

ACCESS TO JUSTICE FOR CHILDREN: KYRGYZSTAN

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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?

Kyrgyzstan ratified the CRC on 7 October 1994.¹ According to Kyrgyzstan legislation the Constitution has supreme legal force.² International treaties and agreements as well as universally recognised principles and norms of international law form a constituent part of the national legal system.³

B. Does the CRC take precedence over national law?

Yes. Pursuant to the Constitution of Kyrgyzstan the provisions of international treaties on human rights are directly applicable and have a priority in respect of provisions of other international treaties.⁴ Moreover, Kyrgyzstan has ratified the Vienna Convention on the Law of Treaties and therefore, has the obligation to give priority to international law over conflicting national legislation.⁵

C. Has the CRC been incorporated into national law?

The CRC became a constituent part of Kyrgyzstan legislation upon ratification. Since human rights treaties are directly applicable they do not require an enactment of a separate act or statute. Moreover, the Children's Code of Kyrgyzstan endeavours to create additional mechanisms in terms of protecting the rights of children enshrined in the CRC.⁶

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

As the CRC has automatically been incorporated into national legislation, it constitutes particular rights and obligations, therefore it is a self-executing treaty and can be directly enforced in courts.

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

The Children's Code of 2012, as noted above, is the main law concerning child rights. Therefore, domestic courts would use or apply this statute, rather than the CRC itself.

¹ UN Treaty Collection, 'Convention on the Rights of the Child', available at:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² Constitution of Kyrgyzstan, Article 6(1), available at:

http://www.legislationline.org/download/action/download/id/3116/file/Kyrgyz%20Constitution%20-%20adopted%20by%20referendum%2027%20Jun2010_f_EN.pdf.

³ Constitution, Article 6(3).

⁴ Ibid.

⁵ UN Treaty Collection.

⁶ Children's Code, available at: http://online.adviser.kg/Document/?link_id=1002498323.

The available databases on Kyrgyzstan case law do not show any cases in which the CRC has been used or applied.

II. What is the legal status of the child?

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

The Constitution of Kyrgyzstan stipulates that everyone shall be guaranteed judicial protection of his/her rights and freedoms envisaged in the present Constitution, laws, international treaties to which the Kyrgyz Republic is a party as well as universally recognised principles and norms of international law.⁷ Furthermore, every individual is entitled to protect his/her rights and freedoms by any means that are not prohibited by law.⁸

Judicial power is exercised by means of constitutional, civil, criminal and administrative procedures.⁹ Different rules and procedures are applicable for each of them. According to the Children's Code, special courts and proceedings are to be established dealing with cases on crimes or administrative offences committed by children.¹⁰ Unfortunately, the courts have not been created yet. However, this issue has been envisaged in the State strategy of 2013-2015 elaborated by the Government.¹¹

Constitutional proceedings (review) is exercised by the Constitutional Chamber of the Supreme Court. Every person, including a child, is entitled to the right of appeal to the Constitutional Chamber if he/she believes that the laws or other normative regulatory acts violate his/her rights and freedoms recognised in the Constitution.¹²

The Code of Civil Procedure ensures the right of every person to protect his or her rights in civil proceedings.¹³ The same rules are applicable for administrative litigation.¹⁴ If the rules set forth in the Code of Civil Procedure contradict the rules of an international treaty, to which Kyrgyzstan is a party, the international regulations are applicable.¹⁵

As for criminal proceedings, having received the information about a crime containing sufficient evidence to assume that a crime has been committed, the investigator or the prosecutor is obliged to launch an investigation.¹⁶ Children are not restricted in their ability to report to the police.

⁷ Constitution, Article 40(1).

⁸ Ibid., Article 40(2).

⁹ Ibid., Article 93(2).

¹⁰ Children's Code, Article 88.

¹¹ Available at:

http://www.kenesh.kg/RU/Articles/15255-Proekt_Postanovleniya_Pravitelstva_Kyrgyzskoj_Respubliki_O_Gosudarstvennoj_strategii_razvitiya_yuvenalnoj_yusticii_v_Kyrgyzskoj_Respublike_na_period_2013_2015_gody.aspx

¹² Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, Article 20(1), available at:

[http://www.codices.coe.int/NXT/gateway.dll/CODICES/laws/eng/asi/kgz?fn=document-frame.htm\\$f%3Dtemplates\\$3.0](http://www.codices.coe.int/NXT/gateway.dll/CODICES/laws/eng/asi/kgz?fn=document-frame.htm$f%3Dtemplates$3.0)

¹³ Code of Civil Procedure, Article 4(1), available at:

http://online.adviser.kg/Document/?link_id=1000870491.

