

ACCESS TO JUSTICE FOR CHILDREN: **BOSNIA AND HERZEGOVINA**

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

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

Bosnia and Herzegovina (BiH)¹ ratified the CRC on 1 September 1993 and withdrew its reservation to Article 9(1) in September 2008.² The CRC, along with 14 other human rights treaties, has the force of law in BiH.³

B. Does the CRC take priority over national law?

The CRC does not appear to have precedence over conflicting provisions of national law. However, the Constitution provides that the European Convention on Human Rights does supersede national legislation.⁴

C. Has the CRC been incorporated into national law?

Yes, Annex I of the BiH Constitution incorporates a number of international human rights instruments, including the CRC.

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

Research could not determine the answer to this question. According to UNICEF, practitioners have reported that the court has not accepted arguments based on CRC, when in conflict with national law.

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

The Constitutional Court has relied on the Convention in many cases, although all mainly concerning custody of children, filed by the parent. In one case, the Constitutional Court found that the removal of a child from the parental home complied with the CRC given the facts of the case.⁵

¹ BiH comprises the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District. Examples cited are representative of all jurisdictions.

² See https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en#1/

³ Constitution of Bosnia and Herzegovina, Annex I, available at: <http://www1.umn.edu/humanrts/icty/dayton/daytonannex4.html>.

⁴ Constitution of Bosnia and Herzegovina, Article II(2).

⁵ Case AP-717/08 *Sakib Music*, decided 9 July 2010, available at: <http://www.ccbh.ba/eng/odluke/index.php?src=2#>.

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?

UNICEF has published a Bosnia-specific legal guide called “Road Signs” for parents and legal representatives. The guide, published in Serbian, Bosnian, and Croatian, outlines the legal process and potential remedies for common child rights violations.⁶

The Bosnian Code of Criminal Procedure allows all citizens to report any criminal offence to the proper authority.⁷ It further imposes an affirmative duty to report crimes against children upon medical workers, teachers, pedagogues, parents, foster parents, adoptive parents and other persons authorised or obligated to provide protection and assistance to minors, to supervise, educate and raise the minors.⁸ If there are grounds for suspicion that a criminal offence has been committed, the prosecutor takes necessary steps to investigate it, to identify the suspect(s) and guide and supervise the investigation.⁹ It is not possible to bring a private criminal prosecution.

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?

According to the two codes of civil procedure which operate in Bosnia and Herzegovina, minors (*i.e.* all children under the age of 18)¹⁰ do not have full legal competence and are considered to have litigation capacity only within the limits of their recognised legal competence.¹¹ Under the Family Law of the Federation of BiH, where the Court finds that a person without full legal competence is able to understand the meaning and legal consequences of their actions, they will be allowed to undertake procedural steps autonomously.¹² Minors have capacity to apply for name changes, accept to be adopted, recognise paternity or draft a will,¹³ but in most matters, including litigation, they must be represented by a legal representative,¹⁴ though they retain a right to express their

⁶ Available at: http://www.unicef.org/ceecis/media_2789.html.

⁷ Criminal Procedure Code of Bosnia and Herzegovina, Article 214(1), available at: <http://www.ohr.int/ohr-dept/legal/oth-legist/doc/criminal-procedure-code-of-bih.doc>.

⁸ *Ibid.*, Article 213(2).

⁹ *Ibid.*, Article 35(2).

¹⁰ *Initial report of Bosnia and Herzegovina to the UN Committees on the Rights of the child*, CRC/C/11/Add.28, 14 October 2004, paras. 33 and 43, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.28&Lang=en.

¹¹ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 292, available at: <https://advokat-prnjavorac.com/legislation/Civil-Procedure-Code-Federation-BiH.pdf>; Republika Srpska Code of Civil Procedure, Article 292, available at: https://advokat-prnjavorac.com/zakoni/Zakon_o_parnicom_postupku_RS_Integral.pdf.

