

ACCESS TO JUSTICE FOR CHILDREN: **TURKMENISTAN**

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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?

Turkmenistan ratified the CRC in September 1993.¹ The Law on International Treaties provides that ratified treaties must be strictly observed by the State and its bodies.² It appears that Turkmenistan follows a monist approach and ratified treaties are considered binding without any need for further incorporation.³

Turkmenistan also ratified the Optional Protocol to the CRC on the involvement of children in armed conflict, as well as the Optional Protocol to the CRC on the Sale of children, child prostitution and child pornography, but has not ratified the third Optional Protocol to the CRC on a communications procedure.⁴

B. Does the CRC take precedence over national law?

Yes, ratified international treaties, including the CRC, and universally accepted norms of international law take precedence in cases of conflict with legal norms of the laws of Turkmenistan.⁵ However, they may not be accorded the same precedence in cases of conflict with provisions of the Constitution.⁶

C. Has the CRC been incorporated into national law?

¹ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-11&chapter=4&lang=en.

² Law on International Treaties, 10 May 2010, Article 17, available at: <http://cis-legislation.com/document.fwx?rgn=31179> and full text available in Russian language at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86643/98170/F1310100008/TKM86643.pdf>.

³ Terzioglu, S., 'International treaties in the legal system of Turkmenistan', *Law and Justice Review*, Vol. IV, Issue 2, December 2013, available at: https://www.academia.edu/6027747/INTERNATIONAL_TREATIES_IN_THE_LEGAL_SYSTEM_OF_TURKMENISTAN_T%C3%BCrkmenistan_Hukuk_Sisteminde_Uluslararası%C4%B1_Anlama%C5%9Fmalar.

⁴ https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtsg_no=iv-11-b&chapter=4&lang=en; https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtsg_no=iv-11-c&chapter=4&lang=en

⁵ Constitution of Turkmenistan 2008, Article 6, available at: https://www.constituteproject.org/constitution/Turkmenistan_2008.pdf and Law on International Treaties, Article 4. The same is also specified in other laws, e.g. Civil Code, Article 7, available at: <http://www.wipo.int/edocs/lexdocs/laws/ru/tm/tm037ru.pdf>.

⁶ Terzioglu, S., 'International treaties in the legal system of Turkmenistan', at p. 77.

The Convention is automatically incorporated through ratification. The main laws which make provisions concerning children are the Law on Guarantees of the Rights of the Child,⁷ the Law on State Youth Policy,⁸ Law on the fight against trafficking in human beings,⁹ the Family Code,¹⁰ the Law on Education,¹¹ the Law on Guarantees of the Right to Work for Youth,¹² the Civil Code, and the Penal Code.¹³

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

It could not be determined with certainty whether the CRC can be relied on in court, though that should be possible given the fact that the Convention forms part of national law.

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

Research could not identify any cases from the national courts citing the CRC. Court cases are not generally available to the public in Turkmenistan.

II. What is the legal status of the child?

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

The protection of violations of rights is to be carried out by the courts depending on their jurisdiction as provided by in procedural law.¹⁴

Under the Family Code, children are guaranteed the right to have their rights and legal interests defended.¹⁵ This is to be done by a parent, or person acting in the place of a parent, or in cases specified by law - by the guardianship and custody state competent bodies, the prosecutor's office and the courts.¹⁶ Children have the right to apply to the guardianship and custody competent bodies for protection of their rights and interests in cases of

⁷ Available in Russian language at: <http://www.turkmenistan.gov.tm/?id=6451>.

⁸ Law for the State Youth Policy, 29 August 2013, available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96249/113690/F93951576/TRKM%20youth.pdf>.

⁹ Law on the fight against trafficking in human beings, No. 155-III of 14 December 2007, available at: <http://www.legislationline.org/ru/documents/action/popup/id/14952>.

¹⁰ Family Code of Turkmenistan of 1 April 2012, available at: <http://turkmenembassy.kz/details/ndownload.php?fn=178&lang=rus>.

