

ACCESS TO JUSTICE FOR CHILDREN: KOSOVO

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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 Kosovo is not a signatory to the CRC. However, the rights conferred by the CRC, along with several other international human rights instruments, are guaranteed in Article 22 of the Constitution of Kosovo.¹

B. Does the CRC take precedence over national law?

Yes, Article 22 of the Constitution explicitly provides that, in the case of conflict, the CRC will have priority over provisions of laws and other acts of public institutions.²

C. Has the CRC been incorporated into national law?

Yes, Article 22 of the Constitution explicitly provides that the CRC is directly applicable in Kosovo.³

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

Yes, Article 54 of the Constitution provides that all persons enjoy judicial protection of their rights guaranteed by the Constitution, which includes the rights guaranteed by the CRC, and where such rights has been violated or denied, every person has the right to an effective legal remedy.⁴

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

No examples of cases citing the CRC were identified, however, according to information provided by judges, the CRC has been implemented in cases concerning children accused of crime.

However, it is worth noting that the Constitution provides that human rights and fundamental freedoms must be interpreted consistent with the court

¹ Constitution of Republic of Kosovo, Article 22, available at: <http://kryeministri-ks.net/zck/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>. For a full list of treaties incorporated by the Constitution, see part V of the report.

² Constitution, Article 22.

³ Constitution, Article 22.

⁴ Constitution, Article 54.

decisions of the European Court of Human Rights.⁵

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 person has the right to address the courts to protect and enforce their legal rights and the right to pursue legal remedies against judicial and administrative decisions that infringe on their rights.⁶ A party in legal proceedings may be any physical person,⁷ including children.

Following the adoption of a new Criminal Code in 2013, there is no possibility for a private complainant to bring a criminal case in Kosovo. In cases where a child is the defendant in criminal proceedings, the provisions of the Juvenile Justice Code will apply.⁸

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?

In Kosovo, full legal capability is acquired at the age of 18 or earlier in the case of marriage.⁹ Minors who have not gained the complete capability to act will be considered to have procedural capacities only within the limits of their capability to act.¹⁰ They need to be represented by a legal representative, as determined by law.¹¹

In cases limited to domestic violence, including violence committed against children, petitions for protective measures may be made to courts by: the protected party (the child); an authorised representative of the protected party; a victim advocate, upon consent of the protected party; or a representative social welfare centre in the municipality where the protected party permanently or temporarily resides in cases where the victim is minor.¹² It is also possible to submit a petition for an emergency protection order.¹³

⁵ Constitution, Article 53. The European Court of Human Rights has issued a number of important decisions applying the CRC - see CRIN, *CRC in Court: The Case Law of the Convention on the Rights of the Child*, available at: http://www.crin.org/docs/CRC_in_Court_Report.pdf.

⁶ Law No. 03/L-199, Law on Courts, Article 7(3), available at: <http://www.assembly-kosova.org/common/docs/ligjet/2010-199-eng.pdf>.

⁷ Law No. 03/L-006 on Contested Procedure, Article 73, available at: http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=265&Itemid=28&lang=en.

⁸ Law No. 03/L-193, Juvenile Justice Code, available at: <http://www.assembly-kosova.org/common/docs/ligjet/2010-193-eng.pdf>.

⁹ Law Nr. 2004/32 Family Law of Kosovo, Article 15, available at: http://www.kuvendikosoves.org/common/docs/ligjet/2004_32_en.pdf.

¹⁰ Law on Contested Procedure, Article 74.3.

¹¹ Law on Contested Procedure, Article 75.1-2.

¹² Law No. 03/L-182, Law on Protection Against Domestic Violence, Article 13(1), available at: <http://www.kuvendikosoves.org/common/docs/ligjet/2010-182-eng.pdf>.

¹³ Law on Protection Against Domestic Violence, Article 13(2).

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

The general rule that children who have not gained legal capability must be represented applies and there are no distinct provisions in relation to infants or young children.

