in domestic and international law and thereby advances implementation and enforcement of children's rights at the domestic level (see art. 4 CRC). These functions include, inter alia, the CRC as a tool for interpretation of domestic law or other human rights standards; the CRC as a 'gap-filler' closing gaps in domestic or international law; the CRC as the higher standard; the CRC as a limiting standard, for example with regard to local custom and practices or religion; and the CRC as an embodiment of principles of international customary law.

In addition, the book seeks to highlight a variety of experiences in children's rights litigation, experiences which legal professionals working in and around courts can draw on for reference purposes and inspiration, and which can be used in the training and education of professionals and students.

3 Outline of the Book

The book is divided into four parts. The first three consist of country studies divided along the lines of legal tradition. The first two parts accommodate countries with a common law system and civil law system, respectively. The third part of the book contains one study of an Islamic law system, namely Algeria (Chap. 10). The

fourth consists of international and regional legal systems, including studies of the communications procedures under the International Covenant on Civil and Political Right (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the African Charter on the Rights and Welfare of the Child (ACRWC), as well as studies of the use of the CRC and related instruments by the European Court of Human Rights (Council of Europe), the European Court of Justice (EU) and the Inter-American Court of Human Rights.

In the first part, four country studies are presented. Skelton (Chap. 2) shows that the South African constitutional democratic legal order has created a 'favourable climate for child rights litigation', and points in particular to the creativity of the South African Constitutional Court. Supported by the South African Bill of Rights, in which children's rights have been acknowledged explicitly (art. 28), the Court has paved the way for its children's rights jurisprudence, which relies significantly on the CRC and related documents, including General Comments of the Committee on the Rights of the Child and the ACRWC. Skelton also stresses the critical role that child rights litigators have played in this regard.

The study of India by Ganguly and Asthana (Chap. 3) provides another example of active children's rights litigation. The authors point to the incremental use of the CRC by litigators and courts at all levels, including the Supreme Court, High Courts and sometimes also lower Courts. They conclude that the CRC 'has contributed significantly to the growth and evolution of jurisprudence on child rights, serving in particular as a guiding force in filling gaps that existed in domestic legislation'. At the same time, they note that 'there is still tremendous scope for identifying areas in existing laws, policies and practices where the standards set by the CRC are yet to be realised and for which judicial intervention will be required'.

A third example of such litigation is found in Dohrn's thought-provoking case study of the United States (Chap. 5), the only country in this book which has not ratified the CRC. She argues that '[t]he unlikely element of success in the US campaigns challenging the juvenile death penalty and extreme sentencing of children is the express recognition, by the US Supreme Court in two germinal cases, of the standards of the Convention on the Rights of the Child (CRC), the role of international human rights law, and the practices of other nations'. Dohrn, who has been at the heart of these campaigns, explains how litigators managed to persuade the US Supreme Court, in the absence of CRC ratification, to adopt international children's rights standards as a frame of reference supporting and confirming the Court's interpretation of the US Constitution.

All three country studies show that the domestic constitutional or supreme courts, supported or even stimulated by the domestic constitutional framework, acted as significant generators for the inclusion of international law and related legal documents as well as judicial practices of other jurisdictions. In addition, the studies underscore the importance of active and/or strategic litigation, a practice that presupposes both a degree of knowledge about the potential of the CRC and related international standards as well as the skills to litigate in a strategic manner. Moreover, it should be noted that the examples of case law found in these studies of common law countries can be discussed as thoroughly as they are thanks to

the existence of extensive court clarifications, a legal feature one will not always encounter in countries with a civil law tradition.

