

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

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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?**

The Republic of Kazakhstan ratified the CRC on 8 June 1994 by a Resolution of the Supreme Council of the Republic of Kazakhstan. According to Article 4 of the Constitution, ratified international treaties become part of national law.<sup>1</sup> Under the International Treaties Act, treaties that have entered into force must be mandatorily and faithfully implemented by the Republic of Kazakhstan.<sup>2</sup>

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

The Constitution also provides that ratified international treaties prevail over national law (except for the Constitution and other constitutional laws) and shall be applied automatically, unless there is a requirement that the treaty be incorporated through the adoption of a national law<sup>3</sup>. The latter does not apply to the CRC, therefore, in law the Convention should prevail over conflicting national legislation. Nonetheless, the UN Committee on the Rights of the Child has expressed concern that in practice this is not always the case.<sup>4</sup>

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

Yes, the CRC has been automatically incorporated into national law.

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

Since the CRC has the force of law in Kazakhstan, it may be enforced in the courts.

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

There are a number of examples of Kazakh courts applying the CRC

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<sup>1</sup> Constitution of the Republic of Kazakhstan dated 30 August 1995 (the “**Constitution**”), Article 4.1 available at: <http://www.akorda.kz/en/category/konstituciya>.

<sup>2</sup> Law of the Republic of Kazakhstan “On International Treaties” dated 30 May 2005 #54 (the “**International Treaties Act**”), Article 20.1, available at: <http://www.osce.org/odihr/19180>.

<sup>3</sup> Constitution, Article 4.3.

<sup>4</sup> UN Committee on the Rights of the Child, Concluding Observations on the initial periodic report of Kazakhstan, CRC/C/15/Add.213, 10 July 2003, para. 8, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.213&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.213&Lang=en).

provisions:

- Almalinskiy District Court #2 of Almaty city<sup>5</sup>, Court #2 of Taraz city<sup>6</sup> and Shakhtinskiy city court of Karaganda region<sup>7</sup> have discussed the CRC in cases concerning deprivation of parental rights;
- Nurinskiy District Court of Karaganda region has discussed the CRC in a case concerning the determination of a child's place of residence;<sup>8</sup>
- Shchuchinskiy District Court of Akmola region has discussed the CRC in a case concerning division of estate<sup>9</sup> and a case concerning alimony recovery;<sup>10</sup>
- Kostanayskiy City Court of Kostanai region has discussed the CRC in a case concerning punitive damages<sup>11</sup>.

The Supreme Court of Kazakhstan has cited the CRC in cases concerning the right of a grandmother to see her granddaughter<sup>12</sup>, the placement of a minor in a special education organisation<sup>13</sup>; and the access of journalists to information concerning children<sup>14</sup>. The Supreme Court has mentioned the Convention in one of its regulatory resolutions, saying that the national legislation concerning adoption is based on the CRC.<sup>15</sup> Another one of its regulatory resolutions stipulates that, when considering disputes concerning children, the courts must be guided by the Family Code,<sup>16</sup> but where a ratified international treaty establishes rules contradicting those of the Family Code, the rules established by the treaty must be applied.<sup>17</sup>

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

<sup>5</sup> *Ms Shatskaya v. Mr Shatskiy*, available at [http://eaias.supcourt.kz/site/Judgements/2005/Judgements\\_rus2005.NSF/Document/F74D8C45DF1313134625767000121911?OpenDocument](http://eaias.supcourt.kz/site/Judgements/2005/Judgements_rus2005.NSF/Document/F74D8C45DF1313134625767000121911?OpenDocument).

<sup>6</sup> *The Prosecutor of Taraz city v. Mr and Ms Evdokimovs*, available at [http://eaias.supcourt.kz/site/Judgements/2006/Judgements\\_rus2006.NSF/Document/F5D11E8119D152EC462576710016BC63?OpenDocument](http://eaias.supcourt.kz/site/Judgements/2006/Judgements_rus2006.NSF/Document/F5D11E8119D152EC462576710016BC63?OpenDocument).