Under the Law on Protection Against Domestic Violence, it is likely that cases would be brought by the victim's lawyer, state social welfare workers, persons with whom the child has a domestic relationship, or other persons with knowledge of acts of violence against the child.¹⁴

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

The Constitution guarantees the right to free legal assistance for those without sufficient financial means if such assistance is necessary to ensure effective access to justice.¹⁵ Under the Law on Free Legal Aid, all citizens and residents of Kosovo are eligible for free legal, as long as they meet certain financial and legal criteria.¹⁶

The Law on Free Legal Aid covers the following types of legal assistance in relation to civil, administrative as well as criminal cases:

- provision of information and legal advice;
- drafting of documents and other technical assistance;
- and representation before the courts.¹⁷

Where a child in conflict with the law, their legal representative or parent have not engaged a defence counsel, such will be automatically appointed by the court at public expense.¹⁸

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 conditions or limitations 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

¹⁴ Law on Protection Against Domestic Violence, Article 13.

¹⁵ Constitution, Article 31.

¹⁶ Law No. 04/L-017, Law on Free Legal Aid, available at:

https://www.ecoi.net/file_upload/1226_1404464803_kosovo-law-free-legal-aid-2012-en.pdf.

¹⁷ Law on Free Legal Aid, Article 4.

¹⁸ Juvenile Justice Code, Article 43.

international/regional instruments, how can a legal challenge be brought?

Cases alleging violations of children's rights can be brought to the basic courts which are the courts of first instance.¹⁹ Where the violation stems from an act or decision of a public authority, administrative proceedings can be initiated by the child (through their representative), as well as by the Ombudsperson of Kosovo.²⁰

Violations of Constitutional principles may also be challenged before the Constitutional Court through its application referral process²¹ as described in part IV.A.

Complaints concerning alleged violations of human rights by public authorities can be submitted to the Ombudsperson.²² The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.²³

All criminal prosecutions in Kosovo are initiated by the State Prosecutor.²⁴ It is not possible for victims of crime to bring a private prosecution.

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

For detailed information about the remedies available in Kosovo's legal system, please see the 'Remedies Catalogue' published by the OSCE.²⁵

Under the Law on Protection Against Domestic Violence, the basic courts may issue protective orders, emergency protective orders, and temporary emergency protective orders, which include the following remedies: removal of parental rights, removal of perpetrator from the living premises, confiscation of items, and monetary payments for support.²⁶

The Constitutional Court is the final authority on constitutional issues and its rulings are binding on all persons and institutions in Kosovo. It may temporarily suspend the contested action or law until its decision is rendered

¹⁹ Law No. 03/L-199, Law on Courts, available at:

<http://www.assembly-kosova.org/common/docs/ligjet/2010-199-eng.pdf>.

²⁰ Law No. 02/L-28, Law on Administrative Procedure, Article 35, available at:

http://www.assembly-kosova.org/common/docs/ligjet/2005_02-L28_en.pdf.

²¹ Law No. 03/L-121, Law on the Constitutional Court of the Republic of Kosovo, available at:

http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L-121_en.pdf and Rules of procedure for the Constitutional Court of Kosovo, available at:

http://www.gjk-ks.org/repository/docs/Rregullore_e_punes_gjkk_ang..pdf.

²² Law on the Ombudsperson, Article 19, available at:

http://web.archive.org/web/20131104174936/http://www.ombudspersonkosovo.org/repository/docs/Ligji_per_Avokatine_LIGJI_Nr_03_L_195_shqip.pdf.

²³ Constitution, Article 132(1).

²⁴ See <http://www.psh-ks.net/?page=2.9>.

²⁵ Organization for Security and Co-operation in Europe Mission in Kosovo, *Human Rights and the Rule of Law: Remedies Catalogue*, available at: <http://www.osce.org/kosovo/13078?download=true>.