¹¹ Law of Turkmenistan on Education of 4 May 2013 No.391-IV, available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=96265

¹² Law on Guarantees of the Right to Work for Youth No. 5-III of 1 February 2005, available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89892

¹³ Penal Code Law, N222-1 of 12 June 1997 (as amended on 9 November 2013), available at: <http://www.wipo.int/edocs/lexdocs/laws/ru/tm/tm039ru.pdf>.

¹⁴ Civil Code, Article 10. See also Law on Courts, Article 6, available in Russian at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84137/93357/F844375246/TKM84137.pdf>.

¹⁵ Family Code of Turkmenistan of 1 April 2012, Article 80, available at: <http://turkmenembassy.kz/details/ndownload.php?fn=178&lang=rus>.

¹⁶ Ibid.

violation of their rights, including by a parent or person acting in the place of a parent.¹⁷

The Law on State Guarantees of the Rights of the Child provides that liability for violations of the its provisions will be decided in accordance with Turkmenistan's legislation¹⁸ and that disputes arising out of the rights, freedoms and legitimate interests of the child shall be settled in the manner prescribed by law.¹⁹

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?

Legal capacity, i.e. capacity to hold rights and obligations, arises at birth.²⁰ Legal procedural capacity, however, i.e. capacity to exercise one's legal right independently, is fully acquired at 18, which is the age of majority, or earlier, in the case of a marriage.²¹ Children under the age of seven are considered to have no legal procedural capacity.²² Children over the age of seven are considered to have limited legal procedural capacity so they need parental consent to enter into any transaction, except those for which remuneration is received.²³

The rights of persons with less than full legal procedural capacity are defended by guardians or trustees.²⁴ Children will be appointed a guardian or trustee where they do not have a parent or their parent has been deprived of parental rights.²⁵ Children under the age of seven, who have no capacity, are appointed guardians (опекуны) who conduct all transactions on behalf of the child.²⁶

Children over the age of seven, who have limited capacity, are appointed trustees (попечители) who need to only give their consent for transactions which the child cannot conduct independently and who also assist a child in the exercise of their rights and defend them from abuse by third parties.²⁷

Persons who do not have full legal procedural capacity can only act in court through a representative - parent, adoptive parent, guardian or trustee.²⁸ Domestic law does not specify the age at which children may seek legal advice without the consent of their parents.²⁹

¹⁷ Ibid.

¹⁸ Law on State Guarantees of the Rights of the Child, Article 47.

¹⁹ Law on State Guarantees of the Rights of the Child, Article 48.

²⁰ Civil Code, Article 20.

²¹ Civil Code, Article 23.

²² Civil Code, Article 23(3).

²³ Civil Code, Article 25.

²⁴ Civil Code, Article 31.

²⁵ Ibid.

²⁶ Civil Code, Article 32.

²⁷ Civil Code, Article 33.

²⁸ Civil Procedure Code, Article 114, available at:

<http://infoabad.com/zakonodatelstvo-turkmenistana/grazhdanskii-procesualnyi-kodeks-turkmenistana.htm>

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²⁹ *Initial report of Turkmenistan to the UN Committee on the Rights of the Child, CRC/C/TKM/1, 5*

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

As outlined in part II.B above, children under the age of seven are considered to have no procedural capacity and will need to be represented by a trustee.

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

The Constitution provides for the right to professional legal assistance at all stages of legal proceedings and the right to legal aid which is rendered by lawyers and other organisations.³⁰

Some provisions for legal aid are contained in the Law on Advocacy.³¹ Free legal aid may be provided in the form of legal advice or assistance in the preparation of documents in cases concerning payment of alimony and personal injury, as well as to certain groups of persons, including children without parental care and in other cases foreseen by law.³² In other types of cases, the competent body, such as the prosecutor or the court, can order that a person is fully or partially excused from paying for legal aid, depending on their financial situation.³³ Beyond these provision, research did not identify other national laws clarifying children's eligibility for legal aid.

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 conditions or 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?