The fourth country study of this part of the book is Williams's account of England and Wales (Chap. 4). She highlights the different ways in which the CRC has found its way into domestic law in England and Wales even though it has not yet been incorporated in domestic legislation—a prerequisite, given the United Kingdom's dualistic system. To illustrate this development, Williams refers to Baroness Hale's statement: 'When two interpretations ... are possible, the interpretation chosen should be that which better complies with the commitment to the welfare of children which this country has made when ratifying the UNCRC'. In another case, it was argued that '[u]nless we in this jurisdiction are to fall out of step with similar societies as they safeguard art 12 rights, we must, in the case of articulate teenagers, accept that the right to freedom of expression and participation outweighs the paternalistic judgment of welfare'. However, Williams argues that, despite the influence the CRC has had on courts' decisions, '[l]egislative incorporation is vital to deliver the necessary systemic changes', and goes on to cite Wales as an example of a novel legislative model.

The second part of this book consists of four studies of civil law countries. Limbeek and Bruning (The Netherlands, Chap. 6) and Vandenhole (Belgium, Chap. 7) present comprehensive studies of the use of the CRC in domestic jurisprudence. While these reveal an increasing use of the CRC in case law in both countries, Vandenhole finds that the denial of direct effect is a major obstacle impeding the CRC from making a substantive impact on Belgian jurisprudence; the self-executing force of CRC provisions plays a role in the Netherlands as well, and is perceived differently by the courts.

The authors of both studies nevertheless observe that courts need not depend on the issuance of direct effect (a typical feature of monistic systems such as Belgium and the Netherlands) and can use the CRC to fill gaps in domestic legislation and as a tool of interpretation when applying it in relevant matters. With regard to migration cases, for instance, in Belgium the expulsion of unaccompanied children without a concrete, sustainable solution in their country of origin has been considered a violation of the best interests of the child and articles 3 and 20 CRC. The Dutch Council of State decided in 2012 that article 3 CRC obliges administrative decision-makers to take into account the best interests of the child even when this is not in line with specific legislation.

However, neither country's jurisprudence reflects a comprehensive and unambiguous approach to the use of the CRC; moreover, Vandenhole argues that the 'full potential of the CRC and the interpretative work of the CRC Committee has not yet been fully capitalised upon by Belgian judicial bodies'. Limbeek and Bruning underline the need for specific training of law professionals in order to improve the quality of the influence of the CRC on Dutch case law.

Vandenhole also points out the tendency for courts to use 'open concepts', such as the best interests of the child principle, rather than specific rights laid down in the CRC. Couzens makes a similar observation in a study of France (Chap. 8). Her analysis of the case law of the country's two supreme courts indicates that

in this jurisprudence the application of art. 3(1) CRC is dominant and has made the best-interests principle a 'direct source of legal entitlements and obligations'. Couzens notes that, despite the direct application of a general principle of the CRC, courts have not been mobilised by the CRC to deal with controversial issues in a more child-oriented manner. According to her, this may well be due to the fact that the CRC has not been used as an interpretive tool in relation to the French Constitution.

The fourth study in this part of the book concerns Serbia (Chap. 9). Vučković Šahović and Savić provide examples of promising children's rights case law in a legal system that has not yet embraced children's rights, in particular children's rights to access to justice and to effective remedies. The authors explain, in addition, that the justiciability of children's rights is virtually impossible in a system in which the rule of law is weak, corruption is high and the judiciary inefficient. Vučković Šahović and Savić outline a number of important steps that need to be taken in order to enable children's rights litigation in Serbia.

Filali addresses similar challenges in his study of Algeria (Chap. 10), the only survey of an Islamic legal system in this book. He explains that although the CRC would take precedence over Algeria's domestic law after ratification and publication, there are significant challenges to the implementation of children's rights, including the use of the CRC in litigation. Sharia law takes precedence over civil family law, and this places major legal and cultural limitations on the implementation of children's rights in Algeria. Filali underscores the need for a specific Code on Children's Rights and the presence of an engaged and dedicated judiciary. However, he also points to the need for cultural change, arguing that legislative and juridical changes will not be enough.

The final and fourth part of this book examines the role that children's rights play in the decisions and judgments of international treaty bodies such as the Human Rights Committee (HRC), the Committee for the Elimination of Discrimination against Women, and the African Committee of Experts on the Rights and the Welfare of the Child (African Committee), and regional judicial bodies, including the European Court of Human Rights, the European Court of Justice, and the Inter-American Court of Human Rights.

