

ACCESS TO JUSTICE FOR CHILDREN: BULGARIA

This report was produced by White & Case LLP in September 2014 but may have been subsequently edited by Child Rights International Network (CRIN).¹ 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 CRC was ratified by the Bulgarian Parliament on 11 April 1991 without any reservations and entered into force for the Republic of Bulgaria on 3 July 1991.

The Bulgarian Constitution states that “international treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be part of the legislation of the State. They shall have primacy over any conflicting provision of the domestic legislation.”²

B. Does the CRC take precedence over national law?

Yes, the Constitution of the Bulgarian Republic provides that ratified international treaties shall have primacy over any conflicting provision of the domestic legislation.³

C. Has the CRC been incorporated into national law?

The CRC was automatically incorporated on ratification. The Child Protection Act⁴ and the Family Code⁵ contain much of the law relevant to children.

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

Yes, given that the CRC forms part of national law, it can be directly enforced in the courts.

E. Are there examples of domestic courts using or applying the CRC or other

¹ The report has been reviewed and comments provided by: lawyer Svetozara Petkova, Program for the Development of the Judicial System, lawyer Dilyana Giteva, Bulgarian Lawyers for Human Rights, and by experts a National Network for Children, Bulgaria.

² Constitution of the Republic of Bulgaria, Article 5(4) available at: <http://www.parliament.bg/en/const>.

³ *Id.*

⁴ Child Protection Act 2000, available at: <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=country&category=LEGAL&publisher=&type=LEGISLATION&coi=BGR&rid=4562d8b62&docid=44ad32014&skip=0>. Latest version with amendments, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2134925825>.

⁵ Family Code 2009, available at: <http://kenarova.com/law/Family%20Code.pdf>. Latest version with amendments, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135637484>.

relevant international instruments?

According to the Bulgarian government, the national courts have established practice of applying the Convention in cases concerning children's rights.⁶ The Supreme Administrative Court has applied the CRC in a case discussing the application of the best interests of the child principle in assessing the validity of national legal provisions concerning international adoption.⁷

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?

Every citizen has the constitutional right to protection where their rights or legal interests are infringed.⁸ Any person may file a claim in order to recover from the violation of his or her rights, or to ascertain the existence or non-existence of a legal relationship or of a right, if he has an interest in this.⁹ Children can bring proceedings in the civil courts, subject to the limitations explained in part II.B below.¹⁰

Where the child is a victim of a crime, the cases will generally be brought by the Public Prosecutor.¹¹ However, it is possible for a victim of a crime, including a child acting through his representative, to bring a criminal case as a private complainant in relation to certain minor offences.¹² A civil case in favour of the child may also be brought by a prosecutor.¹³

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?

Children under the age of 14 have no legal capacity and must be represented by a parent or legal guardian in all legal actions.¹⁴ Court cases must be brought by a parent or guardian on the child's behalf.¹⁵

Children between the ages of 14 and 18 have limited legal capacity and may initiate cases, but only with parental consent.¹⁶ However the requirement for consent is waived in relation to labour law disputes and disputes arising from

⁶ Information provided by to CRIN by the Bulgarian Ministry of Justice.

⁷ *Kerezov v Minister of Justice*, Appeal, Administrative Case No 2829/2002, Judgment No 9904, ILDC 606 (BG 2002), Sup. Admin. Ct. (Bulgaria) (6 November 2002), available at: <https://www.crin.org/en/library/legal-database/kerezov-v-minister-justice>.

⁸ Constitution, Article 56.

⁹ Civil Procedure Code, Article 124, available at:

<http://www.lawoffice-bg.net/userfiles/Code%20of%20Civil%20Procedure.pdf>.

¹⁰ Civil Procedure Code, Article 28.

¹¹ Criminal Procedure Code, Article 46, available at: http://www.vks.bg/english/vksen_p04_03.htm.

¹² Criminal Procedure Code, Article 80.

¹³ Criminal Procedure Code, Article 51.

¹⁴ Persons and Family Act 1949, Article 3, available in Bulgarian language at:

<http://lex.bg/bg/laws/ldoc/2121624577>.

¹⁵ Civil Procedure Code, Article 28(4).

