

# **ACCESS TO JUSTICE FOR CHILDREN: BOSNIA AND HERZEGOVINA**

*This report was produced by White & Case LLP [February 2015] but may have been subsequently edited by Child Rights International Network (CRIN). 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?**

Bosnia and Herzegovina ratified CRC on 1 September 1993<sup>1</sup> and incorporated into national law by constitution. Unlike many countries, Bosnia has ratified the CRC in its entirety, withdrawing a reservation relating to Article 9(1) in September 2008.<sup>2</sup> The CRC can be considered by the Constitutional Court's House of Human Rights, but it does not supersede domestic laws.<sup>3</sup> Bosnia's complex national structure, comprising three essentially autonomous states unified by a weak central government, further complicates the effectiveness and uniform application of the CRC.

The European Convention on Human Rights and Fundamental Freedoms (ECHR) and its protocols are directly applicable in Bosnia and "have priority over all other laws."<sup>4</sup>

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

The CRC does not supersede Bosnia's domestic laws.

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

Annex I of the Constitution identifies the CRC as one of many human rights agreements to be applied in Bosnia.<sup>5</sup>

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

There is no comprehensive system of children's rights that gives direct judicial effect to the CRC.<sup>6</sup>

### **E. Are there examples of domestic courts using or applying the CRC or other**

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<sup>1</sup> See [http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-11&chapter=4&lang=en#1](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en#1).

<sup>2</sup> [http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-11&chapter=4&lang=en#19](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en#19).

<sup>3</sup> See <http://www.crin.org/en/library/publications/bosnia-and-herzegovina-national-laws>.

<sup>4</sup> See <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/InstitutionofHROmbudsmanofBiH.pdf>, Section B.

<sup>5</sup> <http://www1.umn.edu/humanrts/icty/dayton/daytonannex4.html>.

<sup>6</sup> See <http://www.crin.org/en/library/publications/bosnia-and-herzegovina-national-laws>.

relevant international instruments?

The Constitutional Court of Bosnia and Herzegovina references the CRC when considering the revocation of parental rights, generally due to abuse or neglect. Reported decisions are limited, and the Constitutional Court appears to have applied the CRC in only one decision on the merits, finding that removal of a child from the parental home complied with the CRC given the facts of the case.<sup>7</sup>

## 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?

Article 53 of Bosnian Code of Civil Procedure sets forth the requirements for bringing a suit.<sup>8</sup> Age is not listed among the criteria.

The Bosnian Code of Criminal Procedure allows all citizens to report any criminal offense to the proper authority.<sup>9</sup> It further imposes an affirmative duty to report crimes against children upon medical workers, teachers, pedagogues, parents, foster parents, adoptive parents and other persons authorized or obligated to provide protection and assistance to minors, to supervise, educate and raise the minors.<sup>10</sup>

A citizen whose rights or fundamental freedoms enshrined in the Constitution have been violated by a final administrative individual act is entitled to request the protection of the rights or freedoms from the Court.<sup>11</sup> Protection of freedoms and rights of citizens enshrined in the Constitution are also provided if those rights or freedoms are violated by an action of an official in an institution, or of the responsible person in a public agency or public corporation, which directly prevents from or restricts, contrary to law, a certain individual in exercising such freedom or right.<sup>12</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 Article 292 of Bosnian Code of Civil Procedure, a minor who

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<sup>7</sup> Constitutional Court of Bosnia and Herzegovina, Case AP-717/08 Sakib Music, decided 9 July 2010.

Available at: <http://www.ccbh.ba/eng/odluke/index.php?src=2#>.

<sup>8</sup> Bosnian Code of Civil Procedure, Art. 53. Available at:

<https://advokat-prnjavorac.com/legislation/Civil-Procedure-Code-Federation-BiH.pdf>.

<sup>9</sup> Criminal Procedure Code of Bosnia and Herzegovina, Art. 214(1). Available at:

<http://www.ohr.int/ohr-dept/legal/oth-legist/doc/criminal-procedure-code-of-bih.doc>.

<sup>10</sup> Ibid., Art. 213(2).