<sup>7</sup> *Education Dept. of Shakhtinsk city v. Ms Amirova & Mr Abdikeyev*, available at [http://eaias.supcourt.kz/site/Judgements/2006/Judgements\\_rus2006.NSF/Document/E442F85D9C9A05D64625767200284D41?OpenDocument](http://eaias.supcourt.kz/site/Judgements/2006/Judgements_rus2006.NSF/Document/E442F85D9C9A05D64625767200284D41?OpenDocument).

<sup>8</sup> *Ms Kitebayeva v. Mukanov B*, available at [http://eaias.supcourt.kz/site/Judgements/2005/Judgements\\_rus2005.NSF/Document/ODD59236B15D707A4625766D00173223?OpenDocument](http://eaias.supcourt.kz/site/Judgements/2005/Judgements_rus2005.NSF/Document/ODD59236B15D707A4625766D00173223?OpenDocument).

<sup>9</sup> *Ms Baiganova S. v. Ms Baiganova R.*, available [http://eaias.supcourt.kz/site/Judgements/2006/Judgements\\_rus2006.NSF/Document/C9E65A350EDCC4F546257671001A11D7?OpenDocument](http://eaias.supcourt.kz/site/Judgements/2006/Judgements_rus2006.NSF/Document/C9E65A350EDCC4F546257671001A11D7?OpenDocument).

<sup>10</sup> *Ms Zhaikenova v. Mr Abdeldinov*, available at [http://eaias.supcourt.kz/site/Judgements/2007/Judgements\\_rus2007.NSF/Document/09356E625915524B46257689003215F0?OpenDocument](http://eaias.supcourt.kz/site/Judgements/2007/Judgements_rus2007.NSF/Document/09356E625915524B46257689003215F0?OpenDocument).

<sup>11</sup> *Ms Iskakova A. & Ms Iskakova N. v. Kostanay City Children's Hospital*, available [http://eaias.supcourt.kz/site/Judgements/2006/Judgements\\_rus2006.NSF/Document/C427DABB23F7947B46257672002FF34F?OpenDocument](http://eaias.supcourt.kz/site/Judgements/2006/Judgements_rus2006.NSF/Document/C427DABB23F7947B46257672002FF34F?OpenDocument).

<sup>12</sup> Resolution of the supervisory board of the judiciary in civil and administrative cases of the Supreme Court of the Republic of Kazakhstan dated 4 May 2011 #3ГП-205-11.

<sup>13</sup> Resolution of the supervisory board of the judiciary in civil and administrative cases of the Supreme Court of the Republic of Kazakhstan dated 15 January 2013 #3ГП-86-13.

<sup>14</sup> Resolution of the supervisory board of the judiciary in civil and administrative cases of the Supreme Court of the Republic of Kazakhstan dated 15 June 2011 #3ГП-297-11;

<sup>15</sup> Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan "On certain issues concerning courts applying the Law on Marriage (Matrimony) and Family in cases of children adoption" dated 22 December 2000 #17.

<sup>16</sup> Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" dated 26 December 2011 #518-IV (the "Family Code"), available at: <http://adilet.zan.kz/eng/docs/K1100000518>.

<sup>17</sup> Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan "On the application of the law by the courts in resolving disputes relating to the education of children" dated 28 April 2000 #4.

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

Under the Family Code and the Civil Procedure Code<sup>18</sup>, children have the right to challenge violations of their rights and legitimate interests by bringing court cases through a representative (i.e. parents, adoptive parents, guardians<sup>19</sup>, trustees<sup>20</sup>, etc.) or, where required by law, through the state agency in charge of guardianship or trusteeship, the prosecutor or the court, as well as internal affairs agency and other state bodies within their competence.<sup>21</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?

The rights and interests of a minor (a person under 18 years) can only be defended in court by their parent or other legal representative; however, in cases concerning a minor between the ages of 14 and 18 years, the judge has an obligation to also involve the minor concerned in the court proceedings.<sup>22</sup>

Minors aged between 14 and 18 have the right to bring cases by themselves in their own names if:

(i) the case is arising from civil, family, labor, co-operative, administrative and other legal relations or transactions associated with the distribution of earnings or profits from the child's entrepreneurial activity; the court has a discretionary power to involve a legal representative to act on the minor's behalf.<sup>23</sup>

(ii) the case concerns a violation of the rights and legitimate interests of a child by a parent or representative, including child neglect, abuse of parental rights, or failure to fulfill of the parental obligation to support, educate and care for the child.<sup>24</sup>

Legally emancipated minors<sup>25</sup> can also bring cases by themselves in their own names without restriction as they are considered to have full legal capacity.<sup>26</sup>

In relation to criminal proceedings, minors who are victims of crime may not act on their behalf but must be represented before the court by a lawyer or

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<sup>18</sup> Civil Procedure Code dated 13 July 1999 #412-I (the "Civil Procedure Code"), available at: <http://adilet.zan.kz/eng/docs/K990000411>.

