

ACCESS TO JUSTICE FOR CHILDREN: SLOVENIA

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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?

On 6 July 1992, the Republic of Slovenia ratified the United Nations Convention on the Rights of the Child (“CRC”). Slovenia ratified the first and second Optional Protocols to the CRC on 23 October 2004, the first pertaining to the involvement of children in armed conflict, the second on the sale of children, child prostitution and child pornography.¹ In addition, children’s rights provided in the Slovenian Constitution are modelled after the Convention on the Rights of the Child.²

Slovenia has also ratified the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, prepared on the basis of the Hague Convention.³ Slovenia signed the third Optional Protocol to the CRC on 28th February 2012, but has not yet ratified it.

B. Does the CRC take precedence over national law?

Yes, the CRC takes precedence over national law. Pursuant to Article 8 of the Slovenian Constitution, laws and regulations must comply with all general principles of international law and treaties which are binding in Slovenia. International treaties which have been ratified and published are applied directly in Slovenia.⁴ Hence, as Slovenia has ratified the CRC, all Slovenian laws and regulations must comply with the Convention.

C. Has the CRC been incorporated into national law?

There are numerous ways in which the CRC has been incorporated into Slovenian law, and certain institutions were established to monitor the effectiveness of these laws. The Committee on the Rights of the Child in its Concluding Observations on Slovenia’s report on the implementation of the CRC, however, criticised the continued absence of a consolidated child law that would incorporate all the provisions of the Convention into Slovenia’s

¹ *Combined third and fourth periodic reports of Slovenia to the UN Committee on the Rights of the Child*, CRC/C/SVN/3-4, 17 April 2012, para. 426, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSVN%2f3-4&Lang=en.

² Periodic Report, paragraph 85.

³ Periodic Report, paragraph 170.

⁴ Constitution of the Republic of Slovenia, Article 8, available at: <http://www.us-rs.si/en/about-the-court/legal-basis/>; European Union Agency for Fundamental Rights, *FRA Thematic Study on Child Trafficking, Slovenia*, para. 25, available at: https://fra.europa.eu/sites/default/files/fra_uploads/525-Child-trafficking-09-country-sl.pdf.

national legislation.⁵

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

Yes, as the CRC takes precedence over national laws it can be directly enforced in the courts.

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

Yes, there are several examples of national courts using or applying the CRC. For instance, in *Maja Dreo et al. v. Slovenia* in front of the Constitutional Court of Slovenia, the court stated that “the provision of Article 9, point (3), of the CRC is directly applicable since the right of the child to maintain regular contacts with both parents clearly follows from it.”⁶ The Supreme Court has also applied the Convention in family law cases.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?

Yes, children and/or their representatives can bring cases in domestic courts to challenge violations of children's rights. According to the Law on Marriage and Family Relations, children shall be represented by their parents in legal proceedings.⁸ A juvenile who has reached fifteen years of age may him or herself conclude legal business unless otherwise determined by law. The approval of the parents is required for the validity of such business if it is of such importance as essentially to influence the life of the child or if it is such that it may also influence their life after achieving maturity.⁹

According to the Civil Procedure Act, a child who has attained the age of 15 and is capable of understanding the meaning and legal consequences of the acts he or she performs shall be enabled by the court to execute the acts of procedure independently as a party.¹⁰ The statutory representative of the

⁵ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Slovenia*, CRC/C/SVN/CO/3-4, 8 July 2013, para. 8, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSVN%2fCO%2f3-4&Lang=en.

⁶ Constitutional Court of Slovenia, *Maja Dreo et al. v. Slovenia*, a summary of the judgment in English is available in CRIN's CRC in Court Report, page 60, available at: http://www.crin.org/docs/CRC_in_Court_Report.pdf.