<sup>11</sup> Law on Administrative Disputes of Bosnia and Herzegovina, Art. 67. Available at:

[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCkQFjAB&url=http%3A%2F%2Fwww.legislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F5515%2Ffile%2FBiH\\_law\\_administrative\\_disputes\\_2002\\_en.pdf&ei=UPk4VcqyBYPbaPPmgZgD&usg=AFQjCNHjm0VDNZnlxXsBZ2gc9N9zFs\\_EMw&bvm=bv.91427555.d.d2s](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCkQFjAB&url=http%3A%2F%2Fwww.legislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F5515%2Ffile%2FBiH_law_administrative_disputes_2002_en.pdf&ei=UPk4VcqyBYPbaPPmgZgD&usg=AFQjCNHjm0VDNZnlxXsBZ2gc9N9zFs_EMw&bvm=bv.91427555.d.d2s)

<sup>12</sup> Ibid., Art. 69.

has not acquired full legal competence is considered to have litigation capacity within the limits of his or her recognised legal competence.<sup>13</sup> A party that does not have litigation capacity is represented by his or her legal representative.<sup>14</sup>

If there are grounds for suspicion that a criminal offence has been committed, the prosecutor takes necessary steps to investigate it, to identify the suspect(s) and guide and supervise the investigation.<sup>15</sup>

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

While the exact handling of infant cases is unclear, civil suits would presumably be brought by a guardian, perhaps with the assistance of a legal representative. Criminal procedure is unlikely to change based on the age of the child; charges would still be brought by the prosecutor.

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

In criminal proceedings, if a person is not able to pay the expenses of the defense, a defense attorney is assigned at his or her request when the interests of justice so require.<sup>16</sup>

In civil proceedings, courts are permitted to exempt the party from paying the costs of the proceedings if the party cannot compensate the costs without jeopardizing the necessary support of himself or herself and his or her family. The court may exempt a party from paying all or a part of costs of the proceedings.<sup>17</sup>

While numerous Ombudsman's offices and other NGOs provide free legal advice, most are focused on awareness, reporting, and political advocacy. It appears that few of them actually provide free legal representation in courts.

UNICEF has published a Bosnia-specific legal guide called "Road Signs" for parents and legal representatives. The guide, published in Serbian, Bosnian, and Croatian, outlines the legal process and potential remedies for common child rights violations.<sup>18</sup>

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)?

The Bosnian Code of Civil Procedure makes no reference to parental approval when bringing civil suits on behalf of children. Presumably, once a

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<sup>13</sup> Bosnian Code of Civil Procedure, Art. 292.

<sup>14</sup> Ibid., Art. 293.

<sup>15</sup> Criminal Procedure Code of Bosnia Herzegovina, Art. 35(2).

<sup>16</sup> Criminal Procedure Code of Bosnia Herzegovina, Art. 46(1).

<sup>17</sup> Bosnian Code of Civil Procedure, Art. 400.

<sup>18</sup> Available at: [http://www.unicef.org/ceecis/media\\_2789.html](http://www.unicef.org/ceecis/media_2789.html).

child's legal representative is approved by the court, the case may proceed as usual.<sup>19</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?**

The Constitutional Court has jurisdiction over issues referred by any court concerning whether a law is compatible with the Constitution, with the European Convention on Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina.<sup>20</sup>

Civil proceedings are initiated by a complaint which includes the following information: 1. The grounds on which the plaintiff asserts the jurisdiction of the court; 2. a specified claim (including legal remedy sought by the plaintiff) regarding the main matter and subsidiary claims; 3. the facts on which the plaintiff bases the Statement of Claim; 4. the evidence corroborating those facts; 5. the value of the dispute; 6. the legal basis for the claim; and 7. other data that must be contained in each written pleading.<sup>21</sup>

An administrative dispute may be initiated by the Ombudsman for Bosnia and Herzegovina but he or she can also intervene in the ongoing procedure when in discharge of tasks falling within his or her jurisdiction the Ombudsman concludes that the final administrative act violated human dignity, rights and freedoms of citizens ensured by the Constitution and instruments referred to in Annex I of the Constitution.<sup>22</sup>

#### *Regional Mechanisms*

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.<sup>23</sup> 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,<sup>24</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>25</sup> Anonymous complaints are not permitted.<sup>26</sup> The procedural rules for the Court do not make any child-specific provisions.

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<sup>19</sup> Bosnian Code of Civil Procedure, Art. 293.