<sup>19</sup> For children under 14.

<sup>20</sup> For children between 14 and 18.

<sup>21</sup> The Family Code, Article 67.1 and the Civil Procedure Code, Article 46.

<sup>22</sup> The Family Code, Article 67.1 and the Civil Procedure Code, Article 46.2.

<sup>23</sup> The Civil Procedure Code, Article 46.4.

<sup>24</sup> The Family Code, Article 67.2.

<sup>25</sup> Minors between the ages of 16 and 18 who have been granted full legal capacity (sui juris) by a decision of a guardianship and trusteeship agency or a court.

<sup>26</sup> The Family Code, Article 67.1

another person authorised by law to do so.<sup>27</sup> In addition, if a child is arrested, the child's parent or guardian must be notified and will be expected to attend the courtroom during all stages of the proceedings.<sup>28</sup>

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

In the case of infants and young children (under 14), a child's parent or another legal guardian would typically initiate a lawsuit on behalf of the child.

Minors under 14 years may report to the local guardianship or trusteeship agency to complain of violations of their rights and by a parent or representative.<sup>29</sup> Furthermore, state officials or any other citizens who have become aware of the threat to the life or health of a child or of a violation of the child's rights must notify the local authority, which upon receipt of such notice is required to take necessary measures to protect the child concerned.

<sup>30</sup>

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

The Constitution provides for the right of everyone to receive qualified legal assistance, which is available free of charge in cases stipulated by law.<sup>31</sup> In addition, children have a specific right to receive qualified legal assistance contained in the Rights of the Child Act.<sup>32</sup>

General rules on rendering free legal assistance are provided in the Legal Aid Act<sup>33</sup> and the Advocacy Act.<sup>34</sup> Everyone is entitled to free legal aid guaranteed by the State and provided in the form of legal information. In certain cases a person is eligible to receive free legal assistance in the form of legal advice and representation in court or other public institutions.<sup>35</sup>

In civil proceedings, free legal assistance is always available to children without parental care and in relation to cases concerning the recovery of

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<sup>27</sup> Criminal Procedure Code dated 14 December 1997 #206 (the “**Criminal Procedure Code**”), Article 80.2, available at: [http://www.vertic.org/media/National%20Legislation/Kazakhstan/KZ\\_Code\\_of\\_Criminal\\_Procedure.pdf](http://www.vertic.org/media/National%20Legislation/Kazakhstan/KZ_Code_of_Criminal_Procedure.pdf).

<sup>28</sup> Criminal Procedure Code, Article 138.

<sup>29</sup> The Family Code, Article 67.2.

<sup>30</sup> The Family Code, Article 67.3.

<sup>31</sup> Constitution, Article 13.3.

<sup>32</sup> Law of the Republic of Kazakhstan “On the Rights of the Child in the Republic of Kazakhstan” dated 8 August 2002 #345-II (the “**Rights of the Child Act**”), Article 18.2.7, available at: [http://online.zakon.kz/document/?doc\\_id=1032460](http://online.zakon.kz/document/?doc_id=1032460).

<sup>33</sup> Law of the Republic of Kazakhstan “On Legal Aid Guaranteed by the State” dated 3 July 2013 #122-V (the “**Legal Aid Act**”), available at: [http://online.zakon.kz/Document/?doc\\_id=31414229](http://online.zakon.kz/Document/?doc_id=31414229).

<sup>34</sup> Law of the Republic of Kazakhstan “On Advocacy” dated 5 December 1997 #195 (the “**Advocacy Act**”).

<sup>35</sup> Legal Aid Act, Articles 6 and 8.

alimony.<sup>36</sup>

When a criminal offence is committed against a minor, in case of lack of funds on his or her side, legal assistance will be provided free of charge (at the expense of the state).<sup>37</sup> In addition, children who have been arrested on suspicion of committing a crime are entitled to a lawyer free of charge both during interrogation and court proceedings.