²⁶ Assembly of Kosovo, Law No. 03/L-182, Law on Protection Against Domestic Violence, available at: <http://www.kuvendikosoves.org/common/docs/ligjet/2010-182-eng.pdf>.

if the it finds that the application of the contested action or law would result in unrecoverable damages.²⁷ When not otherwise provided by the Constitutional Court decision, the repeal of the law or other act or action is effective on the day of the publication of the Court decision.²⁸

The Ombudsman shall take all necessary measures and actions to address individual complaints, including direct intervention to the competent authorities, who will be required to respond within a reasonable time specified by the Ombudsman.²⁹ If during the investigation, the Ombudsperson considers that the execution of an administrative decision may have irreversible consequences for the person, he may recommend to the competent authority to suspend execution of this decision until the conclusion of the investigation of this issue by Ombudsperson.³⁰

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?

It does not appear possible to bring a case on behalf of an unnamed victim in civil cases because the initial complaints submitted to the court must include the name and contact information of the child on whose behalf the case is filed and their legal representative.³¹ A petition under the Law on Protection Against Domestic Violence also requires the name and address of the protected party.³² Finally, anonymous complaints will not be reviewed by the Ombudsman,³³ however, all investigations involving minors are confidential.³⁴

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

It is possible for a group of persons to bring civil proceedings in relation to the same matter as joint plaintiffs.³⁵

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?

Under the Law on Protection Against Domestic Violence, a petition for protection order or emergency protection order may be submitted by NGOs that are familiar with problem of the victim and are well informed for their treatment.³⁶

²⁷ Constitution, Article 116.

²⁸ Constitution, Article 116.

²⁹ Law on the Ombudsperson, Article 18.

³⁰ Law on the Ombudsperson, Article 18.

³¹ Law on Contested Procedure, Article 99.

³² Law on Protection Against Domestic Violence, Article 14.

³³ Law on the Ombudsman, Article 19(1).

³⁴ Information provided by the Office of the Ombudsman.

³⁵ Law on Contested Procedure, Article 264.

³⁶ Law on Protection Against Domestic Violence, Article 13(3).

Although legal persons may appear as parties in a lawsuit,³⁷ the law does not specify whether NGOs can bring other cases regarding children's rights violations.

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 courts of first instance for both civil and criminal matters in Kosovo are the basic courts, of which there are seven.³⁸ The Basic Courts include a court with a Department on Minors.³⁹ Appeals from the Basic Courts can be taken to the Court of Appeals.⁴⁰ The Supreme Court is the court of last instance.⁴¹ Civil complaints must be filed in the court with general territorial jurisdiction for the place of permanent residence of the defendant.⁴²

The Constitutional Court is the final authority on constitutional claims.⁴³ Cases in the Constitutional Court may be initiated through a referral, the admissibility of which will be determined by a Review Panel.⁴⁴ If the Review Panel concludes that the claim is admissible, the case is referred to the Court, who will then consider the admissibility of and the grounds for the claim in its entirety and issue a decision.⁴⁵ If disclosure of the permanent or temporary address of the petitioner would put them in danger, the petition may provide an alternative address or the records which reflect that address shall be sealed.⁴⁶

Complaints to the Ombudsman must be submitted verbally or in writing and must contain the personal details of the complainant and a description of the circumstances giving rise to the complaint.⁴⁷

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?

³⁷ Law on Contested Procedure, Article 73.1.

³⁸ Law on Courts, Article 9.

³⁹ Law on Courts, Article 12(1.5).

⁴⁰ Law on Courts, Articles 17-8.

⁴¹ Law on Courts, Article 21.

⁴² Law on Contested Procedure, Article 38.1.

⁴³ Law on the Constitutional Court of the Republic of Kosovo.

⁴⁴ Law on the Constitutional Court of the Republic of Kosovo, Article 22.

⁴⁵ Law on the Constitutional Court of the Republic of Kosovo, Article 22.

⁴⁶ Law on Protection Against Domestic Violence, Article 14.