<sup>20</sup> Constitution of Bosnia and Herzegovina, Art. VI(3).

<sup>21</sup> Bosnian Code of Civil Procedure, Art. 53.

<sup>22</sup> Law on Administrative Disputes of Bosnia and Herzegovina, Art. 2.

<sup>23</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), 1950, Articles 19 and 32. Available at:

<https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

<sup>24</sup> Ibid., Article 34.

<sup>25</sup> Ibid., Article 35.

<sup>26</sup> Ibid.

Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>27</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>28</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>29</sup> 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?

Lower civil courts have the power to award damages for rights violations. There are no apparent limits on monetary damages, which are payable within 30 days of the entry of the judgment.<sup>30</sup> Criminal courts can issue sentences to violators of domestic criminal laws. Courts may also make custodial decisions to ensure child welfare.<sup>31</sup>

In the administrative dispute, the Court in its the judgment annulling the final administrative act also decides on the request of the plaintiff on repossession of objects or compensation of damages.<sup>32</sup>

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?

Bosnian law regarding standing to bring claims is unclear but, based on Article 53 of the Bosnian Code of Civil Procedure, it seems that litigation must stem directly from injury or impairment of a specific child's rights under domestic law.

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

Article 83 of the Bosnian Code of Civil Procedure appears to authorize collective action or group litigation in which multiple plaintiffs join together to oppose a single defendant.<sup>33</sup>

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?

In theory, non-governmental organizations could provide monetary or legal support for a child challenging a violation of his or her rights.

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<sup>27</sup> Rules of Court, July 2014, Rule 36. Available at: [http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>28</sup> European Convention on Human Rights, Article 46.

<sup>29</sup> Ibid., Article 41.

<sup>30</sup> Bosnian Code of Civil Procedure, Art. 179.

<sup>31</sup> See generally Case AP-717/08 Sakib Music, decided on 9 July 2010 (describing the procedural posture).

<sup>32</sup> Law on Administrative Disputes of Bosnia and Herzegovina, Art. 37.

<sup>33</sup> Bosnian Code of Civil Procedure, Art. 83.

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 Court of Bosnia and Herzegovina has three divisions: the Criminal Division, the Administrative Division and the Appellate Division.<sup>34</sup> The Court has criminal jurisdiction over criminal offences defined in the Criminal Code.<sup>35</sup>

Administrative disputes are decided by the panel of the Administrative Division of the Court.<sup>36</sup> An action must include: name, surname and place of residence or the name and seat of the plaintiff, number and date of final administrative act against which the action was filed, short explanation of reasons for action as well as what is the direction and scope of the proposed annulment of the final administrative act and signature of the party filing the action. The original of the final administrative act or copy must be attached to the action. If the action requests repossession of the objects or compensation of damages then it must include a certain request in respect to the objects or the level of inflicted damages.<sup>37</sup>

Civil disputes are decided through civil proceedings. Initial filing process is described in Section III.A.

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?

Article 400 of the Bosnian Code of Civil Procedure appears to authorize courts to waive all or part of the cost of civil proceedings if, according to his or her general financial situation, the party cannot compensate the costs without jeopardizing the necessary support of himself or herself and his or her family.<sup>38</sup> Exemption from paying the costs of the proceedings includes exemption from paying court taxes and depositing advance payment for the costs of witnesses, experts, on-the-spot investigation, translation and

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<sup>34</sup> Law on Court of Bosnia and Herzegovina, Art. 19. Available at: [http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC4QFjAC&url=http%3A%2F%2Fwww.legislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F3847%2Ffile%2FBiH\\_Law\\_on\\_Court\\_2000\\_am2007\\_en.pdf&ei=8gE5VfOULc38aOS3gcAO&usg=AFQjCNF64gOaUniaB\\_rIAOQLhlohC2effg&bvm=bv.91427555.d.d2s](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC4QFjAC&url=http%3A%2F%2Fwww.legislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F3847%2Ffile%2FBiH_Law_on_Court_2000_am2007_en.pdf&ei=8gE5VfOULc38aOS3gcAO&usg=AFQjCNF64gOaUniaB_rIAOQLhlohC2effg&bvm=bv.91427555.d.d2s)

<sup>35</sup> Ibid., Art. 13(1).