¹² The Family Law of the Federation of Bosnia and Herzegovina, Article 271 (1), available at: <http://www.fbihvlada.gov.ba/bosanski/zakoni/2005/zakoni/25bos.pdf>.

¹³ *Initial report of Bosnia and Herzegovina to the UN Committees on the Rights of the child*, para. 38.

¹⁴ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 293.

views in the proceedings in accordance with their age and maturity.¹⁵

Children who lack capacity must be represented by an adult. Both civil codes for the Federation of BiH and Republika Srpska provide that a legal representative must be defined by law, or selected by a lawfully authorised governmental body.¹⁶ Within the Federation of BiH, the child's legal representative will be the child's biological or adoptive parent or a guardian appointed by a guardianship authority.¹⁷ Guardianship authorities are responsible under both the Family Law of the Federation of BiH and the Family Law of the Republika Srpska for all key child protection and social services functions¹⁸.

Under the Family Law of BiH, the guardianship authority is required to take all necessary measures to protect the rights and best interests of a child, and individuals and organisations are required to report any child rights violations to the guardianship authority, especially in relation to violence, sexual abuse, and child neglect.¹⁹

The Family Law of the Federation of BiH provides that in cases of conflict between a child and their legal guardian's interests, the Court shall appoint a special representative in order to protect the child's interests.²⁰ Further, wherever the Court is of the opinion that the child's legal representative does not demonstrate sufficient care of the child's interests, it will inform the Guardianship authority and suggest designating another legal representative.²¹

The Family Law of the Republika Srpska also allows for the Court to appoint a special representative in cases where a parent who would ordinarily act as the child's legal representative has conflicting interests to that of the child.²²

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

There are no rules applying specifically to infants or young children, so cases on their behalf would typically be brought by a legal representative as with older children.

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

It is hard to compile a comprehensive summary of legal aid provision in Bosnia and Herzegovina due to the fact that no national harmonised system of legal aid exists and local laws on legal aid differ. Regions which have laws on free legal

¹⁵ The Family Law of the Federation of Bosnia and Herzegovina, Article 125(1).

¹⁶ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 293; Republika Srpska Code of Civil Procedure, Article 293.

¹⁷ *Initial report of Bosnia and Herzegovina to the UN Committees on the Rights of the child*, para. 28

¹⁸ *Ibid.*, paras 91, 104, 105, 121 and 123.

¹⁹ The Family Law of the Federation of Bosnia and Herzegovina, Article 150(1), (2).

²⁰ *Ibid.*, Article 271(5).

²¹ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 293; Republika Srpska Code of Civil Procedure, Article 294(3).

²² The Family Law of the Republika Srpska, Article 140, available at: https://advokat-prnjavorac.com/zakoni/porodicni_zakon_RS.pdf.

aid include: the Republika Srpska, the Brčko District, and a number of Cantons within the Federation of BiH including Una-Sana, Bosnia-Prodinje, Sarajevo, Tuzla, Posavina, West Herzegovina, and Zernica-Doboj.²³

In Republika Srpska, legal aid covers a range of services from the provision of general advice about rights and obligations and the completion of forms as well as representation in court and the drafting of appeals. Legal aid is available in a variety of proceedings where child rights may be at stake including criminal proceedings, civil, administrative, and enforcement proceedings. Applicants must be citizens of the Republika Srpska or on its territory, and must satisfy a means and merits test, or otherwise have a right to legal aid under an international convention. The means test will take into account the means of family members, but not where they are an opposing party in litigation.²⁴

In the Brčko District, legal aid is also available under similar conditions as Republika Srpska. Specific provision exists to ensure that children without parental care are entitled to legal aid.²⁵

The Federation of BiH has no centralised system of free legal aid and laws differ amongst its various cantons.²⁶

Under a new Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, juveniles are required to have defence counsel at the first questioning before the police, and a government-funded attorney is provided if the parents do not hire a private attorney.