- 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 further limits on children or their legal representatives.

### **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?

Children are entitled to challenge any violations of their rights before the courts through a legal representative (parent, guardian, trustee, etc).

In addition to ordinary civil and criminal proceedings, it is also possible to challenge actions and decisions of public authorities (hereinafter referred to as the "public authorities' conduct") that violate the rights of a child. A case can be brought by the legal representatives of the child directly affected and the proceedings will be conducted in accordance with the Civil Procedure Code. Cases are typically brought within three months after the plaintiff becomes aware of the violation.

Any regulatory act (except for laws and resolutions of Parliament and international treaties) can be challenged in courts by any citizen who is directly affected by the regulatory act and who believes that that regulatory act violates his rights.

Laws and resolutions of the Parliament and its Chambers can only be challenged before the Constitutional Council of the Republic of Kazakhstan under an inquiry made by the courts.

Complaints regarding human rights violations by public authorities can be submitted to the Ombudsman (National Commissioner for Human Rights).<sup>38</sup>

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

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<sup>36</sup> The Advocacy Act, Article 6.1.

<sup>37</sup> The Criminal Procedure Code, Articles 75 and 80.

<sup>38</sup> See <http://www.ombudsman.kz>. Law On establishment of the position of the Commissioner for human rights, available at: [http://www.ombudsman.kz/en/about/commissioner\\_%20for\\_%20human\\_%20Rights.php](http://www.ombudsman.kz/en/about/commissioner_%20for_%20human_%20Rights.php).

Courts have powers to review virtually any violations, except those within the competence of the Constitutional Council (see part II.A).<sup>39</sup>

Both civil and criminal courts can award compensation in the form of monetary damages, but may also seek an injunction ordering a party to carry out or cease a particular action.

For instance, in civil procedure a court can:

- 1) recognise the public authorities' conduct illegal and oblige it to eliminate in full the violation of rights, freedoms and legitimate interests of citizens;
- 2) recognise a regulatory act (or its separate parts) invalid as of the adoption of the act;
- 3) award damages; and
- 4) oblige the defendant to take certain actions.<sup>40</sup>

In cases concerning administrative offences against minors, such as failure by the parents or guardian to meet their responsibilities, the courts can impose administrative sanctions (e.g. fines and arrest).<sup>41</sup> Criminal penalties for negligence to ensure the safety of life and health of children and child abuse, include fine, deprivation of the right to occupy certain positions, public or corrective works or imprisonment.<sup>42</sup>

The courts cannot apply any law which may infringe on the constitutional rights of individuals, so if doubt as to the constitutionality of a law arises during the course of the proceedings, the court will refer the matter to the Constitutional court which has the power to declare the law unconstitutional.

The Ombudsman is empowered to make recommendations to the official whose actions violated the rights of the complainant regarding the measures that are needed to remedy the violated rights.<sup>43</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?

Civil claims must identify the plaintiff and include his/her name, date of birth and place of residence.<sup>44</sup> Likewise, a criminal statement should also contain necessary information about the victim.

The Civil Procedure Code states that, if expressly provided by a law, a person (an individual or a legal entity) is entitled to bring a case in the

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<sup>39</sup> The Civil Procedure Code, Article 279.

<sup>40</sup> The Civil Procedure Code, Articles 222-227.

<sup>41</sup> Code of Administrative Offences, 5 July 2014, No. 235-V LRK, Article 127, available at: [http://online.zakon.kz/Document/?doc\\_id=31577399](http://online.zakon.kz/Document/?doc_id=31577399).

<sup>42</sup> Criminal Code, 3 July 2014, No. 226-V LRK, Articles 141-142, available at: [http://online.zakon.kz/Document/?doc\\_id=31575252](http://online.zakon.kz/Document/?doc_id=31575252).

<sup>43</sup> Law On establishment of the position of the Commissioner for human rights, Part 4.