<sup>36</sup> Law on Administrative Disputes of Bosnia and Herzegovina. Art. 5.

<sup>37</sup> Ibid., Art. 68.

<sup>38</sup> Bosnian Code of Civil Procedure, Art. 400.

interpretation and court advertisements.<sup>39</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?

Most aid organizations seem to be dedicated to directing policy and raising awareness of children's issues, rather than directly aiding child plaintiffs in court. As mentioned in Section IV. B. above, courts may waive costs and fees for indigent people.

- 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 action which initiates administrative dispute is filed within two months from the day when the party which filed the action was informed or when it received the final disputed administrative act or decision or from the day of publishing of the disputed regulation.<sup>40</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 when hearing a minor, in particular if the minor was victimized by the criminal offence, the participants are obliged to act with circumspection in order not to have an adverse impact on his or her mental condition. If necessary, the minor is heard with assistance of a pedagogue or other professional.<sup>41</sup>

Minors are among those individuals who may not take the oath or affirmation in criminal proceedings.<sup>42</sup> In case of minors under 16 years of age, who were injured by the offence, the examination must be recorded on audio-visual equipment.<sup>43</sup>

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

Proceeding following a request of the citizen whose right or freedom has been violated by an action of an official in an institution, or of the responsible person in a public agency or public corporation, is considered urgent and a judicial decision must be made as soon as possible and not later than within 15 days from the receipt of the request.<sup>44</sup>

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<sup>39</sup> Ibid.

<sup>40</sup> Law on Administrative Disputes of Bosnia and Herzegovina, Art. 19.

<sup>41</sup> Criminal Procedure Code of Bosnia Herzegovina, Art. 86(4).

<sup>42</sup> Ibid., Art. 89.

<sup>43</sup> Ibid., Art. 90.

<sup>44</sup> Law on Administrative Disputes of Bosnia and Herzegovina, Art. 72.



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

The Constitutional Court has appellate jurisdiction over issues under the Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.<sup>45</sup>

The appeal against the first instant judgment with regard to civil lawsuit must be filed within 30 days from the day of rendering the judgment.<sup>46</sup> Criminal cases may be appealed within 15 days from the date when the copy of the verdict was delivered.<sup>47</sup> The judgment of the Court of Bosnia and Herzegovina delivered in the administrative disputes is final and binding in accordance with the provisions of the Law.<sup>48</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?

Information on this topic is not readily available.

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

There may be issues with collecting damages and enforcing civil judgments, similar to problems found in Western jurisdictions.

**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.

Although Bosnia has enacted the Law on Prohibition of Discrimination,<sup>49</sup> significant disparities in education, socioeconomic status, and access to public resources remain between ethnic groups. While Bosniacs, Serbs, and Croats are officially recognized ethnic groups, roughly 17 other minority groups are simply lumped together as “others.”<sup>50</sup> Romani children bear the brunt of these inequities; 64% do not attend grade school.<sup>51</sup>

Physical punishment is banned in Bosnian schools, but it is legal in the home.<sup>52</sup> This presumably impedes child abuse prosecutions. Child kidnapping and prostitution rings are also active in Bosnia.<sup>53</sup> While human rights organizations recognise these problems, no reported court decisions

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<sup>45</sup> The Constitution, Art. VI(3).

<sup>46</sup> Bosnian Code of Civil Procedure, Art. 203.

<sup>47</sup> Bosnian Code of Criminal Procedure, Art. 292.

<sup>48</sup> Law on Administrative disputes of Bosnia and Herzegovina, Art. 3.

<sup>49</sup> See <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/InstitutionofHROmbudsmanofBiH.pdf>, Section C (2).

<sup>50</sup> See <http://www.humanium.org/en/bosnia-and-herzegovina/>, Para. titled “Nondiscrimination”.

<sup>51</sup> See <http://www.humanium.org/en/bosnia-and-herzegovina/>, Para. titled “Right to Education”.

<sup>52</sup> See <http://www.humanium.org/en/bosnia-and-herzegovina/>, Para. titled “Child Abuse”.

<sup>53</sup> See <http://www.humanium.org/en/bosnia-and-herzegovina/>, Para. titled “Sexual Exploitation”.



on either issue are readily available.

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