- 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)?

The Bosnian Code of Civil Procedure does not require parental consent when bringing civil suits on behalf of children. Presumably, once a child's legal representative is approved by the court, the case may proceed as usual.²⁷

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?

A citizen whose constitutional rights have been violated by a final administrative act or an action of an official of the State is entitled to request the protection of

²³ United Nations Development Programme, *Free Legal Aid in Bosnia and Herzegovina*, 2013, at p. 3, available at: http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/library/crisis_prevention_and_recovery/brochure-on-free-legal-aid.html.

²⁴ *Ibid.*, at pp. 5 - 7.

²⁵ *Ibid.*, at p. 12.

²⁶ *Ibid.*, at p. 15.

²⁷ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Art. 293.

the rights or freedoms from the Court of Bosnia and Herzegovina.²⁸ An administrative case can also be brought by the Ombudsman for BiH or he may intervene in an ongoing case where in discharge of tasks falling within his jurisdiction he concludes that the final administrative act constitutes a human rights violation.²⁹

Complaints in relation to a violation of children's rights can be submitted to the Ombudsman for BiH, which has a specialised department on children's rights, and the Ombudsman for Children of Republika Srpska, directly by children or other persons who seek to challenge a rights violation affecting someone else.³⁰ These bodies may receive complaints, investigate, and issue recommendations to official bodies. Complaints to the Ombudsman must be made in writing.³¹ The Ombudsman office can be contacted whenever responses from other state authorities such as the police, or social workers are inadequate.³² All state bodies and officials are required to cooperate with the Ombudsman and there is no financial charge for making a complaint.³³

Individuals may submit complaints about violations of their rights directly to the Constitutional Court. The Court also has jurisdiction over issues referred by any court concerning whether a law is compatible with the Constitution, with the European Convention on Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina.³⁴

Finally, the European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.³⁵ 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,³⁶ but the complaint will be admissible only if all domestic remedies have been exhausted.³⁷ Anonymous complaints are not permitted.³⁸ 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.³⁹ After examining the case, the Court

²⁸ Law on Administrative Disputes of Bosnia and Herzegovina, Articles 67 and 69, available at: www.legislationline.org/download/action/download/id/5515/file/BiH_law_administrative_disputes_2002_en.pdf. Note, however, the jurisdiction of the Court of Bosnia and Herzegovina over matters concerning children is very limited; for example, it could possibly serve as a second instance in an asylum claim in which children were involved.

²⁹ *Ibid.*, Article 2.

³⁰ See <http://www.ombudsmen.gov.ba/Jezik.aspx>; <http://www.djeca.rs.ba/>.

³¹ Rules of Procedure of the Institution of Human Rights Ombudsman, Article 15, available at: http://www.ombudsmen.gov.ba/documents/obudsmen_doc2013041003424659eng.pdf.

³² *Ibid.*, p 17, 19, 39, 43, 45

³³ UNICEF, *Road Signs*, at p. 8.

³⁴ Constitution of Bosnia and Herzegovina, Art. VI(3).

³⁵ 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>.

³⁶ *Ibid.*, Article 34.

³⁷ *Ibid.*, Article 35.

³⁸ *Ibid.*

³⁹ Rules of Court, July 2014, Rule 36. Available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

renders a judgment which is binding on the State⁴⁰ and also has powers to award monetary compensation to the victims of human rights abuses.⁴¹ 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?

Any victim of a criminal offence is entitled to make a claim for pecuniary or non-pecuniary damages resulting from the offence and may file their claim with either the Court or the prosecutor.⁴² Further, there exist legal obligations on prosecutors to collect evidence that is relevant for the claim of damages, or to establish facts needed for decision making on such a claim.⁴³

In administrative disputes, the Court in its judgment annulling the final administrative act also decides on the request of the plaintiff on repossession of objects or compensation of damages.⁴⁴ In administrative cases, the Court also has the power to declare a decision made by an administrative body invalid or unlawful⁴⁵ and to order that decisions are remade where the decision making process was flawed.⁴⁶

Alternatively, one should turn to the Law on Civil Procedure at entity level, and family law.