<sup>44</sup> The Civil Procedure Code, Article 150.

interests of another person or unspecified persons.<sup>45</sup> However, no national law concerning the rights of children that explicitly permits such action could be located.<sup>46</sup>

In general, court proceedings are public.<sup>47</sup> However, closed-door proceedings may be permitted by an order of the court in certain cases (e.g. in cases concerning juvenile crimes or sexual crimes or to secure the confidentiality of adoption, personal or family secrets or to ensure the safety of the victim, witness or other persons involved, as well as members of their families or close relatives).<sup>48</sup>

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

Civil cases may be brought jointly by several plaintiffs against the same defendant. Each of the plaintiffs is identified individually in the process, although they may entrust their representation to one of their co-plaintiffs.<sup>49</sup>

Although cases are typically brought individually, courts may pool several individual cases of the same nature against the same defendant or challenging the same public authorities' conduct.<sup>50</sup>

As above, we believe collective action or group litigation is not possible without naming individual victims. However, a prosecutor is entitled to bring a case (including one against public authorities) to protect the rights and legitimate interests of a large number of persons (which can be regarded as the "public interest litigation").<sup>51</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?

In general, a person or organisation must be directly affected by a matter in order to bring legal proceedings.

Where expressly provided by law, organisations may have the right to apply to the court on behalf of other persons.<sup>52</sup> However, no such law that allows NGOs to bring a case to protect the rights of children could be located.

However, the rules of civil, criminal and administrative procedure allow a third party, including an NGO, to participate in proceedings as a

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<sup>45</sup> The Civil Procedure Code, Article 8.1.

<sup>46</sup> As far as we know, only the Law "On Consumer Protection" allows for cases in the interests of unspecified persons.

<sup>47</sup> The Civil Procedure Code, Article 19.

<sup>48</sup> The Criminal Procedure Code, Article 29; The Civil Procedure Code, Article 19; the Administrative Offences Code, Article 24.

<sup>49</sup> The Civil Procedure Code, Article 50.

<sup>50</sup> The Civil Procedure Code, Article 171.3.

<sup>51</sup> The Civil Procedure Code, Article 8.2, Criminal Procedure Code, Articles 33-34.

<sup>52</sup> The Civil Procedure Code, Article 56.

representative of a victim based on a power of attorney.

**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?

As a general rule, depending on the character of violation, cases can be filed at the local civil, criminal or administrative courts with jurisdiction for the place of residence of the defendant.<sup>53</sup>

However, there are also 19 specialised children's courts (1 in Astana city, 1 in Almaty city, 2 in East Kazakhstan region, 2 in Almaty Region, 2 in Karaganda region, and 11 courts in other 11 regions of Kazakhstan) to adjudicate cases in which minors are involved, in particular:

- (1) Civil cases regarding disputes (i) concerning the determination of the place of residence of a child; (ii) the deprivation or the restoration of parental rights; (iii) adoptions; (iv) the placement of minors in special education organisations or special treatment organisations; or (v) arising out of the guardianship and trusteeship (foster care) of minors;<sup>54</sup>
- (2) Cases concerning crimes committed by minors<sup>55</sup> and/or certain categories of crimes<sup>56</sup> committed with respect to minors;<sup>57</sup> and
- (3) Cases concerning certain administrative offences committed by<sup>58</sup> or against minors<sup>59</sup>.

If there is no specialised children's court in the locality, the case may still be referred to district courts or city courts.

Cases concerning certain administrative offences can be resolved by the competent state agency which initiated the administrative case (e.g. by the local police department) without recourse to a court.

Initiating civil proceedings involves filing of a complaint supported by the required documents. Extensive guidance on the filing process can be found in the Civil Procedure Code.<sup>60</sup>

Proceedings concerning administrative offences are carried out in accordance with the rules of civil procedure. The case is typically brought to

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<sup>53</sup> The Civil Procedure Code, Article 31.

<sup>54</sup> The Civil Procedure Code, Article 30.1-3.

<sup>55</sup> Except for extremely grievous crimes, which are considered by specialised interregional criminal courts and cases attributed to exclusive competence of specialized interregional military courts.

<sup>56</sup> Such as, for example, assault, abuse or corruption of minors, child trafficking etc.

<sup>57</sup> The Criminal Procedure Code, Article 290-1.

<sup>58</sup> Such as, for example, illegal use of drugs, juvenile delinquency, vandalism etc. In most cases parents will be made responsible for the administrative offences committed by a minor.

