

# **ACCESS TO JUSTICE FOR CHILDREN: ARMENIA**

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

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

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

The Republic of Armenia (“RA”) acceded to the CRC on 23 June 1993 (without reservations) and ratified the CRC’s two additional protocols on 30 June 2005.<sup>1</sup> In RA international agreements come into force only after being ratified or approved. The international treaties including the CRC form a constituent part of the legal system of RA.<sup>2</sup>

### **B. Does the CRC take precedence over national law?**

The CRC takes precedence over conflicting provisions of all national laws,<sup>3</sup> except for those of the Constitution.<sup>4</sup>

### **C. Has the CRC been incorporated into national law?**

The incorporation of the CRC into Armenian law began in 1996 with the passing of the Law on the Rights of the Child (“LRC”). This law closely mirrors the CRC and provides a legislative basis for child rights in the RA.<sup>5</sup>

In December 2003, as a follow-up to the UN Special Session on Children and the World Fit for Children Plan of Actions, the Armenian Government approved the National Plan of Action on Protection of the Rights of the Child for 2004-2015 (“NPA”). The NPA is largely based on the provisions of the CRC.<sup>6</sup>

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

International treaties have the legal effect of a legal act of the body that ratifies or approves them<sup>7</sup>; therefore, they can be enforced in the national courts.

However, according to the UN Committee on the Rights of the Child,

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<sup>1</sup> See [http://www.unicef.org/policyanalysis/files/Formatted\\_-\\_Legislative\\_Reform.pdf](http://www.unicef.org/policyanalysis/files/Formatted_-_Legislative_Reform.pdf) p.4

<sup>2</sup> The Constitution of the Republic of Armenia, Article 6. Available at: <http://www.parliament.am/parliament.php?id=constitution&lang=eng>

<sup>3</sup> Ibid.

<sup>4</sup> Comment provided by Civil Society Institute, Armenia in September 2014.

<sup>5</sup> See [http://www.unicef.org/policyanalysis/files/Formatted\\_-\\_Legislative\\_Reform.pdf](http://www.unicef.org/policyanalysis/files/Formatted_-_Legislative_Reform.pdf)

<sup>6</sup> See [http://www.unicef.org/worldfitforchildren/files/Armenia\\_WFFC5\\_Report.pdf](http://www.unicef.org/worldfitforchildren/files/Armenia_WFFC5_Report.pdf)

<sup>7</sup> Law of the Republic of Armenia on Legal Acts, Article 21(4). Available at: [http://www.translation-centre.am/pdf/Translat/HH\\_orenk/Legal\\_Acts/Legal\\_Acts\\_en.pdf](http://www.translation-centre.am/pdf/Translat/HH_orenk/Legal_Acts/Legal_Acts_en.pdf)

concern exists regarding the inadequate implementation and enforcement of existing laws and regulations in the area of children's rights in the RA, which includes the LRC and attempts to fully transpose and/or enforce the CRC within Armenia and its courts.<sup>8</sup>

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

No examples were found. It is not clear whether the CRC has been cited in domestic courts<sup>9</sup>.

## II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

The Constitution guarantees everyone's right to restore his or her violated rights by an independent and impartial court<sup>10</sup>. Therefore, violations of child rights can be challenged in domestic court.

Moreover, access to court is also guaranteed by the Civil Procedure Code<sup>11</sup>.

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Article 24 of the Civil Code states that the capacity of a citizen to acquire and exercise civil law rights, including starting proceedings in domestic courts, begins at the age of eighteen.<sup>12</sup> A minor who has attained the age of 16 may be declared of full capacity (i.e. emancipated) if he or she works under a labour contract or, with the agreement of his or her parents, adoptive parents, or guardian, conducts an entrepreneurial activity<sup>13</sup>. Moreover, in the case when a statute allows entry into marriage before attaining the age of 18, full dispositive capacity is acquired from the time of entry into marriage<sup>14</sup>.

Except for the case of emancipation, only parents, adoptive parents, curators, or guardians can bring a case to defend the rights and interest of a minor on his behalf<sup>15</sup>.

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

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<sup>8</sup> UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Armenia, CRC/C/ARM/CO/3-4, 14 June 2013, para. 8. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ARM-CO-3-4.pdf>

<sup>9</sup> See <http://web61388.aiso.net/enoc/resources/infoDetail.asp?ID=31321&flag=report>

<sup>10</sup> The Constitution, Article 19.