¹⁴ Ibid., Article 1(1).

¹⁵ Ibid. Article 1(3).

¹⁶ Code of Criminal Procedure, Article 150, available at:

http://online.adviser.kg/Document/?link_id=1000874133.

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

According to the Civil Code of Kyrgyzstan, full legal capacity is obtained at the age of 18.¹⁷ A person can also obtain full legal capacity if he or she marries before attaining the age of 18.¹⁸ Moreover, children aged 16 or over may obtain full legal capacity if he/she enters in labour relations or becomes an entrepreneur.¹⁹

In civil proceedings the rights and interests of children who have not attained full legal capacity must be protected through their parents, adoptive parents or legal guardians.²⁰ The same rules are applicable to administrative proceedings.

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

A child under the age of seven years (an infant) does not have legal capacity. As mentioned in part II.B, their rights and interests are protected through their parents, adoptive parents or legal guardians.

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

The right to legal aid is explicitly provided by the Constitution of Kyrgyzstan, which states that everyone shall have the right to be provided with qualified legal aid. In cases provided for in the law, legal aid is rendered at the expense of the state.²¹ State-funded legal assistance is ensured in criminal proceedings in accordance with the conditions determined by the government.²²

The Law on Publicly-Funded Legal Assistance recognises the right of indigent defendants to state-funded legal advice and representation primarily in criminal matters, and sets out the conditions, mechanisms and procedures for the delivery of legal aid.²³ Under the Law, children are entitled to legal aid without the need for means-testing.²⁴

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 other such conditions or limits on children or chosen legal representatives bringing cases.

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

¹⁷ Civil Code, Article 56, available at: http://online.adviser.kg/Document/?doc_id=30212538&mode=all

¹⁸ Ibid.

¹⁹ Ibid., Article 62(1).

²⁰ Code of Civil Procedure, Article 56(1).

²¹ Constitution, Article 40(3).

²² Code of Criminal Procedure, Article 45(3).

²³ UNDP, 'Accessing justice: legal aid in Central Asia and the South Caucasus', 2013, available at: http://www.undp.org/content/dam/rbec/docs/LegalAid_SouthCaucasus&CentralAsia.pdf

²⁴ Law on Publicly-Funded Legal Assistance, Article 7, available at: http://minjust.gov.kg/?page_id=2629.

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?

Depending on the type of violation, the legal challenge can be brought through constitutional, civil, administrative or criminal proceedings. As mentioned in part II.A, special courts will be created in the near future with the competence to deal with crimes and administrative offences committed by children.

The constitutional complaint can be brought before the Constitutional Chamber of the Supreme Court if the applicant believes that the laws or other normative regulatory acts violate his/her rights and freedoms recognised by the Constitution.

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

The Constitutional Chamber of the Supreme Court of Kyrgyzstan has the power to declare a normative act or its specific provision unconstitutional, which means that they cease to have legal effect upon the promulgation of the judgment.²⁵ Judgments of the Constitutional Chamber are final.

In civil proceedings, the court can grant the applicant pecuniary and non-pecuniary damages. In administrative proceedings, the court can repeal administrative legal acts, order the administrative body to issue certain administrative acts, carry out or stop a certain course of action.²⁶

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 legislation of Kyrgyzstan does not guarantee the possibility of challenging an action without naming a specific victim. However, the Public Defender of Kyrgyzstan has the competence of *actio popularis* in order to challenge normative acts or its particular provisions without naming a specific victim if he/she considers that the human rights and freedoms determined by the Constitution are violated.²⁷

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

Collective litigation is possible in constitutional, civil and administrative proceedings. According to the Code of Civil Procedure, several plaintiffs can apply to the court, however legal action without naming victims or potential victims is not allowed.²⁸

E. Are non-governmental organisations permitted to file challenges to potential

²⁵ Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, Article 20(1).

²⁶ Code of Civil Procedure, Article 260.

²⁷ Law of Kyrgyzstan on Ombudsman, Article 8(3), available at: <http://ombudsman.kg/normativy/30-zakon-kyrgyzskoy-respubliki-ob-ombudsmene-akyykatchy-kyrgyzskoy-respubliki.html>.