¹⁶ Civil Procedure Code, Article 28(2).

small ordinary transactions concluded to meet their day-to-day needs.¹⁷

Victims of domestic violence, which includes physical, mental or sexual violence, and any attempted such violence, who have reached the age of 14 can also initiate court proceedings seeking a protection order.¹⁸

Although children will typically be represented by a parent or guardian, in cases of a conflict of interest, the court will appoint a special (ad hoc) representative for the child.¹⁹

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

Proceedings on behalf of any child below 14 years old must be brought by a parent or guardian, as stated in part II.B.

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

Children are explicitly granted the right to legal aid in relation to all types of proceedings which affect their rights or interests.²⁰ Legal aid, in the form of representation provided free of charge by a court-appointed lawyer,²¹ can be obtained by lodging a written application before the court deciding the case in question.²²

Detailed provision for legal aid in both civil and criminal cases was made in the Legal Aid Act 2005,²³ according to which legal aid can take the form of legal advice regarding out-of-court settlement, assistance with preparing the documents necessary to initiate court, and legal representation in case of arrest.²⁴ Eligibility criteria are set out in Article 22 of the Act.

Legal aid in the form of legal representation at trial is automatically granted for services of “consultation with the purpose to achieve a settlement”, “preparation of documents for filing a case” and in cases where attorney defense or representation is mandatory²⁵ - such as when the defendant in a criminal case is of minor age.²⁶

For further details on the provision of legal aid, please refer to part IV.B below.

¹⁷ Civil Procedure Code, Article 28(3) and Persons and Family Act, Article 4(2).

¹⁸ Protection Against Domestic Violence Act, available at: www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/Protection_Against_Domestic_Violence_Act_BG.doc.

¹⁹ Family Code, Article 129(2).

²⁰ Child Protection Act, Article 15(8).

²¹ Civil Procedure Code, Article 95.

²² Civil Procedure Code, Article 94.

²³ Legal Aid Act 2005, available at: <http://www.legislationline.org/documents/action/popup/id/15525>.

²⁴ Legal Aid Act, Article 21.

²⁵ Legal Aid Act, Article 23(1).

²⁶ Criminal Procedure Code, Article 94(1).

- 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)?

No further limitations or conditions were identified.

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?

Challenges to violations of children's rights can be brought by children and their representatives in the civil courts. In all cases concerning children, the court will notify the Child Protection Department which will either send a representative or prepare a report evaluating the best interests of the child concerned.²⁷

The Constitutional Court decides cases concerning the compatibility of national laws with the rights granted by the Constitution.²⁸ Such cases, however, may only be brought by certain government bodies or the Ombudsman.²⁹

Citizens can submit complaints of alleged violations of their rights and freedoms by public authorities or persons commissioned to provide public services to the Ombudsman of the Republic of Bulgaria.³⁰ Any child can submit a complaint and there is no requirement for parental consent. The Ombudsman may also act on his own initiative where he considers that the rights of citizens have not been adequately protected.³¹

Complaints of discrimination can be brought to the Commission for Protection against Discrimination.³² The complaint must relate to alleged discrimination on one of the recognised grounds - sex, ethnicity, origin, religion, education, personal and social status, property status, any ground recognised in a ratified international treaty and others.³³ The Commission may also act on its own initiative or on the basis of a signal by individuals or legal entities, state and municipal authorities.³⁴

The European Court on Human Rights decides cases concerning alleged violations of one of the rights contained in the European Convention on Human Rights.³⁵ Any individual, group of individuals or an NGO who

²⁷ Child Protection Act, Article 15(6).

²⁸ Constitution, Article 149.

²⁹ Constitution, Article 150.

³⁰ Ombudsman Act 2003, Article 19(1), available at: <http://www.refworld.org/docid/44ae58354.html>.

³¹ *Id.*

³² Protection Against Discrimination Act 2003, Article 50, available at: <http://www.refworld.org/docid/44ae58d62d5.html>.

³³ Protection Against Discrimination Act, Article 4.

³⁴ Protection Against Discrimination Act, Article 50.

³⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Articles 19 and 32, available at: http://www.echr.coe.int/Documents/convention_ENg.pdf.

considers to be 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 application themselves or through a representative, however, all applicants be represented at hearings thereafter.³⁹ After examining the case, the Court renders judgements which are 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?

