

ACCESS TO JUSTICE FOR CHILDREN: UZBEKISTAN

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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?

Uzbekistan ratified the CRC in June 1994. The Constitution does not specifically address the status of ratified international instruments in the Uzbek legal system.¹ However, it appears that the CRC has the force of law under the International Treaties Act 1995 which requires the direct and mandatory application of international treaties.²

B. Does the CRC take precedence over national law?

It appears that the CRC takes precedence over some but not all national law. Although the Constitution states that “[t]he Constitution and the laws of the Republic of Uzbekistan shall have absolute supremacy in the Republic of Uzbekistan,”³ its Preamble also recognises the “priority of the generally accepted norms of the international law.”⁴ Furthermore, some domestic legislation, including the Family Code, requires the CRC to be applied in place of domestic law in cases of inconsistency between the two.⁵

C. Has the CRC been incorporated into national law?

The CRC appears to be automatically incorporated. Uzbekistan has enacted various legislative instruments in the field of children’s rights, including the following:

- The Family Code;
- The Rights of the Child Act of 7 January 2008;⁶
- The Human Trafficking Prevention Act of 17 April 2008;⁷

¹ REDRESS, *Reparation for Torture: A Survey of Law and Practice in 30 Selected Countries (Uzbekistan Country Report)*, available at: <http://www.redress.org/downloads/country-reports/Uzbekistan.pdf> and UN Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Uzbekistan*, CRC/C/UZ/CO/3-4, 13 June 2013, available at: <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-UZB-CO-3-4.pdf>.

² UN Committee on the Elimination of Racial Discrimination, *Combined sixth and seventh periodic reports of Uzbekistan to the UN Committee on the Elimination of Racial Discrimination*, CERD/C/UZB/6-7, 28 November 2008, para. 137, available at: <http://www.refworld.org/pdfid/4d2c5fae2.pdf>.

³ Constitution of the Republic of Uzbekistan, Article 15, available at: <http://www.ksu.uz/en/page/index/id/7>.

⁴ *Id.*

⁵ Family Code, Article 9, available at: http://www.lex.uz/Pages/GetAct.aspx?lact_id=104723.

⁶ Available at: http://www.lex.uz/Pages/GetAct.aspx?lact_id=1297318.

⁷ Available at: www.hsph.harvard.edu/population/trafficking/uzbekistan.trafficking5.08.doc.

- The Education Act 1997;⁸
- Presidential Decree of 18 May 2007 on additional measures for the material and moral support of young families;⁹
- The Prevention of Child Neglect and Juvenile Delinquency Act of 29 September 2010;¹⁰
- Guardianship and Custody Act of 2 January 2014.¹¹

The Constitution also sets forth a few provisions that apply to children: the right to education and free secondary education,¹² the right of minors to protection the State,¹³ as well as equality before the law.¹⁴

Nonetheless, Uzbekistan still needs to enact additional legislations to bring Uzbek laws fully in line with the CRC.¹⁵

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

It is unlikely that the CRC can be cited in the courts.¹⁶ Although Uzbekistan's legal system recognises the supremacy of international law over domestic law, "in order to be applied, an international instrument must be incorporated in domestic law. Following incorporation, the rules of international law become part of domestic law with binding force. But it has not become standard practice for judicial bodies to cite specific international instrument directly; such practice is in fact extremely rare".¹⁷

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

A survey of the experiences of 47 lawyers working in Tashkent over the past 10 years revealed that, in practice, judges refer only to domestic law and do not welcome references to international human rights treaties.¹⁸ None of the interviewed lawyers could identify any case in the past ten years which

⁸ Available at: http://www.lex.uz/pages/GetAct.aspx?lact_id=15622.

⁹ Available at:

<http://uza.uz/ru/documents/o-dopolnitelnykh-merakh-po-materialnoi-i-moralnoi-podderzhke-molodykh-semei-18.05.2007-207>.

¹⁰ Available at: http://www.lex.uz/pages/getpage.aspx?lact_id=1685724

¹¹ Available at: http://www.lex.uz/pages/getpage.aspx?lact_id=2307828

¹² Constitution, Article 41.

¹³ Constitution, Article 45.

¹⁴ Constitution, Article 65.

¹⁵ UN Committee on the Rights of the Child, *Concluding Observations on the third and fourth periodic reports of Uzbekistan*, para. 9.

¹⁶ UN Committee on the Rights of the Child, *Concluding Observations on the third and fourth periodic reports of Uzbekistan*, para. 8.