⁷ *Sodba II Ips 133/2005*, citing Article 6 CRC, available at: [http://www.sodisce.si/znanje/sodna_praksa/search.php?q=G%204/2012&database\[SOVS\]=SOVS&submit=i%EF%BF%BD%C3%A8i&order=changeDate&direction=desc&rowsPerPage=20&page=14&id=9641](http://www.sodisce.si/znanje/sodna_praksa/search.php?q=G%204/2012&database[SOVS]=SOVS&submit=i%EF%BF%BD%C3%A8i&order=changeDate&direction=desc&rowsPerPage=20&page=14&id=9641) and *Sklep II Ips 438/200*, citing Article 9 CRC, available at: [http://www.sodnapraksa.si/?q=id:7971&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDS S\]=VDSS&database\[UPRS\]=UPRS&submit=i%C5%A1%C4%8Di&page=0&id=7971](http://www.sodnapraksa.si/?q=id:7971&database[SOVS]=SOVS&database[IESP]=IESP&database[VDS S]=VDSS&database[UPRS]=UPRS&submit=i%C5%A1%C4%8Di&page=0&id=7971).

⁸ Law on Marriage and Family Relations, Article 107, available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/zakonodaja/law_on_marriage_and_family_relations.pdf.

⁹ *Ibid.*, Article 108.

¹⁰ Civil Procedure Act, Article 409, available at:

child may execute acts of procedure unless and until the child declares that he or she is taking over the litigation. A child who has not yet attained the age of fifteen and who is considered by the court as incapable of understanding the meaning and legal consequences of the acts he or she performs shall be represented by his statutory representative. In the event that the interests of the child and those of his statutory representative collide, the court shall appoint to the child a special representative. Such representative shall also be appointed in all other cases where the court deems it necessary for the protection of the child's interests.¹¹

In cases of violence against children, the Family Violence Prevention Act (2008) grants children extra protection against violence. A child victim has the right to a legal representative in legal proceedings as well as psychological support. In these cases, a multidisciplinary team lead by the social work centre draws up an aid plan for a victim in collaboration with other authorities.¹² Child victims of violence can obtain assistance through social work centres and crisis aid centres.¹³

According to Article 410 of the Civil Procedure Act and Article 78 of the Act Amending the Marriage and Family Relations Act, a child has the right to voice his own opinion in court, and may speak through an intermediary if desired.¹⁴ Several provisions of the Criminal Procedure Act (Articles 236, 240, 64, and 331) specify detailed measures to be taken regarding hearing procedures involving minors.¹⁵

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?

As indicated above in section II.A., children above the age of 15 are permitted to bring these cases by themselves in their own names and on their own behalf. All other cases must be brought by or with the assistance of a representative.¹⁶

According to the Family Violence Prevention Act, if there is suspected abuse of a child, a social work centre, the police or the state prosecutor must be notified.¹⁷ Free legal representation will be offered to victims, and the victim is permitted to choose their own representative to attend all procedures relating to family violence.¹⁸

www.uil-sipo.si/fileadmin/upload_folder/zakonodaja/povezano/Civil_Procedure_Act_Slovenia_ZPP-2004.doc

¹¹ Ibid.

¹² European Network of Ombudspersons for Children, *Slovenia: Children's Rights References in the Universal Periodic Review*, para. 33, available at: <http://crinarchive.org/enoc/resources/infoDetail.asp?ID=21934&flag=report>.

¹³ Periodic Report, paragraph 447.

¹⁴ Periodic Report, paragraphs 102, 141.

¹⁵ Periodic Report, paragraph 103.

¹⁶ Law on Marriage and Family Relations, Articles 107 & 108; Civil Procedure Act, Article 409.

¹⁷ Family Violence Prevention Act, Articles 4 & 6, available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/zpnd_en.pdf.

¹⁸ Ibid., Article 7.

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

In the case of infants and young children, the child's parent(s) would typically initiate a lawsuit on the child's behalf. If the parents are absent or deprived of parental rights, an action could be brought by the child's guardian.¹⁹

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

According to the Free Legal Aid Act, every claimant in Slovenia is entitled to free legal aid if, in view of their financial position and that of their family, he or she would not be able to cover the costs of legal proceedings on their own without jeopardising their financial position and that of their family.²⁰ The financial position of the applicant shall be determined taking into account the applicant's income and receipts, and the income and receipts of the applicant's family and taking into account the property owned by the applicant and the applicant's family.²¹

According to the Family Violence Prevention Act (2008) provides for free legal assistance for victims of domestic violence.²² Such legal aid is available regardless of the economic situation of the victim, provided that the Center for social work issues a threat assessment.²³

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)?