National courts can pronounce decisions on different types of claims, including claims to defend a right, if it is violated, or to ascertain the existence or non-existence of a legal relationship or of a right; claims to sue the defendant to perform repeated obligations and claims for forming, amendment or termination of civil legal relationships (only in the cases provided by law).⁴² Courts can declare that certain act violates human rights, order ceasing of such acts, nullify the consequences of such acts and award compensation in favor of the person whose rights were violated. Interim remedies are also available.⁴³

The Constitutional Court can declare a law unconstitutional which means that the law shall cease to apply as of the date on which the ruling shall come into force.⁴⁴

The Ombudsman reviews complaints and must reply to the complainant in writing within one month of receipt of the complaint.⁴⁵ He has the powers to make proposals and recommendations for reinstatement of the violated rights before the respective authorities/administrations; to mediate between the administrative authorities and the persons concerned for overcoming the violations admitted and shall reconcile their positions; make proposals and recommendations for eliminating the reasons which create prerequisites for violation of rights and freedoms; and to notify the Public Prosecution Office when data exists that a crime, prosecuted on indictment, has been committed.⁴⁶ The authorities/administrations to which the opinions,

³⁶ European Convention on Human Rights, Article 34.

³⁷ European Convention on Human Rights, Article 35.

³⁸ *Id.*

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

⁴⁰ European Convention on Human Rights, Article 46.

⁴¹ European Convention on Human Rights, Article 41.

⁴² Civil Procedure Code, Article 124.

⁴³ Civil Procedure Code, Article 389.

⁴⁴ Constitution, Article 151(2).

⁴⁵ Or three month if necessary due to the complexity of the case - Ombudsman Act, Article 19.

⁴⁶ Ombudsman Act, Article 19.

proposals and recommendations have been addressed, shall be obliged to notify the Ombudsman on the measures undertaken.⁴⁷

The Ombudsman may approach the Constitutional Court with a request to declare unconstitutional a law which he considers to be in breach of human rights,⁴⁸ or he may notify the authorities competent to initiate an action at the Constitutional Court.⁴⁹

Finally, the Commission for Protection Against Discrimination can declare the existence of a violation, order remedies for the prevention or termination of the violation, order restitution to the initial situation, impose administrative penalties, and make recommendations to state and municipal authorities on eliminating discriminatory practices and repeal secondary legislation in violation of the laws on non-discrimination.⁵⁰

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 claim necessary to initiate proceedings must contain the name and address of both parties.⁵¹ Motions for bringing a criminal case by a private complainant must also include their name.⁵² Likewise, complaints to both the Ombudsman and the Commission for Protection against Discrimination must state the name and permanent address of the complainant and anonymous complaints will not be reviewed.⁵³ Therefore, it would not be possible to bring a case on behalf of an unnamed victim.

However, there are certain provisions concerning children and confidentiality in the Child Protection Act. Any information concerning a child obtained in the course of administrative or judicial proceedings shall not be disclosed without the parents' consent and without the child's consent where the child has reached the age of 10, unless the interests of the child point to the contrary.⁵⁴

The identity of any complainant contacting the Ombudsman can be omitted from the register of complaints on their request,⁵⁵ meaning that the complaint will be recorded as anonymous. Furthermore, the Ombudsman's documentation is inviolable and not subject to inspection and seizure and correspondence between the Ombudsman and complaints is also inviolable and cannot be used as evidence in any proceedings.⁵⁶

⁴⁷ Ombudsman Act, Article 28.

⁴⁸ Constitution, Article 150(3).

⁴⁹ Ombudsman Act, Article 19.

⁵⁰ Protection Against Discrimination Act 2003, Article 47.

⁵¹ Civil Procedure Code, Article 127.

⁵² Criminal Procedure Code, Article 81.

⁵³ Ombudsman Act, Article 25 and Protection Against Discrimination Act, Article 51..

⁵⁴ Child Protection Act, Article 16.

⁵⁵ Rules of Procedure of the Ombudsman, rule 19, available at:

<http://www.ombudsman.bg/regulations/activities>.

⁵⁶ Rules of Procedure of the Ombudsman, rule 7.

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

According to the Code of Civil Procedure, collective claims “may be submitted on behalf of persons, damaged by the same infringement of a right, where according to the nature of that infringement their number cannot be determined exactly, but is determinable.”⁵⁷ The collective claim shall be heard by the district court as a court of first instance.⁵⁸ In collective cases, the court may order the defendant to perform a definite action, not to perform a definite action or to pay a definite amount and interim remedies are also available.⁵⁹

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?