<sup>11</sup> Civil Procedure Code of the Republic of Armenia, Article 2. Available at: [http://www.parliament.am/law\\_docs/070898HO247eng.pdf?lang=eng](http://www.parliament.am/law_docs/070898HO247eng.pdf?lang=eng)

<sup>12</sup> Civil Code of the Republic of Armenia, Article 24. Available at:

<http://www.parliament.am/legislation.php?sel=show&ID=1556&lang=eng>

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> The Civil Procedure Code, Article 43(1).

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Minors, who have not reached the age of fourteen, are considered infants and a parent, adoptive parent, or a guardian would act as the minor's legal representative<sup>16</sup>.

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

In 2006 the RA established the Public Defender's Office ("PDO") to provide legal aid for disadvantaged citizens in all criminal cases and some civil cases<sup>17</sup>.

For further detail, please refer to part IV.B below.

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

There are no limits on children or legal representatives bringing cases.

**III. How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Legal challenges may be brought as follows:

- Constitutional proceedings: Every person in a specific case can apply to the Constitutional Court when the final judicial act has been adopted, when the possibilities of judicial protection have been exhausted and when the constitutionality of a law provision applied by the act in question is being challenged<sup>18</sup>. Moreover, the Human Rights Defender can address the Constitutional Court on the issue of compliance of normative acts with the provisions of Chapter two of the Constitution, which determines fundamental human and civil rights and freedoms<sup>19</sup>.
- Civil proceedings: Depending on the nature of violation, a legal challenge might be brought in the form of a civil suit. Such a suit may be brought by the legal representative of the child (parent, adoptive parent, or guardian)<sup>20</sup>.
- Criminal proceedings: If the elements of crime are discovered, the body of inquest, the investigator and the prosecutor are obligated to institute the

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<sup>16</sup> Ibid. Article 29.

<sup>17</sup> See

[http://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/europe\\_eurasia/armenia/news/news\\_armenia\\_first\\_public\\_defenders\\_office.html](http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/armenia/news/news_armenia_first_public_defenders_office.html)

<sup>18</sup> The Constitution, Article 101(6)

<sup>19</sup> The Constitution, Article 101(8)

<sup>20</sup> The Civil Procedure Code, Article 43(1).

criminal case<sup>21</sup>.

- Administrative proceedings: Any person can address the Administrative Court if administrative acts, actions or inaction of state bodies or local government bodies or their officials violate rights guaranteed by the Constitution, international treaties, the laws and other legal acts.<sup>22</sup>

As mentioned above the rights and interests of minors are defended by their legal representatives. Furthermore, the legal representatives can delegate the conducting of the case in court to another representative.<sup>23</sup>

### *Regional mechanisms*

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.<sup>24</sup> Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,<sup>25</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>26</sup> Anonymous complaints are not permitted.<sup>27</sup> The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>28</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>29</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>30</sup> It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

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

Acts committed by state bodies, local self-government bodies or their officials can be considered null and void by court if they contradict the law and the right and/or freedom guaranteed by the Constitution has been breached<sup>31</sup>.

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<sup>21</sup> Criminal Procedure Code of the Republic of Armenia, Article 27. Available at: [http://www.parliament.am/law\\_docs/010998HO248eng.pdf?lang=eng](http://www.parliament.am/law_docs/010998HO248eng.pdf?lang=eng)

<sup>22</sup> Code of Administrative Legal Proceedings of the Republic of Armenia, Article 3(1). Available at: <http://cis-legislation.com/document.fwx?rgn=52229>

<sup>23</sup> Civil Procedure Code, Article 43(2).

<sup>24</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”), 1950, Articles 19 and 32, available at:

<https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

<sup>25</sup> Ibid., Article 34.

<sup>26</sup> Ibid., Article 35.

<sup>27</sup> Ibid.

<sup>28</sup> Rules of Court, July 2014, Rule 36, available at:

[http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>29</sup> European Convention on Human Rights, Article 46.

<sup>30</sup> Ibid., Article 41.

<sup>31</sup> Civil Procedure Code, Article 159.

The court can recognise a minor of sixteen years of age as fully legally capable (emancipated) upon his or her application in cases envisaged in the Civil Code<sup>32</sup>.

A parent can be deprived of parental rights through a judicial procedure if they violate their child's rights<sup>33</sup>.

If parents do not provide their children with the living means, the means for keeping the latter are exacted from parents by judicial procedure<sup>34</sup>.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

If a challenge concerning compliance of a material or procedural norm with the Constitution is brought before the Constitutional Court by the President of the Republic, at least one fifth of the members of parliament, or the Government and Human Rights Defender (Ombudsman), it is possible to challenge the law without naming a specific victim. Potentially, the child victim's legal representative can apply to the Human Rights Defender, a body which can later file a constitutional appeal.