The Constitutional Court of Bosnia and Herzegovina has the power to declare any law of Bosnia and Herzegovina incompatible with the constitution or with the European Convention on Human Rights.⁴⁷

The Constitutional Court issues judicial decisions finding a violation or not; if a violation is found, an appropriate remedy may be ordered, such as ordering the lower court to enforce a certain decision. It may also fully or partially suspend laws⁴⁸, or order that both when it reaches a decision and as an interim measure while it reaches a decision. The Court may also adopt any other interim measure it deems necessary⁴⁹.

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?

The Law on Prohibition of Discrimination allows challenges to be brought

⁴⁰ European Convention on Human Rights, Article 46.

⁴¹ *Ibid.*, Article 41.

⁴² Criminal Procedure Code of Bosnia and Herzegovina, Article 195(1).

⁴³ *Ibid.*, Article 35(2g) and 197(1).

⁴⁴ Law on Administrative Disputes of Bosnia and Herzegovina, Art. 37.

⁴⁵ Law on Administrative Procedure, Art 256 and 257

⁴⁶ *Ibid.*, Art 238.

⁴⁷ Constitution of Bosnia and Herzegovina, Art VI(3c)

⁴⁸ *Ibid.*, Art 61(2)

⁴⁹ *Ibid.*, Art . 64(1)

without naming a specific victim.⁵⁰ This law was successfully relied on by a human rights NGO - Vasa Prava, to bring a challenge which ended the practice of ethnically segregating pupils in schools under Bosnia's 'two schools under one roof' policy, without naming any specific child victims.⁵¹

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

Under Article 83 of the Federal Civil Procedure, the court may merge multiple proceedings against a single defendant where that would contribute to a speedier deliberation or decrease the costs of the proceedings.⁵²

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?

There does not appear to be a general rule of standing for non-governmental organisations to file legal challenges to children's rights violations in Bosnia and Herzegovina. The Law on Administrative Procedure provides that a party to a proceedings is a physical or legal entity whose rights or interests are at stake.⁵³ Registered organisations are able to bring claims on behalf of members whose interests they represent but the consent of an affected member is required.⁵⁴

NGOs do, however, have scope for independently challenging children's rights violations in cases of discrimination. The Law on Prohibition of Discrimination allows challenges to be brought by associations if the issue concerns the rights of a group of persons for which the association advocates.⁵⁵

The rules of procedure for the Constitutional Court of the Federation of Bosnia and Herzegovina⁵⁶ and the Constitutional Court of Bosnia and Herzegovina⁵⁷ also allow persons who are not party to proceedings to intervene in challenges so as to submit expert opinions.

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?

⁵⁰ Law on Prohibition of Discrimination, Article 17.

⁵¹ Supreme Court of the Federation of BiH Judgment: 58 0 Ps 085653 13 Rev (29.08.2014), available at: http://www.vasaprava.org/wp-content/uploads/downloads/2014/11/Vrhovni-sud-Federacije-BiH-odluka-po-reviziji-dvije-%C5%A1kole-pod-jednim-krovom_01.pdf.

⁵² The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 83.

⁵³ Law on Administrative Procedure, Article 41.

⁵⁴ *Ibid.*, Article 42.

⁵⁵ The Law on Prohibition of Discrimination, Article 17.

⁵⁶ The Law on the Procedure before the Constitutional Court of the Federation of Bosnia and Herzegovina, Article 12(3), available at: <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/006%20-%20Judiciary%20System/FBH%20LAW%20ON%20PROCEDURE%20BEFORE%20THE%20CONSTITUTIONAL%20COURT%20OF%20THE%20FBH.pdf>.