Organisations for protection against violence may submit claims on behalf of a group of persons to seek a declaratory judgement of the violation of the victim’s rights or to seek an injunction to stop the violation, or to seek damages in compensation.⁶⁰ Organisations may also intervene in ongoing proceedings where the claim has been filed by the person who alleges a rights violation.⁶¹

Bulgarian non-governmental organisations (NGOs) can address complaints of human rights violations to the Ombudsman⁶². It is also possible for NGOs to file a collective claim in relation to discrimination before the Commission for Protection Against Discrimination.⁶³ In such cases, the organisation filing the claim will be considered party to the claim and any persons who belong to the affected group are entitled to join the proceedings as an assisting party.⁶⁴

Furthermore, Bulgaria has ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints⁶⁵, meaning that complaints of violations of children’s rights contained in the European Social Charter⁶⁶ can be made to the European Committee of Social Rights. Such complaints of unsatisfactory application of the Charter may only be submitted by international non-governmental organisations that have participatory status with the Council of Europe.⁶⁷ The Committee reviews the information provided by both sides and writes a report with its conclusions, which is sent to the Committee of Ministers of the Council of

⁵⁷ Civil Procedure Code, Article 379.

⁵⁸ Civil Procedure Code, Article 380.

⁵⁹ Civil Procedure Code, Article 385.

⁶⁰ Civil Procedure Code, Article 379.

⁶¹ Civil procedure Code, Article 383.

⁶² Ombudsman Act, Article 24(2).

⁶³ Protection Against Discrimination Act, Article 71.

⁶⁴ *Id.*

⁶⁵ Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

⁶⁶ Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

⁶⁷ Additional Protocol for a System of Collective Complaints, Article 1. See also: http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

Europe that adopts a resolution and address a recommendation to the state.⁶⁸ The State must then provide information about the steps taken to comply with the recommendation in its next report under the Charter.⁶⁹ In *MDAC v. Bulgaria*⁷⁰ the Committee found violations of the right to education and a violation of the right to non-discrimination.

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?

The Bulgarian judicial system comprises of the Supreme Court of Cassation, the Supreme Administrative Court, appellate courts, regional courts and district courts,⁷¹ as well as specialised courts, such as the administrative and military courts. However, there are no specialised children's courts in Bulgaria.

In relation to civil cases, both district and regional courts can be courts of first instance, depending on the nature of the claim.⁷² In certain situations, administrative courts can be courts of first instance for claims seeking compensation for violations of rights by state authorities. In general, cases must be filed in the district or regional court with jurisdiction for the place of permanent residence of the defendant.⁷³ If the defendant is a minor, the case must be filed at the court for the place of residence of their representative.⁷⁴ The claim shall be considered submitted by the filing of the motion at the court.⁷⁵ Provisions is also made for the required contents of the motion.⁷⁶

Criminal cases are also brought to either a district or regional court, depending on the nature of the prosecuted offence.⁷⁷ Cases of criminal nature

⁶⁸ Additional Protocol for a System of Collective Complaints, Articles 8-9.

⁶⁹ Additional Protocol for a System of Collective Complaints, Article 10.

⁷⁰ Complaint no. 41/2007, available at:

http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC41Merits_en.pdf. CRIN summary available at: <https://www.crin.org/en/library/legal-database/mental-disability-advocacy-centre-v-bulgaria>.

⁷¹ Constitution, Article 119.

⁷² Civil Procedure Code, Articles 103-4.

⁷³ Civil Procedure Code, Article 105.

⁷⁴ Civil Procedure Code, Article 106.

⁷⁵ Civil Procedure Code, Article 125.

⁷⁶ Civil Procedure Code, Article 127(1): The Claim motion shall be written in Bulgarian language and shall contain 1. the indication of the court; 2. the name and the address of the claimant and of the defendant, of their ex lege representatives or attorneys if they have such, as well as the unified civil number of the claimant and the fax or telex number if he has such; 3. the price of the claim if it can be evaluated; 4. a statement of circumstances, on which the claim is grounded; 5. the substance of the claim; 6. the signature of the person who submits the motion. In the claim motion the claimant shall state the evidence and the concrete circumstances, which shall be proved by them, and to submit enclosed all the written evidence. If the submitting person does not know or cannot sign it, it shall be signed by the person, to whom he has assigned this, and the reason due to which he did not signed it by himself shall be stated.