When the interests of the child and the parents are in conflict with one another, Article 213 of the Law on Marriage and Family Relations stipulates that a special guardian (a guardian *ad litem*) can be appointed.²⁴ However, the implementation of this provision into practice has been criticised by the Human Rights Ombudsman of the Republic of Slovenia because, even though theoretically available, the procedure of appointing a special guardian appears to be hardly used in practice. According to the Ombudsman, special guardians tend to be appointed in cases of clashes of interests in property and probate procedures and in establishing maternity/paternity. The criteria for appointing the special guardian are not stipulated for in the law and are therefore determined on a case-by-case basis, usually by the court. In certain instances, a child under the age of 15 can express his or her opinion on who

¹⁹ Law on Marriage and Family Relations, Articles 201 and 202.

²⁰ European Judicial Network in civil and commercial matters, *Legal Aid - Slovenia*, May 2006, para. 2-3, available at: http://ec.europa.eu/civiljustice/legal_aid/legal_aid_sln_en.htm. See also Free Legal Aid Act (Official Journal Nr. . 96/04, 23/08, 15/14 – odl. US in 19/15), Article 7, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1265>.

²¹ Free Legal Aid Act, Articles 12 and 13.

²² Family Violence Prevention Act, Article 25.

²³ Family Violence Prevention Act. Article 26.

²⁴ Law on Marriage and Family Relations, Article 213; Yale Law School, *Representing Children Worldwide, How Children's Voices are Heard in Protective Proceedings, Slovenia*, December 2003, available at: <http://www.law.yale.edu/rcw/rcw/jurisdictions/euros/slovenia/frontpage.htm>

should be the special guardian. Typically, individuals that are close to the child are appointed as special guardians.²⁵

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?

Laws and regulations, deemed to be contrary to the Constitution or international instruments, can be challenged by way of a constitutional complaint in front of the Constitutional Court, after all legal remedies have been exhausted.²⁶ Anyone who demonstrates a valid legal interest may request the initiation of proceedings before the Constitutional Court. An individual has such a legally-recognised interest if legislation directly impacts on his or her rights, interests or legal situation.²⁷

A request for a law to be challenged before the Constitutional Court can also be issued by the courts, the National Assembly, one third of members of the National Assembly, National Council, the Government, public prosecutors, Bank of Slovenia, Court of Auditors, the Ombudsman and other entities regarding laws governing their specific interests. Some of these entities, such as the National Assembly or the Government, can challenge any law that is on the books. Others, such as the courts, public prosecutor and the Ombudsman, can only challenge the laws that they are asked to apply in one of the cases they are responsible for.²⁸

Cases alleging a rights violation by a decision of an administrative body can be brought at the administrative courts.²⁹

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.³⁰ Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,³¹ but the complaint will be admissible only if all domestic remedies have been exhausted.³² Anonymous complaints are not permitted.³³ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings

²⁵ Yale Law School.

²⁶ Constitutional Court Act, Articles 50-60, available at: <http://www.us-rs.si/en/about-the-court/legal-basis/constitutional-court-act/v-constitutional-complaint/>.

²⁷ Constitution of the Republic of Slovenia, Article 162.

²⁸ Ibid., Article 156.

²⁹ Administrative Dispute Act Nr. 105/06, 107/09 – odl. US, 62/10, 98/11 – odl. US in 109/12, Article 1, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4732#>.

³⁰ European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 19 and 32, available at: http://www.echr.coe.int/Documents/convention_ENg.pdf.

³¹ Ibid., Article 34.

³² Ibid., Article 35.

³³ Ibid.

thereafter.³⁴ After examining the case, the Court renders a judgment which is binding on the State³⁵ and also has powers to award monetary compensation to the victims of human rights abuses.³⁶ 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?