¹⁷ *Core documents forming part of the reports of State parties: Uzbekistan*, HRI/CORE/UZB/2010, 18 Jan 2012, p.27, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2FCORE%2FUZB%2F2010&Lang=en

¹⁸ Uzbek Bureau for Human Rights and Rule of Law, *Uzbekistan's Implementation of the CRC*, April 2013, p. 4, available at:

http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/UZB/INT_CRC_NGO_UZB_13844_E.pdf

referred to the CRC or another international treaty.¹⁹

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?

Children are permitted to bring civil lawsuits in national courts to challenge violations of their rights, but may only do so through their parents, adoptive parents, or guardians.²⁰

Children and their parents or guardians may also challenge human rights violations by state bodies, enterprises and NGOs by lodging complaints with the Office of the Ombudsman.²¹ The activity of the Ombudsman does not substitute but rather complements the existing remedies for protection of citizens' human rights and freedoms, therefore, the complaints concern issues that have already been administratively or legally considered and where the applicant was not satisfied with the decisions taken accordingly.²² Nonetheless, the Office of the Ombudsman has been deemed ineffective for the protection of the rights of the child by both the Uzbek Bureau for Human Rights²³ and the Committee on the Rights of the Child.²⁴

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?

Under the Code of Civil Procedure, cases may be brought in the name of and on behalf of children of any age, but must be filed by a legal representative such as parents, adoptive parents, or guardians.²⁵ An exception to this rule exists in relation to labour law disputes, which minors may initiate themselves, but it is up to the court to decide whether a parent must be involved.²⁶ Although children aged between 14 and 18 must be represented, they can participate in the proceedings.²⁷

Children who have attained the age of 16, may appear on their own behalf in court in an action seeking to become emancipated.²⁸

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

¹⁹ *Id.*, p. 3.

²⁰ Code of Civil Procedure of the Republic of Uzbekistan, Articles 38 and 51, available at: http://fmc.uz/legisl.php?id=k_grajd_pr.

²¹ Official website of the Authorised Person of the Republic of Uzbekistan for Human Rights (Ombudsman), available at: <http://ombudsman.uz/>.

²² *Id.* at: <http://ombudsman.uz/ombudsman-powers-and-authorities>.

²³ Uzbek Bureau for Human Rights and Rule of Law, *Uzbekistan's Implementation of the CRC*, p. 4.

²⁴ UN Committee on the Rights of the Child, *Concluding Observations on the third and fourth periodic reports of Uzbekistan*, para. 7.

²⁵ Code of Civil Procedure, Article 38.

²⁶ Code of Civil Procedure, Article 38.

²⁷ Code of Civil Procedure, Article 38.

²⁸ Code of Civil Procedure, Article 38.

brought?

Cases on behalf of infants or young children must be filed by a legal representative or by guardianship and custody bodies²⁹, same as in relation to an older child.³⁰

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

Children and their representatives are not guaranteed legal assistance in bringing civil cases. In criminal cases children are entitled to a defence counsel and such representation is guaranteed at the expense of the State, and at no cost for the suspect, accused or defendant.³¹

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

No further limitations were identified.

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

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The Constitution of Uzbekistan guarantees the right of everyone to judicial protection of his or her rights and freedoms, and the right to complain to the courts concerning unlawful acts of State agencies or officials or civil society organizations.³² Violations of children's rights granted by the Constitution or the CRC or other ratified international treaty may be challenged in the civil courts, in accordance with the procedure outlined in part IV.A.

Inter-district, regional, and civil courts can adjudicate civil lawsuits on the basis of the Constitution and the laws of the Republic of Uzbekistan.³³

Additionally, the Constitution of the Republic of Uzbekistan empowers the Constitutional Court of the Republic of Uzbekistan to assess the conformity of treaty obligations with the Constitution.³⁴ Further, the Constitutional

²⁹ Code of Civil Procedure, Article 48 and Guardianship and Custody Act, Article 14.

³⁰ Code of Civil Procedure, Article 38.

³¹ Code of Criminal Procedure of the Republic of Uzbekistan, Articles 50-51, 550, available at: http://lex.uz/pages/getpage.aspx?lact_id=111463 . See also Cabinet of Ministers decree of 20 June 2008 N 137, approved by the Ministry of Justice and the Ministry of Finance on 26 November 2008, registered in the Ministry of Justice on 2 December 2008 N 1878, available at: http://www.lex.uz/pages/GetAct.aspx?lact_id=541540.

