

# ACCESS TO JUSTICE FOR CHILDREN: TAJIKISTAN

*This report was produced by Child Rights International Network (CRIN) in May 2015. CRIN takes full responsibility for any errors or inaccuracies in the report.*

## **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

The Republic of Tajikistan ratified the CRC on 26 October 1993.<sup>1</sup> According to the Constitution, international legal documents recognised by Tajikistan, such as the CRC, are a constituent part of the legal system of the Republic, and apply following official publication.<sup>2</sup>

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

Yes. If Republican laws do not conform to recognised international legal documents, the norms of the international documents apply.<sup>3</sup> Moreover, Tajikistan 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.<sup>4</sup> The Constitution, however, has supreme legal force.<sup>5</sup>

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

The CRC was incorporated into Tajikistan law upon ratification and official publication. Since international treaties are directly applicable they do not require enactment of a separate act or statute.

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

The CRC has automatically been incorporated into national law, 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 available databases on Tajikistan 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?**

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<sup>1</sup> 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](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>2</sup> Constitution of Tajikistan, Article 10, available at: <http://www.refworld.org/pdfid/3ae6b50910.pdf>.

<sup>3</sup> Ibid.

<sup>4</sup> UN Treaty Collection, 'Vienna Convention on the Law of Treaties', available at:

[https://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en).

<sup>5</sup> Constitution of Tajikistan, Article 10.

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

The Constitution of Tajikistan stipulates that every person is guaranteed judicial protection. Every person is entitled to demand that his or her case be considered by a competent and impartial court.<sup>6</sup>

The law ensures the right of every person to protect his or her infringed or disputed rights, freedoms and legitimate interests.

Every citizen has the right to apply to any state or local government body and officials, as well as public associations, enterprises, establishments and organisations for protection of their rights and legitimate interests. Article 31 of the Constitution states that “citizens may appeal to the state bodies, individually or collectively.” Article 4 of the Appeals Act lays down the procedure for the submission of complaints and petitions by citizens whose rights have been violated, their legal representatives and other persons or organisations performing human rights protection activities.

Every person is entitled to appeal to the Constitutional Court of Tajikistan if he or she believes that the laws, other normative regulatory acts or decisions of the Supreme Court of Tajikistan or Supreme Economic Court of Tajikistan applied in a specific case by the competent state, public or judicial bodies violate his or her constitutional rights and freedoms.<sup>7</sup>

Children’s rights, freedoms and legitimate interests are protected by their parents or other legal guardians, and, in cases specified by law, by guardianship and custodial bodies, the public prosecutor and the court. Where the rights and legitimate interests of the child are infringed, including cases of failure by the parent(s) to fulfil their child-rearing obligations or in cases of the abuse of their parental rights, the child themselves may seek the protection of a guardianship or custodial bodies and, if he or she has reached the age of 14, that of a court.<sup>8</sup> The acts recognised as the acts violating the rights and legitimate interests of the child are embodied in the Administrative Offences Code<sup>9</sup> and in a special chapter of the Criminal Code entitled “Offences against the family and minors”.<sup>10</sup>

As for criminal proceedings, a case can be opened upon receiving a statement about a crime, full confession, information from an official, enterprise, establishment or mass media, as well as immediate detection of the signs of a crime by the competent bodies.<sup>11</sup> Competent bodies are required to accept, register and verify any statement about an imminent crime, a crime in progress or a committed crime.<sup>12</sup> The law does not contain any restrictions regarding the minimum age of the informant. Cases of private-public prosecution can be opened only upon receiving a statement from the victim.<sup>13</sup>

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<sup>6</sup> Ibid., Article 19.

<sup>7</sup> Constitutional Law on the Constitutional Court of Tajikistan, Article 37(6), available at: <http://mmk.tj/ru/legislation/legislation-base/constitutional-laws/>.

<sup>8</sup> Family Code, Article 57(2).

<sup>9</sup> Administrative Offences Code, Articles 90-93.