There are numerous repercussions for maltreatment of a child under the Slovenian Penal Code. Article 192, for example, addresses the neglect and mistreatment of a child, stating that if a parent/guardian breaches their obligations they can be sentenced for up to three years in prison.³⁷ Other criminal offences against children are also punishable and can receive a sentence of between three to five years imprisonment.³⁸

When children's rights are violated by acts of individuals, criminal and civil procedures before regular courts are available to restore these rights, punish the offender or adjudicate on the amount of damages.³⁹ The administrative courts can order restitution or compensation.⁴⁰

A law challenged through the judicial review process is reviewed by the Constitutional Court. The Court can fully or partially annul the law and order the legislator to adopt new laws.⁴¹

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?

A constitutional complaint can be brought in the name of a legal entity without naming an individual victim. If the complainant of a constitutional complaint is a legal entity, state authority, bearer of public authority, or other legal subject, the complaint needs to include the entity's name and where it is based, as well as the name and title or position of its representative.⁴² The Ombudsman for Human Rights can also lodge a constitutional complaint, but needs the consent of the person whose human rights or fundamental freedoms are being protecting in the individual case.⁴³

³⁴ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

³⁵ European Convention on Human Rights, Article 46.

³⁶ Ibid., Article 41.

³⁷ Penal Code of the Republic of Slovenia, Article 192, available at: <http://www.policija.si/eng/images/stories/Legislation/pdf/CriminalCode2009.pdf>.

³⁸ Slovenian Penal Code, Chapter 21.

³⁹ See for details the Civil Procedure Act and Criminal Procedure Act, the latter is available at: <http://www.policija.si/eng/images/stories/Legislation/pdf/CriminalProcedureAct2007.pdf>.

⁴⁰ Administrative Disputes Act, Article 7.

⁴¹ Constitution of the Republic of Slovenia, Article 160.

⁴² Constitutional Court Act, Article 53.

⁴³ Ibid., Article 52.

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

Group litigation is only possible in the area of environmental protection. There is no such possibility for the protection of children's right.

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?

We have not identified any specific legislation that would allow for non-governmental organisations to independently file challenges of children's rights violations on the domestic level. As mentioned under III.C., constitutional complaints can be brought by legal entities under the conditions listed by the Constitutional Court Act.⁴⁴

Slovenia has ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints⁴⁵, meaning that complaints of violations of children's rights contained in the European Social Charter⁴⁶ can be made to the European Committee of Social Rights. Such complaints of unsatisfactory application of the Charter may only be submitted by international NGOs that have participatory status with the Council of Europe.⁴⁷ 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 Europe that adopts a resolution and makes a recommendation to the State.⁴⁸ The State then must provide information about the steps taken to comply with the recommendation in its next report under the Charter.⁴⁹

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?

Cases can be filed in civil, criminal, administrative and constitutional courts, depending on the nature of the case. For civil and criminal proceedings, there are two different kinds of courts of first instance. i.e. local courts and district courts. There are two stages of appeal - i.e. higher courts and the Supreme Court of the Republic of Slovenia. In some select cases, the rulings of the latter can also be examined by the Constitutional Court in an additional stage of proceedings. Beside civil and criminal courts there are also administrative courts as one form of specialised jurisdiction courts, but there are no specialised juvenile courts in Slovenia.⁵⁰

⁴⁴ Constitutional Court Act, Articles 52 & 53.

⁴⁵ Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

⁴⁶ Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

⁴⁷ Additional Protocol for a System of Collective Complaints, Article 1. See also:

http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

⁴⁸ Additional Protocol for a System of Collective Complaints, Articles 8-9.

⁴⁹ Additional Protocol for a System of Collective Complaints, Article 10.

⁵⁰ GlobaLex, Maja Čarni and Špela Košak, *A Guide to the Republic of Slovenia Legal System and Legal*

- 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 indicated above in section II.D., according to the Free Legal Aid Act, every claimant in Slovenia is entitled to free legal aid if, in view of their financial position and that of their family, he or she would not be able to cover the costs of legal proceedings on their own without jeopardising their financial position and that of their family. The financial position is assessed on the basis of monthly income and that of the claimant's family, and the property owned by the claimant and his or her family.⁵¹

- 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?