³² Constitution, Article 44.

³³ Code of Civil Procedure, Article 12.

³⁴ Constitution, Article 108-109.

Court is charged to render decisions on the constitutionality of the acts of the legislative and executive branches.³⁵

The Ombudsman investigates every communication concerning issues involving a violation of the rights of minors and refers the complaints to the appropriate bodies or conducts his or her own investigation.³⁶ The complaints can be filed by parents, relatives, close friends, neighbors, or workers in children's establishments.³⁷

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

Uzbekistan's legislation spells out the legal remedies regarding violations of protected rights; these remedies are established in legislative instruments, including the following: the Civil Code, the Code of Civil Procedure, the Courts Act, the Office of the Procurator-General Act, the Citizens' Applications Act, the Human Rights and Freedoms (Reporting of Violations to the Courts) Act, the Parliamentary Ombudsman Act, the Legal Profession Act, the Non-Profit NGOs Act, the Regulations of the Ministry of Justice, the Regulations of the Ministry of Internal Affairs.³⁸

For example, the Civil Code explicitly outlines the methods for protection of civil rights, including: recognition of the right, restoration of the situation that existed prior to the violation of law, suppression of acts that infringe or threatening to infringe, invalidation of the transaction, fulfillment of an obligation in kind, award of damages, award of a penalty, award of non-pecuniary damages and termination or modification of relationship.³⁹

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?

To bring forth civil proceedings, a plaintiff must file an application in writing that contains the name of the plaintiff and his claim.⁴⁰ In case a lawsuit is brought by a body or a person on behalf of a third person, the demand should indicate the name and address of a person in whose interests this demand is filed.⁴¹ Therefore, it does not appear possible to bring proceedings on behalf of an unspecified or unnamed victim.

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

³⁵ Globalex, *UPDATE: A Guide to Legal Research in Uzbekistan*, available at: <http://www.nyulawglobal.org/globalex/Uzbekistan1.htm#Judiciary>.

³⁶ *Id.*, para. 967.

³⁷ *Id.*, para. 968.

³⁸ *Combined third and fourth periodic reports of Uzbekistan to the UN Committee on the Rights of the Child*, para. 161, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fUZB%2f3-4&Lang=en.

³⁹ Civil Code, Article 11, available at: http://fmc.uz/legisl.php?id=k_grajd_12.

⁴⁰ Code of Civil Procedure, Article 149.

⁴¹ Code of Civil Procedure, Article 149.

The Code of Civil Procedure does not appear to directly address whether collective action or group litigation such as class actions are possible in the civil courts of Uzbekistan. However, the Code of Civil Procedure does allow actions by a number of people as co-plaintiffs.⁴²

Additionally, the Code allows third parties who are not alleging independent claims on the matter in dispute in the court to intervene as an interested party on either the plaintiff or defendant side, if the decision may affect the third parties' rights or obligations with respect to the plaintiffs or defendants.⁴³

E. Are non-governmental organizations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Non-governmental organisations may appear in civil courts as voluntary representatives and are permitted to file challenges to alleged children's rights violations,⁴⁴ when such right is directly envisaged by laws or regulations.⁴⁵ However, it is not clear whether non-governmental organisations may intervene in cases outside of the role of a voluntary representative, e.g. as a third party without autonomous claims.⁴⁶

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 inter-district, city or regional civil courts typically have jurisdiction over civil lawsuits. In order to initiate legal proceedings, a plaintiff must file an application in writing that contains the name of the court, the plaintiff's and defendant's details (name, place of residence, representative details), as well as details of the claim (price, circumstances and supporting evidence).⁴⁷

A judge is assigned to each case and will decide if a complaint is admissible and will investigate the facts during hearings at the pre-trial stage.⁴⁸

B. Legal aid / Court costs. Under what conditions would free or subsidized 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

⁴² Code of Civil Procedure, Article 41.

⁴³ Code of Civil Procedure, Article 45.

⁴⁴ *Combined third and fourth periodic reports of Uzbekistan to the UN Committee on the Rights of the Child*, para. 169.

⁴⁵ Code of Civil Procedure, Article 52.

⁴⁶ Code of Civil Procedure, Article 45.

⁴⁷ Code of Civil Procedure, Article 149.

⁴⁸ Code of Civil Procedure, Article 158

or their representatives be expected to pay court costs or cover other expenses?

As explained in part II.D, child complainants and their representatives are not guaranteed legal assistance in bringing civil cases.