⁷⁷ Criminal Procedure Code, Article 35.

brought by private complainants must be filed by a written motion containing the details of the complainant, the alleged crime and the person against whom the complaint is made.⁷⁸

Complaints to the office of the Ombudsman may be either written or oral, submitted personally or by other traditional means of communication and must contain the name and permanent address of the sender, a description of the violation and must identify the authority, administration, or person against whom the complaint is lodged.⁷⁹

Complaints to the Commission for Protection against Discrimination must be filed in writing and include the complainant's name and address, information about the circumstances forming the basis of the complaint and must indicate the requests made to the Commission.⁸⁰

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?

Legal aid is granted when a party to the case does not have the financial means to obtain legal representation, but wishes to have an attorney and the interests of justice require so.⁸¹ Pursuant to the Legal Aid Act children are a prioritised group of persons entitled to free assistance. Free legal aid is always available to children placed with foster carers, 'children at risk' within the meaning of the Child Protection Act, as well as victims of domestic or sexual violence or human trafficking, who do not have sufficient funds and wish to avail themselves of the assistance of a lawyer.⁸² Legal aid will not be granted, however, where the claim of the applicant is manifestly ill-founded or inadmissible or where it is deemed that providing legal aid is not justified in light of the potential benefit it could bring to the applicant.⁸³

- In relation to criminal proceedings, the assessment that the suspect or the accused has no funds to pay attorney fees shall be done by the body which governs the proceedings, on the basis of the financial situation of the person in the particular case.⁸⁴
- In civil and administrative cases, the court shall assess whether the party has funds to pay attorney fees, taking into account: 1. the incomes of the person or the family; 2. the property status; 3. the family status; 4. the health status; 5. employment status; 6. the age,

⁷⁸ Criminal Procedure Code, Article 81.

⁷⁹ Ombudsman Act, Article 25.

⁸⁰ Protection Against Discrimination Act, Article 51.

⁸¹ Legal Aid Act, Article 23.

⁸² Legal Aid Act, Article 22.

⁸³ Legal Aid Act, Article 24.

⁸⁴ Legal Aid Act, Article 23(4).

and 7. other related circumstances.⁸⁵

Court costs for initiating a case may be waived by a decision of the court on the application by a party to the case, where the court considers that the party does not have the financial means to pay such costs.⁸⁶ When making such a decision, the court will have regard to a number of factors, including the age of the applicant.⁸⁷ Court costs are not payable by complainants raising a case for payment of alimony.⁸⁸ Furthermore, the submission of complaints before the Ombudsman and the Commission for Protection against Discrimination shall be free of charge.⁸⁹

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

The legal aid system in Bulgaria is in distress because of budget cuts as well as an overall lack of cultural awareness of such services, resulting in a lack of pro bono "infrastructure" in place (e.g., referral organisations or clearing houses). Most free legal representation in Bulgaria is provided by NGOs in the course of their general operations, or by private practitioners on an individualised, ad hoc basis.⁹⁰ Common practice in Bulgaria is to publish announcements in the media advertising temporary law clinics or hot lines offering free legal consultations, usually for a particular social group.⁹¹

The website Bulgaria Pro Bono Directory⁹² provides for a list of associations dealing with pro bono work in defense of human rights. Among these associations there are:

- Bulgarian Lawyers for Human Rights Foundation (BLHR):⁹³ provides legal assistance and strategic litigation related to specific, repeated violations of human rights in Bulgarian and international courts and revealing inconsistency of the Bulgarian legislation and case law with international standards
- Bulgarian Helsinki Committee:⁹⁴ The programme for legal protection of asylum seekers and refugees offers specialised legal consultations, representation and attorney defense to approximately 5,000 people

⁸⁵ Legal Aid Act, Article 23(3).

⁸⁶ Civil Procedure Code, Article 83.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Ombudsman Act, Article 26 and Protection Against Discrimination Act, Article 53..

⁹⁰ Pro Bono Institute, *A Survey on Pro Bono opportunities in 71 jurisdictions*, August 2012, p. 27, available at:

<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

⁹¹ *A Survey on Pro Bono opportunities*, p. 29.

