

ACCESS TO JUSTICE FOR CHILDREN: COSTA RICA

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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?

According to Article 7 of the Political Constitution of Costa Rica, once treaties are approved by Congress, they become part of the national legal system of Costa Rica.¹

Costa Rica signed the CRC on 26 January 1990, and ratified its content on 21 August of the same year. The CRC came into force on 20 September 1990. It was published in the National Gazette on 9 August 1990. Costa Rica did not make any reservations regarding the CRC.

B. Does the CRC take precedence over national law?

According to Article 7 of the Political Constitution of Costa Rica, international conventions are superior to domestic laws in the national legal order of Costa Rica, which means that the CRC takes precedence over national law. However, international conventions are usually not superior to the Constitution, with some exceptions.²

C. Has the CRC been incorporated into national law?

The CRC has been incorporated into Costa Rica's domestic law by Law No. 7184³ (Ratification of the CRC), issued by Congress on 12 July 1990, sanctioned by the Executive Power on 18 July 1990 and published in the National Gazette on 9 August 1990.

The Political Constitution of Costa Rica states in Article 7 that treaties must be approved by Congress in order for them to have effect. Since the CRC is not a convention that regulates territorial matters or political organization of the country, the rule of approbation by the voting of no less than three quarters of all members of Congress and two thirds of the Constitutional Congress does not apply. Therefore, approval by Congress requires a simple majority vote.

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

In Costa Rica, international conventions, such as CRC, are enforceable in court because they are part of the national legal order. This is established by Article 48 of the Political

¹ Article 7 Constitution of Costa Rica, available at: <http://www.constitution.org/cons/costaric.htm>.

² Costa Rica's jurisprudence establishes to some extent that the Political Constitution takes precedence over international conventions. See for example:
[http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS¶m2=1&nValor1=1&nValor2=413946&tem1=Jerarquía normativa&strTipM=T&lResultado=1&strTem=ReTem](http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS¶m2=1&nValor1=1&nValor2=413946&tem1=Jerarquía%20normativa&strTipM=T&lResultado=1&strTem=ReTem)

³ Law No. 7184 is available at: http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Leyes.aspx?Numero_Ley=7184

Constitution of Costa Rica:

“Every person has the right of habeas corpus, to guarantee their freedom and personal integrity, and amparo, to maintain or reinstate enjoyment of other rights contemplated in the Constitution, and those others contemplated in international instruments on human rights, applicable in the Republic. Both resources must be reviewed by Constitutional Court.”

As such, the CRC can be enforced directly before the courts because the rights included in it (or any other international convention) are akin to constitutional rights. Violations of such fundamental rights must be brought by an individual before the constitutional court.

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

There are multiple examples of domestic courts using CRC dispositions. Most examples have occurred in the Supreme Court of Justice, for example in cases of parenthood recognition⁴ and procedural rights of the child.⁵ But there are also a number of cases where the family courts (Tribunal de Familia) have endorsed the application of the CRC, for example in cases of paternity⁶ and child support.⁷

II. **What is the legal status of the child?**

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

With independence of subject matter jurisdiction, children can bring cases before the courts through their representatives, according to the rules governed by the Civil Procedure Code.⁸ Procedurally, persons exercising parental rights or guardianship over minors are required to bring such cases. If there is no such representative, e.g. in case of orphan minors, the judge will appoint a procedural representative (curador procesal).⁹ Article 38 of the Civil Code of Costa Rica states that people under fifteen years of age are incapable of engaging in legal acts personally, except in those cases specifically determined otherwise by applicable law.

⁴ Case example available at:

http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS¶m2=1&nValor1=1&nValor2=448042&tem1=Abandono de menor&strTipM=T&lResultado=1&strTem=ReTem.

⁵ Case example available at:

http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS¶m2=1&nValor1=1&nValor2=518527&tem1=Declaración de los Derechos del Niño&strTipM=T&lResultado=1&strTem=ReTem.

⁶ Case example available at:

http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS¶m2=1&nValor1=1&nValor2=564876&tem1=Derechos de los niños y las niñas&strTipM=T&lResultado=1&strTem=ReTem.