Similarly, in a claim brought before the Administrative Court challenging compliance of a regulation (such as a Government decree) or the provisions of a law (statute), it is possible to file without naming a specific victim. In all other cases, the proceedings cannot be instituted without naming a specific victim.

Criminal proceedings cannot be brought without naming individual victims.

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

A civil suit can be brought by several plaintiffs or against several defendants. Co-plaintiffs or co-defendants can delegate the conduct of the case to one of themselves<sup>35</sup>. The same regulations apply to the proceedings in the Administrative Court<sup>36</sup>.

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

The RA legislation does not envisage the possibility of filing challenges about potential children's rights violations by NGOs. The case law proves that the Republic of Armenia contemplates the right to apply to court only for entities whose rights have been directly violated by the challenged act,

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<sup>32</sup> Civil Procedure, Code, Articles 165-167.

<sup>33</sup> Family Code of the Republic of Armenia, Article 59-60.

<sup>34</sup> Family Code, Article 68(2).

<sup>35</sup> Code of Civil Procedure, Article 30.

<sup>36</sup> Code of Administrative Legal Proceedings, Article 2(1).

action, or inaction<sup>37</sup>.

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc...)? What would the initial filing process entail?

Depending on the nature of the violation, a case might be filed in a court of general jurisdiction (trying civil and criminal cases), administrative court (trying cases arising out of arguments between persons and state/municipal authorities related to their administrative functions), or the Constitutional Court. The issue of territorial jurisdiction is clearly regulated under the procedural codes.

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

The Law of the Republic of Armenia on Advocacy ensures the possibility of free legal assistance through the Public Defender's Office<sup>38</sup>. According to Article 41, compulsory free legal assistance in criminal cases is provided only to the defendants/accused in criminal proceedings. In addition, free legal aid is provided to children left without parental care, as well as children who are listed as without parental care, refugees, asylum seekers and individuals who are not able to otherwise afford legal services (according to criteria defined by law).<sup>39</sup>

Moreover, free legal services can also be provided at the advocate's initiative.<sup>40</sup>

C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

There is no regulatory requirement to provide such pro-bono legal assistance. Some practising lawyers do pro-bono work as part of their

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[http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2011-62/Correspondence\\_with\\_the\\_communicant/Decision\\_of\\_the\\_Court\\_of\\_Cassation\\_01.04.2011\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2011-62/Correspondence_with_the_communicant/Decision_of_the_Court_of_Cassation_01.04.2011_eng.pdf)

<sup>38</sup> The Law of the Republic of Armenia on Advocacy, Articles 41-42. Available at:

<http://www.legislationline.org/documents/id/6626>

<sup>39</sup> Ibid. Article 6. Comment provided by Civil Society Institute, Armenia in September 2014.

<sup>40</sup> Ibid. Article 41.

practice or by participation in the activities of certain NGOs.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

General statute of limitations in civil proceedings is three years<sup>41</sup>. The running of the time period of limitation of actions starts from the day when the person knew or should have know of the violation of his right<sup>42</sup>.

For violations that have caused damage to life or health, there is no statute of limitation in civil proceedings, although the reimbursement would be limited to the three years preceding the date of legal action<sup>43</sup>.

In criminal proceedings, the time limitation for prosecuting a criminal offence depends on the severity of the offence<sup>44</sup>. The expiry of the prescription period is not applicable to persons who committed crimes against peace and human security. Also, prescription periods are not applied to persons who committed crimes envisaged in the RA international agreements, provided the agreement prohibits the application of the prescription period.<sup>45</sup>

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Civil Procedure Code defines evidence as information which is supported by:

1. Written proofs and exhibits;
2. Experts' conclusions;
3. The testimonies of the witnesses;
4. Explanations provided by persons participating in the case<sup>46</sup>.

In exceptional cases, a person under 16 years of age can be summoned as a witness, who is not forewarned about the criminal liability for providing obviously false testimonies and for refusing to testify<sup>47</sup>.

In criminal cases a witness who has not attained the age of 14, and, by discretion of the investigator, a witness who has not attained the age of 16, is interrogated in the presence of the legal representative. Moreover, it is explained to a witness under 16 that it is his or her duty to tell everything relevant to the case in truth, but he or she is not warned about the

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<sup>41</sup> Civil Code, Article 332. Available at: [www.parliament.am/law\\_docs/050504HO239eng.doc?lang=eng](http://www.parliament.am/law_docs/050504HO239eng.doc?lang=eng)

<sup>42</sup> Ibid. Article 337.