Our research has not found any formal child specific free legal services in Slovenia. Since 2000, the University of Ljubljana has been offering free legal assistance to refugees and foreigners through a special legal clinic, but the clinic does not focus specifically on children's rights.⁵²

Although they don't specialise in children's rights, the project *Pravo za Vse* by the Faculty of Law of the University of Maribor provides free general legal advice, including on human rights issues. The same University has also launched the project "Enako PRAV(n)O" through which students provide legal advice to members of the public in the areas of health and welfare.⁵³

- 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 limitation period of prosecuting criminal offences is:

- 50 years for crimes in relation to which a prison sentence of 30 or more years can be imposed;
- 30 years for crimes in relation to which a prison sentence of 10 or more years can be imposed;
- 20 years for crimes in relation to which a prison sentence of five or more years can be imposed;
- ten years for crimes in relation to which a prison sentence of one or more years can be imposed; or

Research, para. 2.1.3., January 2013, available at: <http://www.nyulawglobal.org/globalex/slovenia1.htm>; European Judicial Network in civil and commercial matters, *Slovenia*, https://e-justice.europa.eu/content_jurisdiction-85-si-en.do?member=1.

⁵¹ European Judicial Network in civil and commercial matters, *Legal Aid - Slovenia*, para. 2-3.

⁵² Ljubljana Legal Clinic for Refugees and Foreigners, available at: <http://www.pf.uni-lj.si/en/extra-curricular-activities/legal-clinic-for-refugees-and-foreigners/>.

⁵³ <http://www.soncek-maribor.si/pogosta-vprasanja/352-skupina-enakopravno.html>

- six years for crimes in relation to which a prison sentence of less than a year can be imposed.

The period normally begins to run from the date of commission of the crime. Nonetheless, in relation to some sexual offences, the limitation period will not begin to run until the victim reaches the age of 18.⁵⁴

The limitation period for civil proceedings for damages arising from such crimes is the same as for the underlying crime and therefore also starts running at the victim's majority.⁵⁵

- 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?

Parties must state all the facts that are relevant to their case and present evidence that prove those facts.⁵⁶ Both parties need to establish the facts that substantiate their case. A child or person can give evidence if they are declared capable by the court. It is at the discretion of the court to determine whether an individual is capable to provide a legal testimony.⁵⁷ Evidence can take various different forms, such as immediate inspection, documentation, witnesses, experts or examination of parties.⁵⁸

A number of provisions seek to protect child victims involved in criminal proceedings. The defendant's presence may, or in the case of a child younger than 15 must, be excluded. The identity of the child may be concealed with the help of different technical means.⁵⁹

The Committee on the Rights of the Child has observed that the right of the child to be heard in legal proceedings and in the Social Work Centres is not adequately implemented in practice in Slovenia. In this respect, the Committee voiced particular concern about the overreliance of family departments on experts' opinions while insufficient weight is given to the views of children.⁶⁰

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

For some time, Slovenia faced a serious problem with the number of the cases waiting for to be processed. Namely, in 2006 judges still had to adjudicate cases from as far back as 1998. Slovenia has been condemned in more than 200 cases in front of the European Court for Human rights in

⁵⁴ Penal Code, Articles 90-91.

⁵⁵ Civil Code of the Republic of Slovenia (in Slovenian), available at: http://www2.gov.si/zak/Zak_vel_nsf/7e8891d494d7669fc1256616002db47b/c12563a400338836c1256adb002917dd?OpenDocument.

⁵⁶ Civil Procedure Act, Articles 7 and 212.

⁵⁷ European Judicial Network in civil and commercial matters, *Taking of evidence and mode of proof - Slovenia*, May 2007, available at: http://ec.europa.eu/civiljustice/evidence/evidence_sln_en.htm#1.a.

⁵⁸ Civil Procedure Act, Chapter Eighteen.

⁵⁹ Study on Trafficking, paragraph 21.

⁶⁰ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Slovenia*, para. 32.

Strasbourg for violating the right to a hearing within a reasonable time according to Article 6 of the European Convention on Human Rights.