In addition, all plaintiffs are expected to pay the state-mandated court fees to file a case which are proportional to the size of the claim.⁴⁹ Research did not identify any provision explicitly exempting children from payment of such fees. However, there exists a general provision stating that a person may be exempted from the payment of legal fee, or payment can be postponed, executed by installments or decreased in amount.⁵⁰

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organization, or under an agreement that does not require the payment of legal fees up front?

According to a report produced by the State, free legal advice is provided to members of the public by legal clinics based at universities,⁵¹ however, research could only identify one such clinic at the University of World Economy and Diplomacy.⁵²

It is generally possible for practicing lawyers to offer legal assistance on a pro bono basis, but there does not appear to be any laws regulating this matter. The United Nations Volunteers (UNV) and the United Nations Development Programme (UNDP) have created a legal support website in Tashkent to help the city's residents obtain legal advice and support.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 general statute of limitations for civil cases is three years, and the limitation period commences on the date when the person knew or should have known about the violation of their rights.⁵⁴ However, this general statute of limitations does not apply to claims for damage to life or health.⁵⁵ Neither is any time limitation applicable to crimes against the peace and security of mankind, including genocide and violations of the laws and

⁴⁹ Hans-Joachim Schramm, 'Access to justice in Central Asian Countries' in Schmiegelow and Schmiegelow (eds.), *Institutional Competition Between Common Law and Civil Law: Theory and Policy*, Springer, January 2014, at p. 286.

⁵⁰ Code of Civil Procedure, Article 110-111.

⁵¹ *Combined third and fourth periodic reports of Uzbekistan to the UN Committee on the Rights of the Child*, CRC/C/UZB/3-4, 22 February 2010, para. 169.

⁵² <http://turkistonpress.uz/article/8683>.

⁵³ UN Volunteers, *Improving Access to Legal Services*, available at: <http://www.unv.org/en/what-we-do/countries-and-territories/uzbekistan/doc/improving-access-to-legal.html>.

⁵⁴ Civil Code, Articles 150 and 154.

⁵⁵ *Id.* at art. 163.

customs of war.⁵⁶

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

The plaintiff must prove the factual basis for its claims; but when there is *prima facie* evidence, the burden of proof can shift to the opposing party.⁵⁷ The court will only consider evidence that is relevant to the case.⁵⁸

According to the Code of Criminal Procedure, interrogation of the witness or victim under 16 years old takes place with the participation of a legal representative or a close relative, an educator or a witness's representative upon their consent.⁵⁹ Indicated persons can ask questions to a victim or a witness with the consent of interrogator.⁶⁰ Witnesses and victims under 16 years old are not warned about their liability for refusing to answer a question or give evidence or for knowingly give false evidence, but simply reminded of a moral duty to give truthful testimony and, by the means of it, contribute to establishing the truth.⁶¹ Court interrogation of an underage witness can be conducted in the absence of the defendant upon the decision of the judge, when required by the interests of the case.⁶²

Similarly, in the civil procedure, an underage person can be questioned in the court hearing in the absence of certain persons upon the decision of the judge.⁶³ Minors are allowed to leave the hearing as soon as they are done with questioning, except when the court considers their presence as necessary.⁶⁴

In all criminal cases involving a minor as a suspect, accused person or defendant, it must be determined, among other circumstances, the exact age of the accused, their personal traits and health condition, living and upbringing conditions and the presence or absence of adult instigators or other perpetrators.⁶⁵

Interrogation of a minor accused person and defendant is conducted only with participation of a lawyer. Legal representative, educators or psychologists can participate upon the consent of the investigator or the prosecutor. They can be allowed to ask questions during the interrogation,

⁵⁶ As provided in the Criminal Code - ICRC, *Practice Related to Rule 160*, available at: http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule160.

⁵⁷ *Redress, Reparation for torture*, at p. 15. Although this publication by REDRESS focuses on the reparation for torture, its description of the civil procedure is applicable to civil proceedings generally, including civil lawsuits for violations for the rights and legal interest of a child.

⁵⁸ Code of Civil Procedure, Article 58.

⁵⁹ Code of Criminal Procedure, Article 121.

⁶⁰ Code of Criminal Procedure, Article 121.

⁶¹ Code of Criminal Procedure, Article 121.

⁶² Code of Criminal Procedure, Article 442.

⁶³ Code of Civil Procedure, Article 185.

⁶⁴ Code of Civil Procedure, Article 185.