⁴⁷ Law on the Ombudsperson, Article 20.

Any person resident in Kosovo is eligible to receive legal aid under the Law on Free Legal Aid.⁴⁸ Individuals in Kosovo are entitled to free legal aid if they do not have an income, receive welfare, are retired, or have a monthly income that is lower than the median income in the country.⁴⁹ Additional factors to be taken into account when considering an application for legal aid are the real value of the request in the case and the probability for success.⁵⁰ Emergency legal aid must be provided to all persons detained by police, regardless of the eligibility requirements for other cases.⁵¹

In civil cases, court fees are determined based on the nature of the application. After a party files an application, the judge to whom the case is assigned is responsible for determining the value of the application.⁵² While no specific provisions exempt children from paying these fees, any person “in a poor economic situation,” any person who is “a beneficiary of social welfare assistance,” and any person who is “receiving legal aid from a District Legal Aid Bureau” is exempt from paying court fees.⁵³ The Law on Contested Procedure further allows the court to exempt a party from paying expenses if it is determined payment would be beyond the party’s financial capability and “will harm him/her or their family.”⁵⁴

Submitting complaints to the Ombudsperson is free of charge.⁵⁵

- 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?

In Kosovo, ten Legal Aid Offices (LAOs) provide free legal representation to “vulnerable groups.”⁵⁶ Additionally, several NGOs and business have provided pro bono legal aid in Kosovo; these include Medica Kosova, Sejdiu and Qerkini, the Center for Legal Aid and Regional Development (CLARD), Norma, and Ruka Rici.⁵⁷

⁴⁸ Law on Free Legal Aid, Article 7.

⁴⁹ Republic of Kosovo, Agency for Free Legal Aid, official website available at: http://www.knj-rks.org/index.php?option=com_content&view=category&layout=blog&id=46&Itemid=83&lang=sq.

⁵⁰ Law on Free Legal Aid, Article 9.

⁵¹ Law on Free Legal Aid, Article 10.

⁵² Administrative Direction No. 2008/02 on Unification of the Court Fees, available at: www.kgjk-ks.org/repository/docs/Administrative%20012009.doc.

⁵³ Administrative Direction No. 2008/02 on Unification of the Court Fees, Section 7.1-7.2.

⁵⁴ Law on Contested procedure, Article 468.

⁵⁵ Official website of the Ombudsperson, *Mission*, available at: <http://www.ombudspersonkosovo.org/en/mission>.

⁵⁶ “At What Cost? Budgeting for the Implementation of the Legal Framework Against Domestic Violence in Kosovo,” report by The Kosova Women’s Network, available at: http://www.ks.undp.org/content/dam/kosovo/docs/womenPub/At%20what%20cost_Eng.pdf.

⁵⁷ “At What Cost? Budgeting for the Implementation of the Legal Framework Against Domestic Violence in Kosovo,” Chapter 4.

- 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?

Where no limitation period is specifically prescribed by law, the court will set one having regard to the circumstances of the case at hand.⁵⁸ It is also possible to apply for extension of the limitation period.⁵⁹ However, there do not appear to be any provisions suspending the limitation period for children until they reach the age of 18.

The Criminal Procedure Code establishes various time limits after which criminal prosecution may not be initiated: thirty years for a crime punishable by life imprisonment, twenty years for a crime punishable by imprisonment of more than ten years, ten years for the commission of a criminal offense punishable by imprisonment for more than five years, and so forth.⁶⁰

- 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?

All facts relevant to the verdict must be supported by evidence by the party relying on them.⁶¹ Documents as well as oral testimony by witnesses or experts may be presented as evidence and detailed provisions regarding the admissibility and presentation of evidence are made in Chapter XXII of the Law on Contested Procedure.