⁷ Case example available at:

http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=TSS¶m2=1&nValor1=1&nValor2=564876&tem1=Derechos de los niños y las niñas&strTipM=T&lResultado=1&strTem=ReTem.

⁸ Article 260, Civil Procedure Code.

⁹ Article 120, Family Code.

Minors over fifteen years of age may appoint as procedural representative the person they select as their preferred representative, as long this representative has the legal capacity of judicial representation. This designation must be done before the judge and the judge may overrule this designation if the person selected does not have the necessary capabilities. In that case, the judge will ask the minor to appoint someone else, and if not, a representative will be named ex officio.¹⁰

The provisions of the Childhood and Adolescence Code (Código de la Niñez y Adolescencia)¹¹ guarantee the rights of minors to present a civil complaint regarding a violation of their rights, and to exercise those actions through a representative of the Public Ministry. Furthermore, the Code provides for the legal boundaries and obligations of authorities regarding children and adolescents, and provides the overall legal framework for the protection of children's rights.

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?

Article 104 of the Childhood and Adolescence Code provides for the right of minors to present a civil complaint regarding a violation of their rights, but requires minors to exercise this right through a representative of the Public Ministry.

Nevertheless, Article 105 of the Childhood and Adolescence Code establishes that minors are able to directly participate in the process and procedures regarding their rights and that their opinion will be heard, taking the mental maturity of the minor into account in order to determine how to receive that opinion. Minors over fifteen years of age are permitted to act personally before the court in certain cases, and in any other case must be represented by parental authorities or the National Childhood Patronage.¹²

According to the Code of Civil Procedure, in non-dispute related cases regarding public interest, the interest of a minor, the interest of an incompetent person, or the interest of someone who is absent, the General Attorney of the Republic must intervene.¹³ With respect to children, the General Attorney Office shall intervene where children's rights are challenged and must guarantee the observance of those rights in accordance with the CRC and the Childhood and Adolescence Code. The specific types of cases are: filiation proceedings, cases involving suspension or loss of parental authority, marriage annulment, any criminal process regarding felonies against life and physical integrity, and sexual crimes.¹⁴

If the case later turns into a dispute, the State must cease its intervention and the matter must be followed by the legal representative of the child or a representative of the National Childhood Patronage.¹⁵

Pursuant to the Childhood and Adolescence Code, the National Childhood Patronage

¹⁰ Article 261, Civil Procedural Code.

¹¹ Childhood and Adolescence Code (Código de la Niñez y la Adolescencia), available at: <http://cpj.go.cr/docs/derechos/codigo-ninez.pdf>.

¹² Article 108 a), Childhood Procedural Code.

¹³ Article 119, Civil Procedural Code.

¹⁴ Article 110, Childhood and Adolescence Code.

¹⁵ Article 120, Civil Procedural Code.

must also provide general assistance and protection to a child regarding his or her rights.

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

The child's parent or legal guardian will typically file a suit on the child's behalf.¹⁷ If there is no such representative, e.g. in the case of orphan minors, the judge will appoint a procedural representative (curador procesal).¹⁸ According to the Procedural Civil Code rules applicable to minors, cases will typically be brought through a complaint,¹⁹ depending on the type of request (i.e. child support or filiation).

An administrative process (Proceso Especial de Protección en Sede Administrativa) may be initiated in order to claim a violation of children's rights based on an omission or action of the State, the child's parents, the child's guardians or people otherwise responsible for the child's safety, or against themselves.²⁰ This process must be brought before local offices of the National Childhood Patronage.²¹ In urgent cases, this procedure can be initiated ex officio, or by the complaint of any person, authority or NGO.²²

When the National Childhood Patronage decides on cautionary measures, such as medical treatment, provisional custody or similar, this process must be settled in a judicial venue (Proceso de Protección en la Vía Judicial).²³

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

Yes, Costa Rica's Childhood and Adolescence Code provides that all legal actions initiated by an underage person or his or her representative will be exempt from judicial fees and any other fees.²⁴

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)?