<sup>59</sup> The Administrative Offences Code, Chapter 12.

<sup>60</sup> The Civil Procedure Code, Chapter 14.



the court by the competent state agency which initiated the administrative case (e.g. by the local police department).

Submitting a civil claim is subject to payment of a filing fee, however, certain categories of claims may be exempt from filing fees (e.g. for employment related claims, claims arising out of copyright, recovery of alimony etc.).

Depending on the nature and gravity of the committed crime, the criminal prosecution can take one of three forms: private, private-public or public. Private and private-public criminal prosecutions can be initiated only if a victim files a statement, although, if the person whose lawful interests were affected by the criminal action is in a helpless or dependent condition or is not able to independently use his or her rights for other reasons, a public prosecutor may initiate the case even if there is no victim's statement.<sup>61</sup> Public criminal prosecutions shall be initiated irrespective of whether there is a victim's statement or not.

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?

As described in part II.D, national legislation allows certain categories of citizens to receive legal assistance free of charge. There are no specific conditions as to the significance of the case and/or a likelihood of success for a complainant to qualify for free legal aid.

In civil proceedings, the general rule is that the losing party shall pay the winning party's costs, which include court costs and legal aid costs (payment of the costs of a legal representative). The legal aid costs shall be reimbursed in full, but is capped at ten percent of the award of damages. If legal aid has been rendered by an advocate free of charge, the court shall make the losing party pay the corresponding legal aid costs directly to the advocate.<sup>62</sup>

In criminal cases, procedural costs may be imposed by the court on a defendant or may be paid at the expense of the state under certain circumstances.<sup>63</sup> Procedural costs associated with participation of an advocate who rendered legal assistance free of charge as a defense lawyer of a suspect, an accused, a person on trial or a representative of a victim shall be incurred at the expense of the state.<sup>64</sup>

In private criminal prosecutions, if a person has been found not guilty, the court may collect procedural costs fully or partially from the person,

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<sup>61</sup> Criminal Procedure Code, Article 34.

<sup>62</sup> Civil Procedure Code, Articles 110 - 111.

<sup>63</sup> Criminal Procedure Code, Article 176.1.

<sup>64</sup> Criminal Procedure Code, Article 176.4.

pursuant to whose complaint the proceedings were initiated. In case of conciliation of parties, procedural costs shall be collected from one or both parties.<sup>65</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 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?

Practicing lawyers have no legal obligation to render assistance on a pro bono basis. However, in practice, most local offices of international law firms tend to provide free legal aid. Local lawyers and law firms also occasionally provide pro bono legal assistance but this is not common.

As above, the pro bono legal assistance during proceedings is typically provided by advocates in accordance with the Advocacy Act.<sup>66</sup> Contingency fee arrangements are not allowed for advocates in Kazakhstan, except for property related disputes, where the parties (individuals or private legal entities) are involved in business activities.<sup>67</sup> The restriction does not apply to practicing lawyers who are not advocates, therefore conditional fee arrangement are generally permitted in civil proceedings.

- 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?

For civil proceedings, the time limit for bringing cases depends on the type of claim brought. The general limitation period is three years from the date when a person has become aware or should have become aware of violations of his or her rights.<sup>68</sup> The Civil Code or laws of Kazakhstan may establish shorter or longer limitation periods for specific types of claims. For example, for the claims made against the public authorities' conduct, the limitation period is three months from the date when a person has become aware of violations of his or her rights, freedoms or legally protected interests<sup>69</sup> and no limitation period will apply to claims for harm to the health and wellbeing of a person.<sup>70</sup>

The limitation period in civil proceedings shall be suspended, if a disabled person (minors are classified as disabled for the purposes of the statute of limitations) has no legal representative.<sup>71</sup> The statute of limitations does not apply to certain types of civil claims, for example, the claims brought to

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<sup>65</sup> Criminal Procedure Code, Article 176.9.

<sup>66</sup> Available at: [http://online.zakon.kz/Document/?doc\\_id=1008408](http://online.zakon.kz/Document/?doc_id=1008408).

<sup>67</sup> Advocacy Act, Article 5.