<sup>10</sup> Criminal Code, Chapter 20.

<sup>11</sup> Code of Criminal Procedure, Article 140.

<sup>12</sup> Ibid., Article 145.

<sup>13</sup> Ibid., Article 147.

Finally, anyone, including children, may submit complaints regarding the acts and decisions of state and local bodies, officials and public employees of enterprises, establishments and organisations to the Human Rights Ombudsman. The Ombudsman can bring cases to the Constitutional court if he considers that a legislative act violates the rights or freedoms guaranteed by the Constitution.<sup>14</sup> When conducting an investigation based on an individual complaint, the Ombudsman has the right to attend the hearings of any body, including closed court hearings, relating to the case in accordance with the law of Tajikistan.<sup>15</sup>

However, the status of the Human Rights Ombudsman of Tajikistan is not in full compliance with the Paris Principles,<sup>16</sup> and is therefore not vested with sufficient powers to settle disputes arising between the State and individuals.<sup>17</sup> The Committee on the Rights of the Child has expressed its concern that the specific interests of children may not be sufficiently addressed by this Ombudsman due to its general mandate, and recommended the establishment of a Children's Rights Ombudsman.<sup>18</sup> Based on this recommendation, Government order No. 35 of 2015 foresees the establishment of a Children's Rights Ombudsman.<sup>19</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?

According to the Civil Code of Tajikistan, full legal capacity is obtained at the age of 18.<sup>20</sup> Additionally, full legal capacity may be obtained before reaching 18 years upon marriage<sup>21</sup> and emancipation.<sup>22</sup> Therefore, in civil proceedings, children are entitled to protect their rights and interests themselves if they marry or attain full legal capacity in accordance with the law.<sup>23</sup> The rights and interests of children aged 14 to 18 who have not attained full legal capacity are protected by their parents, adoptive parents or legal guardians, but the court is required to involve such children in the proceedings. Children aged 14 to 18 have partial legal capacity and are entitled to independent protection of their rights and interests only in limited cases arising from civil, family, labour, public and other relationships,<sup>24</sup> in which they are entitled to participate by law.<sup>25</sup> The law specifies particular cases when it is required to obtain the child's opinion before the court hearings or when child's participation in court hearings is obligatory. For

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<sup>14</sup> Law on the Human Rights Ombudsman in the Republic of Tajikistan, 20 March 2008, №372, Article 21. Available at: [http://base.spinform.ru/show\\_doc.fwx?rgn=22025](http://base.spinform.ru/show_doc.fwx?rgn=22025).

<sup>15</sup> Ibid., Article 12(3).

<sup>16</sup> International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 'Chart of the status of national institutions', 28 January 2014, available at: [http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf).

<sup>17</sup> This is according to feedback we received on this report in April 2014.

<sup>18</sup> UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Tajikistan*, CRC/C/TJK/CO/2, 5 February 2010, paras 12-13. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTJK%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTJK%2fCO%2f2&Lang=en).

<sup>19</sup> Information provided to CRIN by the Embassy of Tajikistan in the United Kingdom.

<sup>20</sup> Civil Code, Article 22(1), available at: <http://mmk.tj/ru/legislation/legislation-base/codecs/>.

<sup>21</sup> Ibid., Article 22(2).

<sup>22</sup> Ibid., Article 28.

<sup>23</sup> Code of Civil Procedure, Article 39(2).

<sup>24</sup> Ibid., Article 39(4).

<sup>25</sup> See Civil Code, Article 27.

example, it is required to obtain the consent of a child aged over 10 for adoption or change of name and surname before the court hearings. The participation of a child aged over 14, and in some cases aged 10 to 14, is obligatory in court hearings on adoption.<sup>26</sup>

Complaints or petitions filed under the Appeals Act on behalf of minors or persons who lack legal capacity must be lodged by their legal representatives.