Everyone is constitutionally guaranteed judicial protection of their dignity, personal and political rights and freedoms.³⁴ Citizens have the right to seek redress in court for unlawful actions of state bodies, organisations or other individuals.³⁵ Any person can bring proceedings for a violation of their rights

December 2005, at para. 49, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTKM%2f1&Lang=en.

³⁰ Constitution, Article 108.

³¹ Law on advocacy and legal practice, available in Russian at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86642/98169/F1895252782/TKM86642.pdf>.

³² Law on advocacy, Article 7.

³³ *Ibid.*

³⁴ Constitution, Article 43.

³⁵ Constitution, Article 44.

or legal interests.³⁶

Every person, who believes their constitutional rights have been violated by a decision or an act of a public body, has the right to complain to the court.³⁷

There is no court in Turkmenistan which has the authority to review the constitutionality of laws. Although the Parliament decides whether laws are in conformity with the Constitution,³⁸ it has no explicit power to determine the same in relation to international treaties.³⁹

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

Civil courts can provide declaratory relief, restitution, damages (i.e., compensation), invalidation or non-application of a State agency act, and injunctive relief (performance / non-performance of an act), as well as any other relief provided under law.⁴⁰

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?

It does not appear to be possible to bring a civil case on behalf of an anonymous or unspecified victim as the Civil Procedure Code requires that the name and address of the plaintiff are included in the initial complaint.⁴¹

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

Several persons may bring a case as co-plaintiffs and judges have the power to combine similar cases for joint consideration.⁴²

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?

This question could not be answered with certainty. However, it must be noted that non-governmental organisations are not free to operate in the country. In 2003, a law was passed to withdraw the registration of all NGOs with a select few being allowed to re-register and operate under the state's strict control.⁴³ Therefore, even if it is allowed in law, it seems unlikely that

³⁶ Civil Procedure Code, Article 3.

³⁷ Law on challenging in court the actions of state bodies, public associations, local government bodies and officials violating constitutional rights and freedoms, Article 1, available in Russian at: http://base.spininform.ru/show_doc.fwx?rgn=2432.

³⁸ Constitution, Article 63.

³⁹ Terzioglu, S., 'International treaties in the legal system of Turkmenistan', at p. 79.

⁴⁰ Civil Code, Article 11.

⁴¹ Civil Procedure Code, Article 127. Please see also Part IV.A below.

⁴² Civil Procedure Code, Article 130.

⁴³ Freedom House, *Freedom in the World 2014: Turkmenistan*, available at: <https://freedomhouse.org/report/freedom-world/2014/turkmenistan>.

an NGO will bring a court case to challenge human rights violations.

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 system in Turkmenistan consists of the Supreme Court, the Court of Arbitration, provincial courts (велятские суды), district (этрапские суды) and city courts (суды городов с правами этрапа или велята).⁴⁴ There are no specialised children's courts.

Civil cases must be brought in the court with jurisdiction for the place of residence of the defendant.⁴⁵ The initial complaint must identify the plaintiff and defendant and describe the circumstances on which the claim is based.⁴⁶ Other requirements for filing the initial complaint are found in the Civil Procedure Code.⁴⁷

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?

The conditions for obtaining free or subsidised legal aid are unclear. For related information, please see part IV.B below.

The costs of bringing a civil case include the state fee and costs of the proceedings.⁴⁸ There is no general provision releasing children from liability for payment of such costs, however, there is an exemption for all plaintiffs in cases for recovery of alimony⁴⁹ and judges have the discretion to postpone or order payment in installment of costs depending on the parties' financial situation.⁵⁰

In cases alleging violations of constitutionally guaranteed rights by public authorities, if the court rules in favour of the complainant, the costs shall be borne by the defendant public authority.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

⁴⁴ Law on courts, Article 14.

⁴⁵ Civil Procedure Code, Article 117.

⁴⁶ Civil Procedure Code, Article 127.

⁴⁷ Civil Procedure Code, Chapter 12.

⁴⁸ Civil Procedure Code, Article 61.

⁴⁹ Civil Procedure Code, Article 62.