<sup>68</sup> The Civil code of the Republic of Kazakhstan dated 27 December 1994 (the "Civil Code"), Article 178, available at: [http://online.zakon.kz/Document/?doc\\_id=1006061](http://online.zakon.kz/Document/?doc_id=1006061).

<sup>69</sup> Missing the deadline would not necessarily mean that the court would refuse the claim. The court would consider the reasons why the claimant has not brought his case within the limitation period.

<sup>70</sup> The Civil Code, Article 187.

<sup>71</sup> The Civil Code, Article 182.1(4).

protect intangible assets and personal non-property rights, except as provided by law. There are no limitation periods for cases deriving from marriage and family relationships, except where the timing to protect the violated rights is stipulated in the Family Code.<sup>72</sup> The Family Code sets the limitation period only for the claims of divorced spouses concerning the division of marital property (which is three years from the date of divorce). In very exceptional cases, when a court thinks the claimant had a reasonable excuse for missing the deadline (serious illness, helpless condition, illiteracy, etc.), the case may be considered even after the limitation period has expired.

For criminal proceedings, the following limitation periods apply:

- 1) one year from commission of a misdemeanor;
- 2) two years from the commission of a crime of a lesser gravity;
- 3) five years from the commission of a crime of a medium gravity;
- 4) 15 years from the commission of a grave crime;
- 5) 20 years from the commission of an especially grave crime.<sup>73</sup>

For administrative offences, the general limitation period is two months after the commission of offence, while there are different limitation periods in relation to specific offences (e.g. in the sphere of taxation, customs, anti-monopoly, insurance etc.).<sup>74</sup>

The limitation periods for crimes and administrative offences committed by minors are halved.<sup>75</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 Criminal Procedure Code,<sup>76</sup> the Civil Procedure Code<sup>77</sup> and the Administrative Offences Code<sup>78</sup> provide for the kinds of evidence admissible in, correspondingly, civil, criminal and administrative proceedings, and also set out particular rules, procedures and practices for dealing with evidence that is produced or presented by children.

The list of admissible evidence is very similar for the above mentioned kinds of proceedings and includes factual data based on physical evidence, documents, witness statements or testimony, expert testimony and opinions, reports, recordings, photos, instrumental data etc.<sup>79</sup>

Children cannot be called as witnesses in civil proceedings if, due to their young age, they are not able to perceive facts and provide accurate testimony

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<sup>72</sup> The Family Code, Article 8.

<sup>73</sup> The Criminal Code, Article 71. All periods start from the moment of the commission of crime.

<sup>74</sup> The Administrative Offences Code, Article 71.

<sup>75</sup> The Criminal Code, Article 85; the Administrative Offences Code, Article 765(2).

<sup>76</sup> Article 5.

<sup>77</sup> Article 68

<sup>78</sup> Article 765.

<sup>79</sup> The Administrative Offences Code, Article 777; the Civil Procedure Code, Article 64; the Criminal Procedure Code, Article 115.

about them, except for cases on childbearing.<sup>80</sup> Criminal and Civil Procedure Codes establish rules about the interrogation of minor witnesses or victims. Both Codes prescribe that witnesses under the age of 14 must be interrogated in the presence of a teacher. Parents or other legal representatives of the child may also be required to be present during the interrogation. The court also has a discretionary power to extend the same protection to children aged 14 to 16 for civil proceedings or 14 to 18 for criminal proceedings.

Witnesses (in civil proceedings) and witnesses and victims (in criminal proceedings) under the age of 16 shall not be subject to criminal responsibility for refusal to testify and for perjury<sup>81</sup>. In explaining the procedural rights and obligations they would be instructed to speak only the truth and explained the right to refuse testifying.