⁹² <http://www.refugeelaidinformation.org/bulgaria-pro-bono-directory>.

⁹³ www.blhr.org/#sthash.Qickaabi.dpuf.

⁹⁴ <http://www.bghelsinki.org/en/>.

annually. The program staff is engaged in: representation in refugee status determination proceedings, professional and independent legal defense, defense before the courts and other state institutions, assistance for successful integration, assistance for voluntary repatriation.

- Center for Legal Aid – Voice in Bulgaria:⁹⁵ “Center for Legal Aid – Voice in Bulgaria” is an independent, non-profit organisation founded in the public interest and focused on promoting the rights of migrants and refugees on the territory of Bulgaria, as well as other vulnerable groups of people, through legal aid and policy advocacy.

Other active NGOs providing for pro bono services are:

- The Gender Alternatives Foundation, which is focused on the promotion of women’s rights;⁹⁶
- The Horizon Foundation, which is focused on equal rights and opportunities for disabled individuals;⁹⁷
- The Association for European Integration and Human Rights, which is focused on the legal protection of human rights;⁹⁸
- The Bulgarian Center for Not-for-Profit Law, which is focused on providing legal advice to civic organisations.⁹⁹

Furthermore, the website of the Bulgarian Non-Governmental Organisations Information Point provides for a list of NGOs specialised in the defense of children’s rights.¹⁰⁰

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 general period of limitations for civil cases is five years,¹⁰¹ however, other specific time limits may be imposed in relation to certain actions. The limitation period is suspended in relation to violations of children’s right by their parent or guardian until their parental rights are terminated (typically when the child reached the age of majority - 18) and also in relation to violations of the rights of children who do not have legitimate representative until six months after the date on which a representative is appointed.¹⁰²

⁹⁵ <http://www.centerforlegalaid.com/index.html>.

⁹⁶

<http://www.genderalternatives.org/index.php/en/news/101-dynamic-start-for-gender-alternatives-foundati-on>.

⁹⁷ <http://www.horizonti.bg/>.

⁹⁸ www.eurorights-bg.org.

⁹⁹ <http://www.bcnl.org/en/index.html>.

¹⁰⁰ <http://www.ngobg.info/en/search.html?OrgName=&Region=0&ScopeOfActivity=15&Submit=search>.

¹⁰¹ Obligations and Contracts Act 1950, Article 111, available at:

http://www.maxconsult.bg/images/useful/useful_15_de.pdf.

¹⁰² Obligations and Contracts Act 1950, Article 115.

Criminal cases brought by private complainants must be submitted within six-month from the day when the victim learned about the commission of the crime.¹⁰³

Complaints to the Ombudsman must be filed within a two year period from the time of commission of the violation¹⁰⁴ and complaints to the Commission for Protection against Discrimination within three years.¹⁰⁵

- 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?

Children have the right to express their opinion freely on all matter concerning their interests.¹⁰⁶ In all judicial or administrative proceedings, concerning the interests of a child, the hearing of the child's opinion is mandatory if the child has reached 10 years of age, unless such hearing would contradict the child's best interests.¹⁰⁷ Court may also order that evidence is heard from a child below 10 years of age, depending of the child's level of development.¹⁰⁸ Prior to a hearing, the court must make ensure that the children have access to relevant information which could help form their opinion.¹⁰⁹ Hearings are generally held in the presence of a parent, guardian or other person who cares for the child, unless that would contradict the interests of the child.¹¹⁰

In civil cases, evidence from children aged 14 to 18 may be heard in the presence of a parent or guardian,¹¹¹ but if the child is younger than 14, the court will hear from his or her legal representative.¹¹²

In criminal cases, children below the age of 14 may only be questioned in the presence of a pedagogue or psychologist and, where necessary, a parent or a guardian.¹¹³ And children aged between 14 and 18 may be questioned in the presence of the above mentioned persons only where the court deems it necessary.¹¹⁴ Those persons may also pose questions to the child with the permission of the court.¹¹⁵ Where a child is the defendant in a criminal trial,¹¹⁶ they must be questioned in the presence of a pedagogue or psychologist who can participate and ask questions.¹¹⁷ There is also a possibility for a

¹⁰³ Criminal Procedure Code, Article 81(3).

¹⁰⁴ Ombudsman Act, Article 25(3).