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

A child under the age of 14 years does not have legal procedural capacity. As mentioned in part II.B, their rights and interests are protected by their parents, adoptive parents, legal guardians and other persons entitled by law. However, the parents are not allowed to represent the child's interests if the guardianship and custodial body establishes that there exists a conflict between the parents' and child's interest. In that case, the guardianship and custodial body appoints a representative for protection of the child's rights.<sup>27</sup>

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

Article 92 of the Constitution states that legal assistance is recognised in all stages of investigation and court proceedings. The Bar Act establishes the structure, forms of operation of the legal profession and types of legal assistance.<sup>28</sup> In accordance with the law, the members of bar associations are required to provide free legal aid, among other cases, for plaintiffs in alimony cases in the court of first instance, to children under 18 years of age if they don't have legal guardians, and to persons whose overall income for each family member is lower than the monthly index.<sup>29</sup>

In criminal proceedings, a child suspect, accused or defendant must be guaranteed the assistance of a lawyer in all stages of the case.<sup>30</sup> If a lawyer is not called upon by the minor or his/her legal guardian, the investigation officer, prosecutor or the court are required to provide for the participation of a lawyer. In this case, legal aid fees are compensated by the state, but a duty of reimbursement can be imposed on the convicted person.<sup>31</sup>

Government order № 425 of 2 July 2015 establishes a Plan for provision of free legal aid in Tajikistan. Under this Plan, free legal aid will be available in criminal cases to children without a parent or a guardian, children with limited financial means, victims of domestic violence or torture, refugees and others.

E. Are there any other conditions or limits on children or chosen legal representatives

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<sup>26</sup> Civil Procedure Code, Article 277, 278.

<sup>27</sup> Family Code, Article 64(2).

<sup>28</sup> See Bar Act No. 1182 of 18 March 2015, available at:

[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CFgQFjAH&url=http%3A%2F%2Fwww.mmktj.org%2Fru%2Flibrary%2Fob\\_advokature\\_i\\_advokatskoi\\_deyatelnosti.doc&ei=K m9tVbH2NKi07gbKkoKYCA&usq=AFQjCNFk7cFRMGpuR2K1Q1ujHykm9S8PCw&bvm=bv.94455598.d.ZGU](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CFgQFjAH&url=http%3A%2F%2Fwww.mmktj.org%2Fru%2Flibrary%2Fob_advokature_i_advokatskoi_deyatelnosti.doc&ei=K m9tVbH2NKi07gbKkoKYCA&usq=AFQjCNFk7cFRMGpuR2K1Q1ujHykm9S8PCw&bvm=bv.94455598.d.ZGU)

<sup>29</sup> Ibid., Article 32.

<sup>30</sup> Code of Criminal Procedure, Article 51.

<sup>31</sup> Ibid., Article 50(11).

bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

In a case when a person is not able to appeal to the court independently due to their health condition, age, disability or other reasonable excuse, a prosecutor can bring a claim on his/her behalf. State and local bodies, individual citizens and organisations can appeal to the court for protection of the rights of a third person in cases specified by law. A claim for the protection of the rights of a person lacking procedural legal capacity can be filed even without the consent of the person or his/her legal guardian.<sup>32</sup>

### **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?

Depending on the type of violation, a legal challenge can be brought through civil, administrative, constitutional, or criminal proceedings (see part II.A above). Different rules and procedures are applicable for each of them.

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

The majority of civil cases in the first instance are handled by the city and district courts of general jurisdiction. The courts hear cases on infringed or disputed rights according to the rules of civil procedure arising from civil, labour, family, land, ecological, housing and other types of legal relationships (including challenging acts and decisions of state and local government bodies, state officials and public employees). Legal remedies available in civil proceedings include, for example, recognition of a right, restoration of a position prior to a violation of the right, ruling an act of a state or local government body as invalid, compensation for losses and non-pecuniary damages, or non-application of an act that is contradictory to the law by the court.<sup>33</sup>

Cases concerning administrative offences are handled by the courts and competent state bodies and officials. Administrative offences against minors (such as, failure to fulfil child-rearing obligations, abuse of the right of legal guardianship and custody, illegal adoption or transfer to adoptive family) are punished by an administrative fine.<sup>34</sup>

The Constitutional Court has the power to declare a normative act or its specific provision unconstitutional, which means that it ceases to have legal effect upon the promulgation of the judgment.<sup>35</sup> Judgments of the Constitutional Court are final.