²⁸ Code of Civil Procedure, Article 152.

children's rights violations or to intervene in cases that have already been filed?

Non-governmental organisations (NGOs) may participate in civil, administrative or criminal proceedings if they are victims, applicants or respondents in the particular case.

Moreover, NGOs also have the right to act as legal representatives of children at any stage of proceedings.²⁹ Furthermore, if the violation of the child's right constitutes a crime, any person can provide information to the investigator, including NGOs.

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 case can be brought in the court of first instance or in the Constitutional Chamber of the Supreme Court of Kyrgyzstan depending on the nature of the claim. Moreover, the legislation of Kyrgyzstan ensures the existence of specialised children's courts dealing specifically with children's matters. However, the courts have not been created yet.

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?

See part II.D above.

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?

Yes, there are several organisations which offer free legal assistance in Kyrgyzstan. A full list of organisations is available at: <http://prava.kloop.kg/?p=896>.

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?

According to the Civil Code of Kyrgyzstan the general statute of limitations is three years;³⁰ specific statute of limitations depends on the nature of the claims.³¹ In terms of challenging administrative legal acts or omissions, the statute of limitations is three months.³² The legislation of Kyrgyzstan does not contain special provisions that allow young adults to bring cases about the violations of their rights that occurred when they

²⁹ Ibid., Article 54.

³⁰ Civil Code, Article 212.

³¹ Ibid., Article 213.

³² Code of Civil Procedure, Article 263.

were children.

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

In criminal proceedings, the following types of evidence are considered: testimony, material evidence and any other relevant documents provided during the litigation.³³

The Code of Criminal Procedure sets forth special provisions regarding the interrogation of children. In particular, if an interrogated witness or victim is under 14, and upon the investigator's consideration if the witness or victim is aged 14 to 16, a pedagogue shall be called for interrogation. The representative of a child interrogated as a witness or victim shall be authorised to be present during the interrogation.³⁴

As for civil proceedings, the interrogation of children under 14 as well as children aged 14 to 16 can be conducted in the presence of a pedagogue. Parents, adoptive parents or guardians can also be present if necessary. They can ask questions with the consent of the court or express their opinions concerning the content of the testimony given by the child.³⁵ A child under 16 shall leave the courtroom at the end of his/her interrogation unless the court deems his/her presence is necessary.³⁶

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

The consideration of a constitutional claim by the Constitutional Court of Georgia shall not exceed five months. Under exceptional circumstances the time limit can be prolonged by no longer than one month.³⁷

The consideration of an administrative claim shall not exceed one month.³⁸ In civil cases, a final judgment shall be produced within 2 months.³⁹ There are few exceptions from the general rule.⁴⁰

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

The judgment of the Constitutional Chamber is final and cannot be appealed.⁴¹

In criminal cases, the judgment of the court of first instance can be appealed in the Appellate Court.⁴² The judgment of the Appellate Court can be further appealed in the Supreme Court of Kyrgyzstan.⁴³

³³ Code of Criminal Procedure, Article 81.

³⁴ Ibid., Article 193(1).

³⁵ Ibid., Article 180(1).

³⁶ Ibid., Article 180(3).

³⁷ Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyzstan, Article 29.

³⁸ Code of Civil Procedure, Article 267(1).

³⁹ Ibid., Article 155.

⁴⁰ Ibid.

⁴¹ Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyzstan, Article 51.

⁴² Code of Criminal Procedure, Article 339.

⁴³ Ibid., Article 372.

In civil and administrative cases the judgment of the court of first instance can be appealed in the Appellate and Supreme Courts.⁴⁴

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?

There does not appear to be the possibility for political backlash or repercussions from a positive decision.

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

The UN Special Rapporteur on the sale of children, child prostitution, and child pornography highlighted the country's insufficient protection of children from violence, exploitation, and abuse, and urged law enforcement agencies to do more to investigate, prosecute, and punish perpetrators.⁴⁵ Therefore, enforcing decisions might face some practical problems.

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

There are no additional factors.

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

⁴⁴ Code of Civil Procedure, Article 247.

⁴⁵ See Human Rights Watch, 'World Report 2014: Kyrgyzstan', available at: <https://www.hrw.org/europecentral-asia/kyrgyzstan>.