⁵⁷ *Ibid.*, Article 47.

The court system in Bosnia and Herzegovina reflects the complex political organisation of the state. Bosnia and Herzegovina is divided between two political entities: the Federation of Bosnia and Herzegovina, and the Republika Srpska. There also exists a self governing administrative unit which is formally part of both entities called the Brčko District.

There are only two courts at the state level in Bosnia and Herzegovina - the Court of Bosnia and Herzegovina and the Constitutional Court of Bosnia and Herzegovina. The Court of Bosnia and Herzegovina has three divisions: the Criminal Division, the Administrative Division and the Appellate Division.⁵⁸ The Constitutional Court of Bosnia and Herzegovina has appellate jurisdiction arising out of a judgment of any court in Bosnia and Herzegovina, provided that all other legal remedies have been exhausted.⁵⁹

The Federation of Bosnia and Herzegovina, the Republika Srpska, and the Brcko District each have their own separate court systems.

Within the Federation of BiH, the lowest level court is a Municipal Court. Cantonal Courts exercise appellate jurisdiction over Municipal Courts. The Cantonal Courts also act as a court of first instance in a number of matters including serious criminal matters as well as administrative disputes and requests for the protection of rights set out in the Constitution of the Federation⁶⁰. The Supreme Court of the Federation of BiH is the highest court within the Federation.

Within the Republika Srpska, a similar structure exists but the lowest court is the Basic Court, with District Courts, and the Supreme Court exercising an appellate jurisdiction.

The Brcko District contains only Basic Courts and Appellate Courts.

Civil proceedings are initiated by a complaint which must include the following information: 1. the grounds on which the plaintiff asserts the jurisdiction of the court; 2. a specified claim (including legal remedy sought by the plaintiff); 3. the facts on which the plaintiff bases their claim; 4. the evidence corroborating those facts; 5. the value of the dispute; 6. the legal basis for the claim; and 7. other data that must be contained in each written pleading.⁶¹ Administrative actions must include the plaintiff's identity, the number and date of the final administrative act against which the action was filed, a short explanation of reasons for action and the remedies sought and signature of the party filing the action.⁶²

Juvenile cases are processed at entity courts under a new Law on Protection and

⁵⁸ Law on Court of Bosnia and Herzegovina, Article 19, available at: www.legislationline.org/download/action/download/id/5506/file/Law_on_Court_BiH_2009_en.pdf.

⁵⁹ See Constitutional Court of Bosnia and Herzegovina - <http://www.ccbh.ba/eng>.

⁶⁰ The Law on the Courts in the Federation of Bosnia and Herzegovina, Articles 27 and 28.

⁶¹ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 53.

⁶² Law on Administrative Disputes of Bosnia and Herzegovina, Article 68.

Treatment of Children and Juveniles in Criminal Proceedings.

- 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?

Article 400 of the Bosnian Code of Civil Procedure appears to authorise courts to waive all or part of the cost of civil proceedings if a party's general financial situation does not allow them to compensate the costs without jeopardising the necessary support of himself or herself and his or her family.⁶³ Exemption from paying the costs of the proceedings includes exemption from paying court taxes and depositing advance payment for the costs of witnesses, experts, on-the-spot investigation, translation and interpretation and court advertisements.⁶⁴

- 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?

Legal assistance may be obtained from NGOs and other pro-bono organisations. Vaša Prava is the largest provider of free legal aid in the country⁶⁵ and has provided legal advice and representation in matters including social, economic and cultural rights, discrimination in access to education and social welfare as well as other human rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms and other international legal instruments. The organisation has provided assistance to over 450,000 people since 1996.⁶⁶

The website of the network of legal aid providers includes information about and contacts of all government-funded and NGO legal aid providers.⁶⁷

- 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?

The statute of limitation for criminal offences runs from the time of the commission of the offence, regardless of the age of the victim, except for in Republika Srpska, which amended its criminal code so that the statute of limitations runs from the age of 18.