Zayas (Chap. 11) shows that both the HRC and CEDAW have provided significant guidance on the interpretation of provisions under the ICCPR and CEDAW with particular relevance for children. According to Zayas, this may be due to the absence (until April 2014 when the Third Optional Protocol to the CRC entered into force) of an individual complaints mechanism for children under the CRC. Zayas's analysis, however, also shows that neither the HRC nor the CEDAW Committee make any reference to the CRC and/or the general Comments of the CRC Committee in their interpretation of the child-specific provisions of the ICCPR and CEDAW. Furthermore, he emphasises that in view of the non-binding decisions of the treaty bodies, it remains important that states parties are willing to implement these decisions. National legislation may well be needed for domestic judicial authorities to incorporate these decisions into domestic case law. Zayas argues that this will be relevant as well for the Third Optional Protocol to the CRC on a Communications Procedure.

Sloth-Nielsen (Chap. 15) provides concrete examples of the early case law developments of the African Committee of Experts on the Rights and Welfare of the Child as a source of inspiration for the Committee on the Rights of the Child on how to deal with individual communications of children. She stresses the importance of awareness of the communications procedure; the need for room for grass-roots organisations and individual child complainants to be able to lodge complaints; and the need for technical and financial resources to exhaust domestic remedies and pursue a complaint at the international level. The experience under the African children's rights system provides for interesting insights, as pointed out by Sloth-Nielsen. She draws attention in particular to the need for expeditious processes; the challenges human rights treaty bodies face inasmuch as they are not full-blown courts with extensive investigating powers; and the need for a continuum between national litigation, judicial decision-making and the complaints mechanism before the African Committee.

At the European level, the ECtHR has developed a growing body of legally-binding case law that incorporates children's rights standards, notwithstanding that the European Convention of Human Rights contains only few references to children. With the focus on article 12 CRC, Kilkelly (Chap. 12) shows that, even though it lacks explicit clarification, the ECtHR's case law has unmistakably been informed by the principle and substance of article 12 CRC. However, she also emphasises that the ECtHR is far from having realised the potential of the CRC and should go beyond listing international standards to make explicit reference to particular CRC provisions. Kilkelly argues that there is a 'need for regional and international bodies to engage with and respond to each other's jurisprudence'. This would enable courts 'to make a further, important contribution to the wider understanding of the application of children's rights in specific contexts'.

In her chapter on the case law of the European Court of Justice (Chap. 13), Stalford explains that although the European Union has made efforts to integrate references to CRC provisions in its standard-setting activities and a mainstreaming strategy for children has become apparent, the Court of Justice 'has so far evaded any serious scrutiny when it comes to the actual implementation of children's rights measures'. According to Stalford, this is a missed opportunity, because if the court were to adopt a different approach this would provide 'an invaluable mechanism for stimulating dialogue between the Member States as to how they should apply uniform EU children's rights measures'. In addition, it would reinforce the international obligations in respect of children's rights to which all EU Member States are bound.

Finally, Feria-Tinta addresses the use of the CRC by the Inter-American Court of Human Rights in her study (Chap. 14), observing that the CRC has been a substantive tool for construing obligations for States parties under the American Convention on Human Rights. As far as the use of the CRC as a procedural tool is concerned, she concludes that it has indeed been used as an important tool to better state the law in the Americas and thereby maintain the unity of international law. In doing so, this Court has provided an interesting example for other legal systems in dealing with children's rights issues.