The systemic problems were addressed in a series of governmental reforms and reforms conducted by the courts, which have since improved the situation.⁶¹ In response to the European Court of Human Rights' decision in *Lukenda v. Slovenia*, finding a violation of the European Convention due to excessive length of legal proceedings,⁶² Slovenia enacted the Act on the Protection of the Right to a Trial without Undue Delay in 2006, which provides a number of remedies against delay in proceedings.⁶³ According to information provided to CRIN by the Slovenian government, the average duration of proceedings in 2015 was just four months, compared to 14 months in 1998, and the overall number of pending cases in 2015 is at its lowest level since 1995.

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

Several appeal stages are open to all claimants on Slovenia. High courts, of which there are four in Slovenia, adjudicate at the second instance and it is not possible to file an action directly with them. Higher courts adjudicate on appeals against the decisions of local and district courts. They also adjudicate on disputes relating to jurisdiction between local and district courts in their region. The Supreme Court of the Republic of Slovenia has jurisdiction to adjudicate on appeals against judgments of the high courts, especially decisions relating to revisions and the protection of legality.⁶⁴

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?

As the Slovene legal system is a civil law jurisdiction, case law is not recognised as an official source of law, but it can be used to support legal arguments. In practice, lower courts often use precedents when making decisions and follow the arguments made by other courts in their decisions. One of the functions of the Supreme Court of Slovenia is also to assure uniform case law.⁶⁵

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

One of the challenges in enforcing a positive decision which has been noted

⁶¹ GlobaLex, Maja Čarni and Špela Košak, para. 2.1.3.

⁶² European Court of Human Rights, *Application No. 23032/02, Lukenda v. Slovenia*, available at: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-70449>.

⁶³ Subsequently amended in 2009 and 2012, available at: http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/zakonodaja/angleski_prevodi_zakonov/121212_Act_on_the_Protection_of_the_Right_to_a_Trial_without_Undue_Delay_eng.pdf.

⁶⁴ European Judicial Network in civil and commercial matters, *Jurisdiction of the Courts - Slovenia*, March 2006, para. B, available at: http://ec.europa.eu/civiljustice/jurisdiction_courts/jurisdiction_courts_slj_en.htm#B.I.

⁶⁵ GlobaLex, Maja Čarni and Špela Košak, para. 3.1.5.

is the lack of a consolidated text which protects children's rights. Instead, the protection of rights is being addressed by a number of statutes.

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.

Examples of implementation of parts of the CRC include the Child Observatory, established in 2004, which monitors the welfare of children and maintains specialised child databases.⁶⁶ In addition, the 'Programme for Children and Youth 2006-2016', established in 2006, is specifically designed to implement any recommendations given by the UN Committee on the Rights of the Child to Slovenia.

The Family Violence Prevention Act (2008) details actions to be taken when a child becomes the victim of neglect, physical, sexual, psychological or economic abuse.⁶⁷ Complementary seminars for judges were established in 2008 to raise awareness concerning juvenile issues in legal proceedings.⁶⁸ Education personnel were also given guidelines according to the Rules on the Treatment of Domestic Violence for Educational Institutions, so that principals and teachers know how to handle students who are victims of family violence. In addition, two educational programmes operated by the police called 'One-One-Three' and 'Take Courage' have been established which serve to educate children on how to best respond to incidents of sexual abuse and violence. A similar national program exists to educate students about child trafficking and the National Action Plan against Trafficking (2004).⁶⁹

In 2012, a Family Code, article 9 of which would have prohibited corporal punishment of children and other humiliating treatment, was rejected by a referendum (54.55% voted against the law).⁷⁰ Corporal punishment is unlawful as a disciplinary measure in penal institutions under the Criminal Code (2008) but there is no explicit prohibition. The Criminal Code also increased child protection, and detailed specifics to be undertaken in the case of child trafficking. Slovenia appointed an Interdepartmental Working Group for the Fight Against Trafficking in Human Beings.⁷¹ Forced child labour was abolished and child pornography has been criminalised.⁷² Lastly, conscription of mercenaries and persons under 18 years of age is regulated by Article 106 of the Criminal Code.⁷³

There are several other pieces of legislation which aim to incorporate the CRC into national law and seek to protect the general well being of children

⁶⁶ Periodic Report, paragraph 42.

⁶⁷ Periodic Report, paragraph 10.

⁶⁸ Periodic Report, paragraph 51.

⁶⁹ Study on Trafficking, paragraph 30.