The general period of limitations for civil claims in the Federation of Bosnia and Herzegovina is 5 years.⁶⁸ And in Republika Srpska, civil claims have a general

⁶³ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 400.

⁶⁴ *Ibid.*

⁶⁵ Association for Democratic Initiatives, *Access to Justice: Providing Information, Advice, and Free Legal Aid in Bosnia and Herzegovina*, 2013, at p. 5, available at: <http://adi.org.ba/wp-content/uploads/2013/09/Country-Report-BiH-bos-.pdf>.

⁶⁶ See <http://www.vasaprava.org/>.

⁶⁷ <http://mrezappravnepomoci.org/en/>.

⁶⁸ The Foundation of the International Association of Defense Counsel, *Survey of International Litigation*

limitation deadline of 10 years unless a shorter time period is specified by law.⁶⁹ Claims for compensation of damage expire within three years from when the claimant found out about the damage and the person who caused the damage, and in any case from within five years of the damage caused.⁷⁰

An action which initiates an administrative dispute must be filed within two months from the day when the party which filed the action was informed or when it received the final disputed administrative act or decision or from the day of publishing of the disputed regulation.⁷¹

Finally, the Ombudsman may refuse to investigate complaints that are filed more than 12 months following the event, facts or decision which is the subject of the complaint.⁷²

- 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?

In criminal proceedings when hearing a minor, in particular if the minor is the victim, the participants are obliged to act with circumspection in order not to have an adverse impact on his or her mental condition. If necessary, the minor is heard with the assistance of a pedagogue or other professional.⁷³ Minors may not take the oath or affirmation in criminal proceedings.⁷⁴ In case of minors under 16 years of age who were injured by the offence, the examination must be recorded on audio-visual equipment.⁷⁵

The new Laws on Protection and Treatment of Children and Juveniles in Criminal Proceedings of Republika Srpska, Federation of BiH and the Brčko District also contain provisions on children giving evidence in legal proceedings. For example, if a witness who is being examined is a child who is an injured party, the Law prescribes that examination may only be carried out a maximum of two times, and the child must as a rule be examined in the presence of a pedagogue, psychologist or another professional.⁷⁶ Examinations are conducted in the prosecutor's office, and exceptionally, if there are justified reasons behind it, a child may be examined in his/her residence, in another place where he/she stays, or in the social care centre.⁷⁷

Procedures: Bosnia and Herzegovina, at p. 7, available at:

http://www.iadcfoundation.org/UserFiles/file/SILP_BosniaHerzegovina.pdf.

⁶⁹ The Law on Obligations in Republika Srpska, Article 371.

⁷⁰ *Ibid.*, Article 376.

⁷¹ Law on Administrative Disputes of Bosnia and Herzegovina, Article 19.

⁷² See Website of the Ombudsman for Bosnia and Herzegovina, available at:

<http://www.ombudsmen.gov.ba/>.

⁷³ Criminal Procedure Code of Bosnia Herzegovina, Article 86(4).

⁷⁴ *Ibid.*, Article 89.

⁷⁵ *Ibid.*, Article 90.

⁷⁶ Federation of BiH Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, Article 185; Republika Srpska Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, Article 186(2).

⁷⁷ Federation of BiH Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, Article 187(3); Republika Srpska Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, Article 186(3).

The Codes of Civil Procedure for the Federation of Bosnia and Herzegovina, and the Republika Srpska do not provide for any special rules of evidence when hearing the evidence of children, other than allowing for the Court to exclude the public to protect the interests of children.⁷⁸

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

Every area of law has different timeframes/deadlines. By way of example, proceedings following a request of the citizen whose rights or freedom have been violated by an action of an official in an institution, or of the responsible person in a public agency or public corporation, is considered urgent and a judicial decision must be made as soon as possible and not later than within 15 days from the receipt of the request.⁷⁹

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

This depends on the jurisdiction and the area of law in question. For example, the Constitutional Court has appellate jurisdiction over issues under the Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.⁸⁰ An appeal against a first instance judgment with regard to a civil lawsuit must be filed within 30 days from the day of rendering the judgment.⁸¹ Criminal cases may be appealed within 15 days from the date when the copy of the verdict was delivered.⁸² The judgment of the Court of Bosnia and Herzegovina delivered in an administrative dispute is final and binding.⁸³

- 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?