Generally, in civil proceedings, everyone is entitled to appear as a witness, however, minor under 14 will only be called to testify if “necessary to solve the case”.⁶² In invitation to testify will be sent to children under 14 through their parent or legal custodian.⁶³ If the child is a party to civil proceedings, evidence will be given by their representative.⁶⁴

The Criminal Procedure Code contains special protections for child witnesses. The examination of any witness under sixteen who is a victim of a crime is not permitted in the main trial if the child’s testimony has already been taken under Article 132 or Article 149 of the Criminal Code and if the trial panel acknowledges that a new examination is unnecessary.⁶⁵ Additionally, if a child is present at trial as a witness or injured party, the child must be taken out of the courtroom as soon as his or her presence is no longer necessary.⁶⁶ Finally, a child cannot be required to take an oath.⁶⁷

⁵⁸ Law on Contested Procedure, Article 125.1.

⁵⁹ Law on Contested Procedure, Article 125.2.

⁶⁰ Criminal Code of the Republic of Kosovo, Article 106, available at: <http://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Code.pdf>.

⁶¹ Law on Contested Procedure, Article 319.

⁶² Law on Contested Procedure, Article 339.

⁶³ Law on Contested Procedure, Article 346.2.

⁶⁴ Law on Contested Procedure, Article 375.

⁶⁵ Criminal Procedure Code, Article 339.

⁶⁶ Criminal Procedure Code, Article 339.

⁶⁷ Criminal Procedure Code, Article 340.

Children are examined, where necessary, with the assistance of pedagogue, psychologist etc.⁶⁸

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

The Law on Courts provides that “All courts should function in an expeditious and efficient manner to ensure the prompt resolution of cases”⁶⁹ and the Law on Contested Procedure also confirms that courts “shall be bound to carry out proceedings without delay”.⁷⁰ Administrative proceedings must be concluded within three months.⁷¹ However, research could not determine the amount of time that a typical legal proceeding might last.

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

As described in part IV.A, cases brought in the basic courts may be appealed to the Court of Appeals and then the Supreme Court of Kosovo. Cases brought to the Constitutional Court cannot be appealed as that Court serves as the final authority on constitutional violations.

In juvenile justice cases, minors may not waive their right to appeal, furthermore, the defense counsel, the public prosecutor, the spouse, the parent, adoptive parent or guardian, a relation by blood in a direct line to any degree, the brother or the sister may file an appeal on behalf of the minor, even against his or her will.⁷²

- 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?

Kosovo has a civil law system; its core principles are codified.⁷³ Thus, most court decisions have little precedential impact. However, decisions of Kosovo’s Constitutional Court are binding on the judiciary and on all persons and institutions in the Republic of Kosovo.⁷⁴

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

Serious obstacles to successful and timely enforcement of judicial decisions have been reported in Kosovo.⁷⁵ A particularly grave problem is the huge backlog of cases awaiting execution.⁷⁶

⁶⁸ Juvenile Justice Code, Article 59.3

⁶⁹ Law on Courts, Article 7(5).

⁷⁰ Law on Contested Procedure, Article 10.1.

⁷¹ Law on Administrative Procedure, Article 81.

⁷² Juvenile Justice Code, Article 75.

⁷³ See <http://www.kuvendikosoves.org/?cid=2,191>.

⁷⁴ Constitution, Article 116.

⁷⁵ USAID, Contract Law Enforcement (CLE) Programme, *New Approaches to enforce civil judgments in Kosovo Courts*, available at: <http://kontrata.net/?cid=2,54,177>.

⁷⁶ Spornbauer, M., *EU Peacebuilding in Kosovo and Afghanistan: Legality and Accountability* (Martinus

- 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.

In addition to the rights enshrined in the CRC, the Constitution of Kosovo guarantees the protections of the following international agreements: Universal Declaration of Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; International Covenant on Civil and Political Rights and its Protocols; Council of Europe Framework Convention for the Protection of National Minorities; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women; Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.⁷⁷

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Nijhoff, 20 February 2014) p. 74.

⁷⁷ Constitution, Article 22.