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 Tajikistan does not guarantee the possibility of challenging an action

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<sup>32</sup> Ibid., Article 48.

<sup>33</sup> Civil Code, Article 12.

<sup>34</sup> Code of Administrative Offences, Articles 90-93.

<sup>35</sup> Constitutional Law on the Constitutional Court of Tajikistan, Article 16.

without naming a specific victim.

A civil claim must include the name and place of residence of the plaintiff and his/her representative if relevant. If a case is brought by a third person or organisation entitled to appeal to the court for the protection of the rights and interests of other persons, the victim must be informed of the case and participates in the civil proceedings as a plaintiff.<sup>36</sup>

A constitutional complaint must include information on all the applicants and the facts related to the discrepancy between a particular act and the Constitution.<sup>37</sup>

However, it is possible to file a claim for the protection of the rights and interests of an undefined group of people in cases specified by law. This right belongs to the prosecutor, state and local government bodies, individual citizens and organisations.<sup>38</sup>

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

Collective litigation is possible in civil and constitutional 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.<sup>39</sup> As stated in part III.C above, it is possible to file a claim for the protection of the rights and interests of an undefined group of people in cases specified by law.

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?

Non-governmental organisations (NGOs or public associations) are entitled to represent and defend in court its rights, legitimate interests of its members and participants, as well as the rights of other persons, for the purposes of achieving statutory goals.<sup>40</sup> Therefore, an NGO can bring a claim in defence of children's rights if such an activity is consistent with its statutory goals. The law also allows NGOs to participate in a case as an intervener with one of the litigants if the court decision can affect its rights and duties in relation to the parties to the case. NGO representatives can also participate in court hearings as third persons and provide statements on the case.

**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 judicial system of Tajikistan is comprised of the Constitutional Court, Supreme Court, Supreme Economic Court and other economic courts, military court, the court of autonomous region of Gorno-Badakhshan, of the city of Dushanbe, and city and district

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<sup>36</sup> Code of Civil Procedure, Article 40.

<sup>37</sup> Constitutional Law on the Constitutional Court of Tajikistan, Article 41.

<sup>38</sup> Code of Civil Procedure, Articles 47, 48.

<sup>39</sup> Ibid., Article 41.

<sup>40</sup> Public Associations Act, Article 24.

courts.<sup>41</sup> Therefore, there are no special courts with the competence to deal with crimes and administrative offences committed by children. The courts of general jurisdiction handle civil, administrative and criminal cases which fall under their competence. Upon the agreement of the parties, a civil case can also be heard by the arbitration court.

According to a general rule, a civil claim is filed with the court at the place of residence or place of business of the respondent.<sup>42</sup> Alimony and establishment of paternity claims can be filed at the place of residence of the plaintiff.<sup>43</sup> A claim challenging an act or decision of a state or local government body, state official or public employee can be filed both at the place of residence of the plaintiff or at the place of business of the respondent.<sup>44</sup> A civil claim must contain the plaintiff and respondent details, information on the violation, its circumstances and evidence as proof of a violation.<sup>45</sup> If a claim is filed by a prosecutor on behalf of a third person, it must indicate the reason for the represented person's failure to file a claim himself/herself.<sup>46</sup> Upon admission of a civil claim, the court conducts preparation work and a preliminary hearing.

Administrative cases are opened upon detecting an offence by the competent bodies or upon receiving information about an offence from the law enforcement bodies, local governments, public associations, individuals, organisations and mass media.<sup>47</sup> Opening a case is followed by an administrative investigation before passing case materials to the court or a competent body or official that is entitled to rule on the case.