⁵⁰ Civil Procedure Code, Article 63.

⁵¹ Law on challenging in court the actions of state bodies, public associations, local government bodies and officials violating constitutional rights and freedoms, Article 9.

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?

Some pro bono legal clinics work on cases involving children.⁵² For example, the Legal clinic attached to the youth organisation called Makhtumkuli, located in Ashgabat.⁵³ The website of the Ministry of Justice also includes a list of practicing lawyers and organisations which may provide legal assistance to children.⁵⁴

- 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 limitations period for civil actions is 10 years, however, no limitation period is applicable to actions for damage to life or health and to actions for assertion of personal rights, for which no limitation period is specified elsewhere.⁵⁵ Where a child is bringing a claim against a parent, the period of limitations shall be suspended until the child reaches 18 years.⁵⁶

Actions alleging a violation of constitutionally guaranteed rights by public authorities must typically be raised within a year from the date on which the complainant learns about the violation, however, the court has discretion to extend this statute of limitations.⁵⁷

- 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?

Evidence in a civil trial can take the form of: accounts of the parties themselves or by third persons, witness or expert testimony, and documentary or physical evidence.⁵⁸ The Civil Procedure Act does not impose any limit on children giving evidence in court.⁵⁹

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

Civil cases must be heard within 7 days of receiving the initial complaint, or 20 if the case is particularly complex. Normally civil demands would be

⁵² See

http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/turkmenistan/news/news_turkmenistan_pro_bono_legal_service_helps_family_0409.html. See also UNICEF, *Opportunities for Juvenile Justice Reform: Third Forum on Child protection in Central Asia*, at p. 17, available at: http://www.unicef.org/ceecis/CP_Forum_2011_Report_Russian.pdf.

⁵³ <http://www.lawclinic.ru/cisclinic.html>.

⁵⁴ http://minjust.gov.tm/ru/main_art_view.php?det_id=33&art_id=11.

⁵⁵ Civil Code, Article 147.

⁵⁶ Civil Code, Article 153.

⁵⁷ Law on challenging in court the actions of state bodies, public associations, local government bodies and officials violating constitutional rights and freedoms, Article 4.

⁵⁸ Civil Procedure Act, Article 29.

⁵⁹ Civil Procedure Act, Chapter 4 - Evidence.

examined in one month, and in certain cases within 10 days or 20 days.⁶⁰ Cases alleging rights violations by public authorities should be heard within a 10 day period.⁶¹

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

The right to appeal is constitutionally guaranteed.⁶² Parties may appeal decision from the district, provincial and municipal courts, Ashgabat city courts, and the Supreme Court of Turkmenistan (acting as a court of first instance) through the cassation process.⁶³ Applications for cassation review must be made within ten days.⁶⁴ Under the cassation procedure, if it finds for the appellant, the appeals court may remand the case to be decided again by the trial court or substitute its own decision in part or in full.⁶⁵

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?

This question could not be answered. It is important to note that the judicial system is not independent⁶⁶ and therefore the possibility of obtaining a positive judgement is in question.

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

This question could not be answered, however, please note the answer in part IV.H above.

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.

The President of Turkmenistan has recently announced a proposal to create an Ombudsman institution charged with reviewing abuses of human rights by state officials,⁶⁷ however, it is not yet clear whether such an institution would be empowered to receive and address complaints by children or their representatives.

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

⁶⁰ Civil procedure Code, Article 87.

⁶¹ Law on challenging in court the actions of state bodies, public associations, local government bodies and officials violating constitutional rights and freedoms, Article 6.

⁶² Constitution, Article 107.

⁶³ Civil Procedure Code, Article 284.

⁶⁴ Civil Procedure Code, Article 285.

⁶⁵ Civil Procedure Code, Article 307.

⁶⁶ *Freedom in the World 2014: Turkmenistan*.

⁶⁷ CBC website, *Ombudsman to appear in Turkmenistan*, available at:

<http://cbc.site.itdc.ge/ru/news/vse-novosti/v-turkmenistane-poiavitsia-ombudsmen.page>.