⁶⁵ Code of Criminal Procedure, Article 548.

get acquainted with the interrogation protocol and submit their comments.⁶⁶

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

Preparation of a civil case for judicial proceeding must be completed within 10 days after a claim has been admitted. In exceptional cases this period can be extended up to 20 days.⁶⁷ Alimony cases, as well as compensation claims arising from injuries or other health damage, or death of a 'breadwinner', and cases arising from labour relationships must be considered by the court within 10 days when the parties are residing in the same city or district, and within 20 days in other cases.⁶⁸

Regarding other cases, once a judge decides that the case is admissible, he or she must adjudicate the claim within a one-month period, or in exceptional cases, this term might be extended to two months.⁶⁹

Regarding criminal procedure, any complaints, communications or other information concerning crimes must be registered and addressed immediately, or within 10 days, when it is necessary to verify legality of motives and validity of grounds to open a criminal case, which can be extended to one month in exceptional cases.⁷⁰ As a general rule, preliminary investigation must be completed within 3 months.⁷¹ Court hearings on a criminal case must not exceed two months, which can be extended up to 6 months in exceptional cases upon the resolution of an authorized judge.⁷²

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

Civil court decision can be challenged by the prosecutor or appealed by the parties to the case, as well as other interested parties involved in the case, or persons, on whose rights and duties the court pronounced, within 20 days of the adoption of the decision.⁷³

Criminal sentences may be appealed by the convicted person, their lawyer, legal representative or by the victim or their legal representative within 10 days of the sentence announcement.⁷⁴

- 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?

Uzbekistan has a civil law system, meaning that judicial decisions are not

⁶⁶ Code of Criminal Procedure, Article 553-555.

⁶⁷ Code of Civil Procedure, Article 131.

⁶⁸ Code of Civil Procedure, Article 131.

⁶⁹ Code of Civil Procedure, Article 131.

⁷⁰ Code of Criminal Procedure, Article 329.

⁷¹ Code of Criminal Procedure, Article 351.

⁷² Code of Criminal Procedure, Article 405.

⁷³ Code of Criminal Procedure, Article 320.

⁷⁴ Code of Criminal Procedure, Article 497.

considered a source of law. Nevertheless, Supreme Court can adopt directives on a group of similar cases which would serve as clarifying guidelines for the lower courts. A negative directive of the Supreme Court could potentially have long-lasting negative impact on other cases alleging children's rights violations in the lower courts.

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

Uzbekistan suffers from widespread corruption in almost all branches of the government, and in particular the law enforcement and judiciary.⁷⁵ Where a case has been successfully brought against the Government, there is no guarantee that the court will satisfy the demand or that its decision will be respected.

- 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.

Under the Family Code, children have the right to protection of their rights and legal interests, and such protection is carried out by their parents, and, in cases stipulated by the present code, by the body of guardianship and trusteeship, the public prosecutor, and the court.⁷⁶ In the case of abuse, including non-fulfillment or improper fulfillment by their parents of responsibilities for the child's upbringing and education, minors have the right independently to turn for protection of their rights and legal interests to the body of guardianship and trusteeship and, upon reaching 14 years of age, to the court.⁷⁷

Additionally, persons who become aware of any threat to the life or health of a child, or infringement of the child's rights and legal interests, have an obligation to inform the body of guardianship and trusteeship located near the child's residence, who, upon receiving such notice, who has an obligation to take necessary protective measures for the child.⁷⁸

Under the Law on the guarantees of the rights of the child, every child enjoys human rights and freedoms according to the Constitution and other laws.⁷⁹ The State adopts appropriate measures to ensure child's protection from all forms of discrimination.⁸⁰

A child has the right to protection from abuse by a parent or legal representative. In case of violation of the rights, freedoms or other lawful interests of a child, they have the right to seek protection from the

⁷⁵ Uzbek Bureau for Human Rights and Rule of Law, *Uzbekistan's Implementation of the CRC*, at p. 5.

⁷⁶ Family Code, Article 67, available at:

<http://www.crin.org/en/library/legal-database/sections-family-code-republic-uzbekistan>.

⁷⁷ Family Code, Article 67.

⁷⁸ Family Code, Article 67.

⁷⁹ Law on the guarantees of the rights of the child, Article 7, available at:

http://www.lex.uz/Pages/GetAct.aspx?lact_id=1297318.

⁸⁰ Law on the guarantees of the rights of the child, Article 7.

guardianship bodies independently⁸¹.

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

⁸¹ Law on the guarantees of the rights of the child, Article 11.