Opening a criminal case is followed by a preliminary investigation conducted by the prosecution office, internal affairs bodies, national security, anti-corruption and drug control bodies.<sup>48</sup>

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?

For free legal aid, see part II.D above.

In some cases a plaintiff can be exempted from paying state duty, for example, in alimony cases and cases concerning compensation for damage caused by a crime.<sup>49</sup> Organisations and individuals are exempted from paying state duty when they successfully appeal to a court for the protection of the rights and interests of other persons. Additionally, the court may exempt an individual from state duties or decrease, postpone and permit execution of payment by installments.<sup>50</sup>

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<sup>41</sup> Tajikistan Courts Constitutional Act, Article 20.

<sup>42</sup> Code of Civil Procedure, Article 30.

<sup>43</sup> Ibid., Article 31

<sup>44</sup> Ibid., Article 254

<sup>45</sup> Ibid., Article 134

<sup>46</sup> Ibid., Article 134(5)

<sup>47</sup> Code of Administrative Procedure, Article 81.

<sup>48</sup> Code of Criminal Procedure, Article 159.

<sup>49</sup> State Duties Act, Article 5 .

<sup>50</sup> Code of Civil Procedure, Article 91.

In criminal cases, court costs can be paid by the state in case of financial insolvency of the convicted person, or if paying such costs can negatively affect the financial situation of the convicted person's dependants. Court costs in cases concerning crimes committed by children can be imposed on their parents.<sup>51</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 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 Tajikistan. A full list of organisations is available at:

<http://www.notabene.tj/index.php/2012-08-20-10-31-28/sajty-obshchestvennykh-organizatsij-respubliki-tadzhikistan>.

Free legal advice is also provided to individuals with low income by students of legal clinics working under the guidance of their tutors.<sup>52</sup>

It is reported, however, that lawyers are generally unwilling to work on a pro bono basis, and provide free legal assistance only when it is required by law. As most children with problems come from poor families, lack of access to pro bono legal services poses an obstacle to access to justice for many children in Tajikistan.<sup>53</sup>

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, the general statute of limitations is three years;<sup>54</sup> specific statute of limitations periods depend on the nature of the claim.<sup>55</sup> In terms of challenging administrative legal acts or omissions, the statute of limitations is six months.<sup>56</sup> However, the statute of limitations is applied by the court only upon the request of the parties and therefore cannot automatically impede acceptance of the claim by the court.

The statute of limitations for filing a constitutional complaint is six months.

The Penal Code provides the following statutes of limitations:

- 2 years after the commission of a crime of light gravity;
- 6 years after the commission of a crime of average gravity;
- 10 years after the commission of a grave crime; and
- 15 years after the commission of an especially grave crime.

There is no limitation period for crimes against peace and humanity. Additionally, the court can decide not to apply the statute of limitations to crimes punishable by life

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<sup>51</sup> Code of Criminal Procedure, Article 139.

<sup>52</sup> [http://codolc.com/clinic/175-rossiisko\\_tadzhikskiiy\\_slavyanskiy\\_universitet\\_yuridicheskaya/](http://codolc.com/clinic/175-rossiisko_tadzhikskiiy_slavyanskiy_universitet_yuridicheskaya/).

<sup>53</sup> This is according to feedback we received on this report in April 2014.

<sup>54</sup> Civil Code, Article 221.

<sup>55</sup> Ibid., Article 222.

<sup>56</sup> Code of Administrative Procedure, Article 125(3).



imprisonment or the death penalty.<sup>57</sup>

The legislation of Tajikistan does not contain special provisions that allow young adults to bring cases concerning violations of their rights that occurred when they were children. However, under the Civil Procedure Code, the court may admit cases which have been delayed due to exceptional circumstances, such as prolonged illness, destitution, illiteracy or other. Such an exception could be made when the case could not be started due to the plaintiff's age and limited legal capacity.<sup>58</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?