In exceptional cases, during the interrogation of a minor the court may decide that any person involved in the case be removed from the courtroom.<sup>82</sup> A witness under the age of 16 (in civil proceedings) and a victim or a witness under the age of 18 (in criminal proceedings) shall be removed from the courtroom after his or her interrogation is over, unless the court finds it necessary for him or her to be present in the courtroom.<sup>83</sup>

The interrogation of an accused minor or a suspect minor must be held in the presence of a defence counsel and a legal representative (and, if necessary, a psychologist or a teacher) and must be held during daytime. Further, the interrogation cannot continue without interruption for more than two consecutive hours and, in total, for more than four hours a day (in case of apparent fatigue of a minor, the interrogation must be terminated even earlier).<sup>84</sup>

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

As a general rule, civil cases shall be considered and settled in the original jurisdiction within two months from the final date of preparing the case for proceedings, though there are categories of cases<sup>85</sup> where the timing is different.<sup>86</sup> The cases in the courts of appeal and the courts of cassation shall be considered within one month.<sup>87</sup>

The Criminal Procedure does not set out the period in which courts of original jurisdiction shall consider a case. However, while on trial, a person can be apprehended for not more than 6 months (and in cases of serious crimes, up to twelve months). Thus, in practice, courts tend to deliver a

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<sup>80</sup> The Civil Procedure Code, Article 79.

<sup>81</sup> The Civil Procedure Code, Article 196.2; the Criminal Procedure Code, Article 215.2.

<sup>82</sup> The Civil Procedure Code, Article 199.2; the Criminal Procedure Code, Article 352.3.

<sup>83</sup> The Civil Procedure Code, Article 199.3; the Criminal Procedure Code, Article 352.4.

<sup>84</sup> The Criminal Procedure Code, Article, Article 485.

<sup>85</sup> E.g. Claims concerning employment reinstatement, alimony recovery or claims made against the public authorities' conduct must be resolved within one month.

<sup>86</sup> The Civil Procedure Code, Article 174.

<sup>87</sup> In the courts of appeal this can be extended to two months.

sentence during this period. Courts of appeal and courts of cassation must deliver the judgment within one month, unless the term is extended for one month due to the complexity of the case.<sup>88</sup>

Administrative offences cases must be considered within fifteen days from the day of receipt of an administrative offence report and other materials, though one month extension is possible. In general, the courts of appeal must consider the case within ten days.<sup>89</sup>

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

Decisions of civil, administrative and criminal courts can be reviewed by higher courts before they enter into force (courts of appeal) or after they have entered into force (courts of cassation) and can be finally revised by the Supreme Court of Kazakhstan. The Supreme Court of Kazakhstan does not have original jurisdiction on all types of cases; rather it acts as a 'supervisory' court (i.e. reviewing the resolutions of the lower courts, including the appellate courts and the courts of cassation).

Typically sentences and resolutions of a court that have not entered into force may be appealed within fifteen days:

- in civil cases, from the date of delivery of a copy of the court decision,<sup>90</sup> and
- in criminal cases, upon announcement of a sentence (in respect of convicted individuals in custody; from the moment a copy of the sentence has been handed to them).<sup>91</sup>

Sentences and resolutions of court that have entered into force may be challenged in the courts of cassation within 6 months.<sup>92</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?**

The legal system of the Republic of Kazakhstan is not based on precedents. Hence the decisions of the courts of various levels are not generally binding on them or the lower courts, though lower courts are bound to follow a revision of their decision by a higher court.

The Supreme Court periodically analyses the practical application of law by courts and passes special normative resolutions.<sup>93</sup> Such resolutions are binding and pursuant to the Constitution become a part of Kazakhstan law. They are aimed at resolving uncertainties in law that have led to courts

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<sup>88</sup> The Criminal Procedure Code, Article, Articles 406, 446-4.

<sup>89</sup> The Administrative Offences Code, Article 817, 847(3).

<sup>90</sup> The Civil Procedure Code, Article 334.

<sup>91</sup> The Criminal Procedure Code, Article 399.

<sup>92</sup> The Criminal Procedure Code, Article 446-1.5.; the Civil Procedure Code Article 383-4.1

<sup>93</sup> Constitution, Article 81.

misapplying the law.

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

The enforcement of court decisions is reported to be problematic in Kazakhstan. Some decisions may remain unenforced for years.

**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.

The Kazakhstan International Bureau for Human Rights and Rule of Law is the most well-known human rights organisation in Kazakhstan that provides legal support to people who believe their rights have been violated. Though the Bureau has no children's rights division, children and their representatives are still able to receive help and support from this institution. There are also a number of child's right NGOs functioning in Kazakhstan.

It is worth mentioning that Kazakhstan has not ratified the European Convention on Human Rights, meaning that its citizens do not have recourse to the European Court of Human Rights.

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