Political backlash is likely in cases related to the 1992-1995 war.⁸⁴ The “two schools under one roof ruling” at first received some criticism by the public,⁸⁵ however, no major backlash is expected in relation to issues of children’s rights.

Children have been “in the spotlight”, when they commit heinous crimes, and there is clear public pressure on prosecutors and judges to punish severely. Regarding sensitive civil cases, the government and public bodies regularly fail

⁷⁸ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 119; Republika Srpska Code of Civil Procedure, Article 119.

⁷⁹ Law on Administrative Disputes of Bosnia and Herzegovina, Article 72.

⁸⁰ The Constitution, Article VI(3).

⁸¹ Bosnian Code of Civil Procedure, Article 203.

⁸² Bosnian Code of Criminal Procedure, Article 292.

⁸³ Law on Administrative disputes of Bosnia and Herzegovina, Article 3.

⁸⁴ Kapetanovic, M., *The Impact of the ECtHR Ruling in the Case of Maktouf and Damjanovic v Bosnia and Herzegovina*, available at:

<https://lanclaw.wordpress.com/2015/03/11/part-ii-transitional-justice-in-b-h/>.

⁸⁵ Barbieri, Vrgova and Bliznakovski, *Overcoming Ethnic-Based Segregation: How to Integrate Public Schools in Macedonia and Bosnia and Herzegovina*, available at:

https://dgap.org/sites/default/files/article_downloads/zasto_ne_bosnia-herzegovina_idscs_macedonia_ovecoming_ethnic-based_segregation.pdf.

to implement judicial decisions, including decisions of relevant Constitutional Courts and the European Court, and it is doubtful that the two schools under one roof ruling will be implemented. Therefore, non-implementation is a much bigger problem than political backlash.

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

Judgments ordering a party to pay damages must typically be performed within 30 days; but the performance period for judgments ordering other actions to be performed could be longer, as determined by the court.⁸⁶

Public officials who obstruct or refuse to enforce a final decision of the Constitutional Court of Bosnia and Herzegovina commit a criminal offence punishable by a six-month to five-year prison sentence.⁸⁷ See, however, comments in part IV.H above.

- 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.

According to a number of victims rights groups, it is very rare and difficult for victims of sexual violence to obtain compensation.⁸⁸ Further, alarmingly, courts sometimes assess the truthfulness of victims' evidence by considering whether the victim has refrained from seeking financial compensation.⁸⁹

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

⁸⁶ The Federation of Bosnia and Herzegovina Code of Civil Procedure, Article 179.

⁸⁷ Criminal Code of Bosnia and Herzegovina, Article 239.

⁸⁸ NGO report to the Special Rapporteur on Violence Against Women, its Causes and Consequences, *Situation of Women Victims of Rape or Other Forms of Sexual Violence*, 2011, paras. 66-72, available at: http://www.trial-ch.org/fileadmin/user_upload/documents/CAJ/BH/GeneralAllegationSRViolenceAgainstWomen_-_May_2011.pdf.

⁸⁹ In one judgment, the Court of BiH stated: "The truthfulness of her statement and the intention to testify is sufficiently supported by the fact that during proceedings she did not file a property claim or requested any material compensation for the tragedy she suffered, which only proves the honesty of the witness." Judgment of the Court of Bosnia and Herzegovina, No. S1 1 K 004648 11 KRI (X-KR-05/111) (9 November 2011, para. 230).