In criminal proceedings, the following types of evidence are considered: testimony, material evidence, expert and specialist reports, records of court and investigation, recorded phone records, digital, video- and audio observations..<sup>59</sup> In criminal cases involving a minor suspect, the following must be established, among other circumstances of the crime: the exact age of the child, his/her life, education and upbringing conditions, contributing causes of the offence and the presence of adult instigators or perpetrators.<sup>60</sup>

The Code of Criminal Procedure sets forth special provisions regarding the interrogation of children. A witness or a victim under 16 years is summoned for interrogation through his/her parents or legal guardians.<sup>61</sup> If an interrogated witness or victim is under 16, and upon the investigator's consideration if the witness or victim is above 16, a pedagogue should be present during the interrogation. Parents or legal guardians have the right to be present as well. Persons present at the interrogation may pose questions and make observations upon the consent of the interrogator. Witnesses and victims under 16 are not warned about the responsibility for refusing to give testimony or giving false testimony. The interrogator urges them to tell only the truth and explains the right to refuse to give testimony exposing their close relatives or themselves.<sup>62</sup> A suspect, accused or convict under the age of 16 is also summoned for interrogation through their parents or legal guardians. The interrogation cannot last for more than two consecutive hours or four hours a day in total. A pedagogue and psychologist must be present at the interrogation of a child under 16 years. They can ask questions and make observations concerning the interrogation records upon the interrogator's consent. Legal guardians are summoned to the court hearings involving minors. Minors can be expelled from the courtroom if the circumstances under consideration can negatively affect them.<sup>63</sup>

Similar rules are established for civil proceedings. According to the Code of Civil Procedure, the presiding justice explains to witnesses under 16 that they are obliged to state honestly all they know about the case in question, but they are not warned of their liability for refusal to give evidence, avoiding giving evidence or giving evidence

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<sup>57</sup> Penal Code, Article 75.

<sup>58</sup> Code of Civil Procedure, Article 229.

<sup>59</sup> Code of Criminal Procedure, Article 72(2).

<sup>60</sup> Ibid., Article 90.

<sup>61</sup> Ibid., Article 198(5).

<sup>62</sup> Ibid., Article 203.

<sup>63</sup> Ibid., Article 434.

known to be false.<sup>64</sup> The interrogation of children under 14 as well as children aged 14 to 18 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.<sup>65</sup> A child under 18 shall leave the courtroom at the end of his or her interrogation unless the court deems his or her presence is necessary.<sup>66</sup>

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

In civil cases, a final judgment shall be produced, generally, within three months.<sup>67</sup> There are few exceptions to the general rule<sup>68</sup> (for example, one month for alimony cases and challenging administrative acts or decisions).<sup>69</sup> The consideration of an administrative offence case shall not exceed 20 days.<sup>70</sup> The consideration of a constitutional claim by the Constitutional Court shall not exceed six months.<sup>71</sup>

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

According to the rules of civil procedure, all court rulings issued in the first instance and not entered into force can be appealed through filing a cassation complaint (by the parties to the case) or a cassation plea (by the prosecutor participating in the case).<sup>72</sup> A cassation complaint or prosecutor's plea is filed with the court that issued the ruling within one month after receiving a copy by the parties.<sup>73</sup> The court considering the case in the cassation instance can leave the initial ruling without changes, cancel the ruling in part or in total and redirect the case for reconsideration, introduce changes or issue a new ruling and close the case.<sup>74</sup> A court decree that has already entered into force can be appealed through filing a supervisory complaint (by the parties to the case or other persons affected by the ruling) or a supervisory plea (by the prosecutor).<sup>75</sup> A supervisory complaint or plea is filed directly with the court entitled to act as a supervisory court in the given case. Court decrees that have entered into force can also be revised on the grounds of newly discovered circumstances. A revision claim can be lodged by the parties to the case, prosecutor and other persons participating in the case within three months from the date of establishing the existence of the new circumstances.<sup>76</sup>

A similar appeal and revision order is established for criminal and administrative proceedings. Rulings on administrative offences can be appealed within 10 days<sup>77</sup> and are considered by the upper court or upper state body or official.<sup>78</sup> Rulings on criminal

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<sup>64</sup> Code of Civil Procedure, Article 176.