4 Concluding Observations

4.1 *The CRC in Litigation at National Level*

It may be too early to identify clear and emerging trends in the way the CRC is used in litigation at the national level. However, some developments can be noted:

- The significant impact of the CRC on explicit constitutional recognition of the rights of the child (South Africa and, to a certain degree India).
- The growing use of the CRC in countries with dualistic systems even when it has not been incorporated legislatively into their national laws (England and Wales), and its use in court decisions in countries that are not states parties to the CRC (United States). This can be seen as an indication of the truly worldwide impact the CRC could make and of its increasing recognition as the global and—arguably—universal frame of reference for children’s rights.
- Growing acceptance of the self-executing nature of the articles 2, 3 and 12 of the CRC. This is important because the Committee on the Rights of the Child considers these articles (together with art. 6) as the CRC’s general principles, meaning that they should be taken fully into account in the implementation of the other articles of the CRC. A significant number of the cases presented in the different studies of this book show that these articles are indeed taken into account by domestic courts in different areas of law such as family law, migration law and administrative law.
- The viewpoint, expressed by all the authors, that there is still a long way to go, particularly in countries strongly influenced by Islamic law (Algeria), to establish a practice in which the CRC is used systematically as a key tool for respecting, protecting and fulfilling the rights of the child. This seems especially true of the child’s economic, social and cultural rights.

4.2 *The CRC in Litigation at Regional and International Level*

The chapters on the CRC’s use in litigation at the regional and international level identify a number of encouraging developments, but there are notable differences among the latter. Given that regional courts have the power to issue binding decisions, they are discussed first, after which some remarks are made on the activities of human rights treaty bodies.

The Inter-American Court on Human Rights turns out to be the most progressive regional court in this survey. In using the CRC as a tool for interpreting the provisions of the American Convention on Human Rights, the Court

states that both this Convention and the CRC are part of a broad international *corpus iuris* for the protection of children. This position supports the Court in establishing the content and the scope of general provisions defined in article 19 of the American Convention. The CRC forms an integral part of the Court's activities in its interpretation of the American Convention (see Chap. 14). In this regard, it is noteworthy that the Inter-American Court does not work according to the margin-of-appreciation doctrine, one which is embraced by the European Court of Human Rights and which affords States parties a certain amount of discretion, subject to judicial scrutiny. The Inter-American Court, thanks to its power enshrined in article 63(1) of the American Convention, is also able to provide specific, and rather creative, remedies and compensation for violations of children's rights, including investment and trust funds for victims as well as public apologies and acknowledgements in which, for instance, public places such as streets and squares are named in honour of the affected children.

The two European Courts dealt with in Chaps. 12 and 13 show in their judgments a growing use of the CRC as a guiding legal instrument. While the ECtHR seems more advanced in this respect than the European Court of Justice (ECJ), both of these courts have also drawn considerable criticism for, among other things, the unpredictability of the recently applied and developed legal formulas (see also Nissen 2013). Other scholars have addressed the legal uncertainty in the ECtHR's application of the best-interests principle in family law cases, and judges have been called upon to clarify the relevant factors in determining the best interests and the weight to be attached to these factors (Van Bueren 2007). The ECJ has been criticised on the grounds that its case law has become so individualistic and fact-specific as to raise the accusation of arbitrariness (Nic Shuibhne 2012).

In the light of these criticisms (see also Kilkelly and Stalford in their respective contributions to this book), it can be concluded that further action is needed in order to use the CRC as an important standards-setting instrument for the interpretation of both the European Convention on Human Rights as well as EU Law. As Kilkelly states in Chap. 12, there is clearly a need for regional and international courts and treaty bodies to engage with and respond to each other's jurisprudence (for example, see Zayas's analysis of the recommendations of the HRC and CEDAW Committee, which lack explicit reference to the CRC and the work of the CRC Committee).

Finally, the experiences of the African Committee of Experts on the Rights and Welfare of the Child in dealing with individual communications provide useful lessons for the CRC Committee when it starts to handle the communications submitted under the Third Optional Protocol to the CRC. The decision-making process can be very lengthy, and it is necessary to take effective measures for producing the final decisions as soon as possible. Children would have undergone already the long process of exhausting national remedies and should not have to face another protracted wait before hearing a final decision.