⁷⁰ Country Report for Slovenia, available at: <http://endcorporalpunishment.org/progress/country-reports/slovenia.html>.

⁷¹ Study on Trafficking, paragraph 30.

⁷² Periodic Report, paragraphs 11, 387, 390, 443 and 444.

⁷³ Periodic Report, paragraph 473.

such as: Restrictions of the Use of Tobacco Products Act (2007), the Road Traffic Safety Act (2008), the Protection against Drowning Act (2007), the Explosive Substances and Pyrotechnic Products Act (2008), the General Safety of Products Act (2003), and the Rules on the Safety of Toys (2007).

Various benefits are provided to children to ensure their wellbeing. There are acts which ensure children and families receive benefits if necessary: the Parental Protection and Family Benefit Act. (amended in 2014), Subsidised Secondary School Student Meals Act (amended in 2014), scholarships, book funds, active employment policy programmes, and EQUAL initiative test programmes.⁷⁴

Various pieces of educational legislation have been enacted in order to educate children about their rights. The Guidelines for Education for Sustainable Development from Preschool to University Education (2007) outline programmes which educate students on human rights issues. Several Slovenian education acts ensure all students receive equal education: the Organisation and Financing of Education Act, the Elementary School Act, the Preschool Institution Act, the Act on High Schools, the Vocational Education Act, the Post-secondary Vocational Education Act, and the National Vocational Qualifications Act.⁷⁵ Granted the special circumstances of the Roma community in Slovenia, both the Roma Community Act and the Strategy for Education of the Roma in the Republic of Slovenia (2004), together with its amendment (2011), address non-discriminatory and equal education measures, and implement forms of assistance for the Roma community to secure appropriate housing, education, employment, family welfare, healthcare, and cultural development.⁷⁶ The National Programme of Culture 2004-2007 also includes measures to increase Roma cultural activity, and the cultural literacy of all children.⁷⁷

Children of negligent parents are also protected under the Act Concerning the Pursuit of Foster Care (amended in 2012) and the Marriage and Family Relations Act (2004). Children with special needs are protected under the Law on Guiding Children with Special Needs (2011), and in 2008 Slovenia adopted an Act ratifying the Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Lastly, the Penal Sanctions Enforcement Act (amended in 2015) addresses children who are themselves charged with a crime. Children covered by the International Protection Act (1991) or the Displaced Persons Act (2005) are provided with special assistance such as: food, social workers, health care, education, and social assistance from non-governmental organizations.⁷⁸ One additional factor which has been highlighted by Committee on the Rights of the Child is the persistent discrimination of the rights of Roma children in Slovenia. The Committee has urged the State party to take all effective

⁷⁴ Periodic Report, paragraph 280.

⁷⁵ Periodic Report, paragraph 312.

⁷⁶ Periodic Report, paragraph 88.

⁷⁷ Periodic Report, paragraph 325.

⁷⁸ Periodic Report, paragraph 341.

measures to reduce disparities in the enjoyment of rights between children belonging to minority groups, in particular Roma children, and children belonging to the majority population in all areas covered under the Convention, and to pay particular attention to standards of living, health and education.⁷⁹

The government of Slovenia established the post of a Human Rights Ombudsman in 1993 in response to recommendations made by the Committee on the Rights of the Child. The Ombudsman works inter alia on the protection of children's rights, monitors children's rights enforcement, highlights legislative deficiencies and promotes new legislation.⁸⁰ A specific Deputy Ombudsman works in the area of children's rights and social security, but the Committee has voiced concern about his or her limited capacity, as well as about the few applications sent by children to the Deputy Ombudsman. The Committee has recommended that the State party take measures to bring the Ombudsman's office into compliance with the Paris Principles, and in particular to launch awareness-raising programmes among children on their right to file complaints directly to the Deputy Ombudsman, and to ensure that procedures are accessible, simple and child-friendly.⁸¹

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

⁷⁹ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Slovenia*, para. 68.

⁸⁰ Website of the Ombudsman for Human Rights, available at: <http://www.varuh-rs.si/index.php?id=1&L=6>.

⁸¹ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Slovenia*, para. 18-19.