<sup>65</sup> Ibid., Article 183(1).

<sup>66</sup> Ibid., Article 183(3).

<sup>67</sup> Code of Civil Procedure, Article 157(1).

<sup>68</sup> Ibid., Article 157(3).

<sup>69</sup> Ibid., Article 257.

<sup>70</sup> Code of Administrative Procedure, Article 136.

<sup>71</sup> Constitutional Law on the Constitutional Court of Tajikistan, Article 45.

<sup>72</sup> Code of Civil Procedure, Article 325.

<sup>73</sup> Ibid., Articles 326, 327.

<sup>74</sup> Ibid., Article 350.

<sup>75</sup> Ibid., Article 365.

<sup>76</sup> Ibid., Articles 382, 383.

<sup>77</sup> Code of Administrative Procedure, Article 150.

<sup>78</sup> Ibid., Article 148.

cases that have not entered into force can be appealed within 10 days as well.<sup>79</sup> Judgments of the Constitutional Court are final and cannot be appealed.<sup>80</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?

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?

In practice, court rulings are not always properly executed, or their execution takes a very long time, especially in alimony, housing and compensation for damages cases.<sup>81</sup>

**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.

According to feedback we received on this report, access to justice for children in Tajikistan is virtually absent in practice, and parents often do not represent the interests of their children. It is reported that parents are unwilling to be involved in court proceedings and have resorted to bribery as a way of resolving their problems. Parents often choose to hand over their children to institutions under the pretext that they are not able to care for them or deal with them.

Similarly, the Committee on the Rights of the Child has expressed its concern at the fact that many parents prefer institutionalisation of children for economic reasons and that most families are not aware of the negative effects that institutionalisation can have on a child's development.<sup>82</sup> According to a US State Department report, low wages for judges and prosecutors left them vulnerable to bribery, which was a common practice.<sup>83</sup>

The Committee on the Rights of the Child has expressed its concern that the Tajik criminal justice system lacks juvenile courts, judges who specialise in juvenile justice and a separate form of criminal procedure for children in conflict with the law. It has recommended the establishment of a juvenile justice system in full compliance with juvenile justice standards.<sup>84</sup> It is important to note that Tajikistan is currently undertaking law reform in the area of justice and Executive Order of the President of Tajikistan № 327 of 5 January 2015 approved a Programme for judicial reform, which will assess the possibility of creating juvenile courts.<sup>85</sup> It has also recommended that

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<sup>79</sup> Code of Criminal procedure, Article 359.

<sup>80</sup> Constitutional Law on the Constitutional Court of Tajikistan, Article 16.

<sup>81</sup> See

<http://www.news.tj/ru/news/sudebnye-resheniya-v-tadzhikistane-chasto-ne-ispolnyayutsya-chto-vredit-im-idzhu-tretei-vlasti>.

<sup>82</sup> UN Committee on the Rights of the Child, para. 42.

<sup>83</sup> US Department of State, '2013 Human rights reports: Tajikistan', 27 February 2014, available at:

<http://www.state.gov/j/drl/rls/hrrpt/2013/sca/220406.htm>.

<sup>84</sup> UN Committee on the Rights of the Child, paras 72-73.

<sup>85</sup> Information provided to CRIN by the Embassy of Tajikistan in the United Kingdom.

Tajikistan ensure, through adequate legal provisions and regulations, that all child victims and/or witnesses of crimes are provided with the protection required by the CRC.<sup>86</sup>

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

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<sup>86</sup> Ibid., para. 74.