¹⁰⁵ Protection Against Discrimination Act, Article 52.

¹⁰⁶ Child Protection Act, Article 12.

¹⁰⁷ Child Protection Act, Article 15(1).

¹⁰⁸ Child Protection Act, Article 15(2).

¹⁰⁹ Child Protection Act, Article 15(3).

¹¹⁰ Child Protection Act, Article 15(5).

¹¹¹ Civil Procedure Code, Article 177(2).

¹¹² *Id.*

¹¹³ Criminal Procedure Code, Article 140(1).

¹¹⁴ Criminal Procedure Code, Article 140(2).

¹¹⁵ Criminal Procedure Code, Article 140(3).

¹¹⁶ The age of criminal responsibility in Bulgaria is 14.

¹¹⁷ Criminal Procedure Code, Article 388.

child to give evidence over a video conference call where necessary.¹¹⁸

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

By law, courts have an obligation to hear cases within a reasonable time.¹¹⁹ The European Court of Human Rights has found, however, that in practice the Bulgarian judicial system suffers from systemic delays in civil, administrative and criminal proceedings.¹²⁰

Where the court fails to progress the case within a reasonable time, a party to the proceeding may file an application to the court of next instance asking for an appropriate time-limit for completion of the proceedings to be set.¹²¹

For the period 2006-2010, the European Court of Human Rights has found a violation of the right to fair trial due to excessive length of proceedings in over 100 cases against Bulgaria.¹²²

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

Decision by the district courts can be appealed to the regional courts and decisions by regional courts acting as courts of first instance can be appealed to the appellate courts.¹²³ Appeals must be filed within two weeks of the date of pronouncement.¹²⁴

Decisions from the Commission on Protection Against Discrimination can be appealed to the Sofia City Court within 14 days.¹²⁵

- 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?

Court judgments in Bulgaria do not have the force of precedent and are not binding on lower courts.

At the same time, three types of court decisions are of such significant importance as to impact the enforcement of laws and other acts:¹²⁶

¹¹⁸ Criminal Procedure Code, Article 140(5).

¹¹⁹ Civil Procedure Code, Article 13 and Criminal Procedure Code, Article 22.

¹²⁰ *Dimitrov and Hamanov v. Bulgaria*, Applications No 48059/06 and 2708/09, 10 May 2011, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104700>.

¹²¹ Civil Procedure Code, Article 255.

¹²² European Commission for the Efficiency of Justice, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, 31 July 2012, Appendix 1, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2204779&SecMode=1&DocId=1965298&Usage=2>.

¹²³ Civil Procedure Code, Article 258.

¹²⁴ Civil Procedure Code, Article 259.

¹²⁵ Protection Against Discrimination Act, Article 68.

¹²⁶ Hauser Global Law School Programme, *UPDATE: The Bulgarian Legal System and Legal Research*, May/June 2014, available at: <http://www.nyulawglobal.org/globalex/Bulgaria1.htm>.

1. Judgments of the Supreme Administrative Court (SAC), which abrogates statutory instruments that contradict an Act of Parliament or the Constitution.
 2. Interpretative decisions of the Supreme Court of Cassation (SCC) which are binding on other courts and on the executive branch of the government. Thus, they are of significant importance for unifying the court practice on disputable questions of law. Such decisions are issued where the respective college finds that an interpretation of an Act of Parliament or of a statutory instrument is needed because of the lower courts issuing flawed judgments by misinterpreting such Acts or instruments or because of dissenting judgments of different courts on similar cases. In cases of contradictory practice between the the SAC and SCC, the general assmebly of the judges of both courts will jointly adopt an interpretative decree clarifying the matter.¹²⁷
 3. The Supreme Administrative Court can issue Interpretative Decisions, which are binding on the Judiciary and the Executive Branch of the Government (including the local authorities) as well as on all public bodies which are entrusted with the right to make delegated legislation.
- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

A domestic court decision becomes enforceable from the moment there is no further right of appeal. Court decisions are enforced by bailiffs following the traditional civil law procedural structure.¹²⁸

- 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.

No further relevant laws, policies or practices were identified.

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

¹²⁷ Judicial System Act, Article 124(2), available at: http://www.vks.bg/english/vksen_p04_06.htm.

¹²⁸ Civil Procedure Code, Article 404-5.