<sup>43</sup> Ibid. Article 344.

<sup>44</sup> Criminal Code, Article 75. Available at:

<http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng#3>

<sup>45</sup> Ibid.

<sup>46</sup> Civil Procedure Code, Article 47(1).

<sup>47</sup> Civil Procedure Code, Article 63(6).

responsibility for refusal or avoidance to testify and perjury<sup>48</sup>.

A witness under sixteen years of age must be taken from the courtroom after the interrogation, except those cases when the court by appeal of a party or by its own initiative finds it necessary that the witness should be present<sup>49</sup>.

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

The courts are required to conclude the proceedings within a reasonable period of time. Reasonableness differs from case to case. In general, a case could last from several months to several years.

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

Armenian legislation ensures the possibility of appealing decisions to a higher court. The appellate court has the power to review substantive judicial acts of universal, civil, and criminal courts<sup>50</sup>. Moreover, the Cassation Court shall review judicial acts of appellate and administrative courts<sup>51</sup>.

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Positive decisions are unlikely to cause political backlash. Decisions resulting from deficiencies in laws and regulations may from a long-term perspective result in legislative initiatives.

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

One of the major challenges with any decision or judgment is the lack of efficiency of the Service of Compulsory Execution of Judicial Acts.

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

There is no holistic juvenile justice system in the RA, including juvenile courts and comprehensive law on juvenile justice<sup>52</sup>.

#### A. Legislation in General

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<sup>48</sup> Criminal Procedure Code, Article 207.

<sup>49</sup> Ibid. Article 341.

<sup>50</sup> Judicial Code, Article 39. Available at: <http://www.legislationline.org/documents/action/popup/id/4125>

<sup>51</sup> Ibid. Article 50.

<sup>52</sup> UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Armenia, CRC/C/ARM/CO/3-4, 14 June 2013, para. 51. Available at:

<http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ARM-CO-3-4.pdf>



The Law on the Rights of the Child contains many of the key provisions on children's rights in the RA, but there is no comprehensive or consolidated children's law at the national level. Legislation of particular relevance to children includes, but is not limited to:

- The Law on the Rights of the Child;
- The Criminal Code;
- The Civil Code;
- The Family Code;
- The Law on the Human Rights Defender;
- The Law on Adoption;
- The Law on Education;
- The Law on the Education of Persons with Special Needs;
- The Law on Social Protection of Persons with Disabilities in the Republic of Armenia;
- The Law on Refugees and Asylum;
- The Law on Social Protection of Children without Parental Care;
- The Law on Employment of Population and Social Protection in Case of Unemployment;
- The Law on the Registration of Civil Status Acts;
- The Law on the Nationality of the Republic of Armenia;
- The Law on Mass Information;
- The Law on the Press and Other Mass Media;
- The Law on Human Reproductive Health and Reproductive Rights;
- The Law on Freedom of Conscience and Religious Organisations.
- National Programme for the Protection of Children's Rights for 2013-2016.

#### B. Laws related to juvenile justice<sup>53</sup>

The Criminal Code defines the characteristics for criminal responsibility and punishment of minors, as well as some criminal assaults against minors and circumstances when a criminal assault is considered "aggravated" due to the fact that it is committed against a minor. The code has a separate chapter on assault against the interests of the family and the child. The following are considered criminal assaults:

- violence against children;
- involving a child in a crime;
- involving a child in anti-social acts;
- illegally separating a child from his or her parents or substitution of the child at the maternity hospital;
- trafficking of children;
- publishing information about the identity of adopted children or their natural parents' adoption;
- failure to realize the duty of raising a child;
- failure to realize the duty of ensuring the security of the life or health of a child as a result of child neglect;
- improper realization of parental responsibilities; and
- abusing the rights of a foster parent or guardian.

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<sup>53</sup> See [http://www.unicef.org/policyanalysis/files/Formatted\\_-\\_Legislative\\_Reform.pdf](http://www.unicef.org/policyanalysis/files/Formatted_-_Legislative_Reform.pdf) p. pp. 12-13

Moreover, RA Law on Amendments and Additions to the Criminal Code of Armenia stipulates criminal responsibility in the event of providing false information to civic registration agencies.

Furthermore, RA Code on Administrative Offences defines (i) the minimum age for administrative (non-criminal) responsibility at sixteen years, (ii) the legal consequences of the involvement of adolescents in administrative offences and (iii) special requirements for the arrest of an adolescent by administrative order.

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