There are no other such conditions or limits. If a minor is subject to parental authority and has an interest that is in opposition to his or her parent's or guardian's interest, the parent or guardian will not be able to represent the minor. Instead, a procedural representative (curador procesal) is appointed by a judge.²⁵ It is also possible for the National Childhood Patronage to represent a child's interests when there is a conflict of interest with that of the parents.²⁶

¹⁶ See e.g. Articles 23, 26, 31b, 32, 33, 35, 40, 92 and 10, Childhood and Adolescence Code.

¹⁷ Article 140, Family Code.

¹⁸ Article 120, Family Code.

¹⁹ See for example: Article 40, Childhood and Adolescence Code.

²⁰ Article 130, Childhood and Adolescence Code.

²¹ Article 129, Childhood and Adolescence Code.

²² Article 132, Childhood and Adolescence Code.

²³ Article 142, Childhood and Adolescence Code.

²⁴ Article 106, Childhood and Adolescence Code.

²⁵ Article 260, Civil Procedural Code.

²⁶ Article 111, Childhood and Adolescence Code.

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?

Besides the common procedures mentioned above (i.e. civil, administrative), children's right violation may be brought via amparo (constitutional complaint) or habeas corpus (complaint against unlawful detention) complaints, in accordance with Article 48 of the Constitution:

“Every person has the right of habeas corpus, to guarantee their freedom and personal integrity, and amparo to maintain or reinstate satisfaction of other rights contemplated in the Constitution, and those others contemplated in international instruments on human rights, applicable in the Republic. Both resources must be reviewed by the Constitutional Court.”

The Constitutional Jurisdiction Law (7135) regulates the competences of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, which is in charge of constitutional control regarding human rights, specifically the resolution of amparo or habeas corpus complaints.

Habeas corpus complaints can be brought to guarantee liberty or personal integrity of a person against acts of an authority of any order, including judicial.²⁷ These complaints may be brought by any person, including children, in any written way and without the need for authentication.²⁸

Amparo complaints must be brought before the Constitutional Chamber in case of any other rights violations which do not regard personal liberty or integrity which are caused by any disposition or resolution, or any action, omission or material performance by a public authority. This again includes the rights of children.²⁹

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),³⁰ on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.³¹ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final

²⁷ Article 15, Constitutional Jurisdiction Law.

²⁸ Article 18, Constitutional Jurisdiction Law.

²⁹ Article 33, Constitutional Jurisdiction Law.

³⁰ The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a “dual role” as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Chapter VII, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

³¹ American Convention on Human Rights, Article 44.

judgment.³² The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.³³ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.³⁴ When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).³⁵ Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.³⁶ The Court’s judgments are legally binding on the State against which they are made.

Finally, once all domestic remedies have been exhausted, complaints against violations of children’s rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,³⁷ which Costa Rica has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.³⁸ The violations must concern a right granted by either the CRC, its Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict³⁹ and must have occurred after the entry into force of the Protocol on 14 April 2014.⁴⁰ Anonymous complaints are inadmissible and so are complaints not made in writing.⁴¹ In addition, only complaints made in one of the working languages of the UN will be accepted.⁴² After examining the complaint, the Committee can make recommendations to the state, which are not legally binding.⁴³

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

The Constitutional Chamber is in charge of cases where a probable violation of human

³² Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at: <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

³³ *Ibid.*, Article 28.

³⁴ *Ibid.*, Article 23.

³⁵ *Ibid.*, Article 45.

³⁶ American Convention on Human Rights, Article 63.

³⁷ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en.

³⁸ Optional Protocol on a communications procedure, Article 5

³⁹ *Id.*

⁴⁰ Optional Protocol on a communications procedure, Article 7(g).

⁴¹ *Id.*

⁴² Office of the United Nations High Commissioner for Human Rights, *23 FAQ about Treaty Body complaints procedures*, available at:

<http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>

⁴³ Optional Protocol on a communications procedure, Article 10.

rights is alleged.

In case of a habeas corpus complaint, the court can issue an injunction to avoid the execution of the order by which the violation may be effected.⁴⁴ The court may also order visitations, cautionary measures or any other methods that it considers necessary to protect the rights of the claimant.⁴⁵ In case of a court decision in favour of the claimant, the court may grant monetary compensation for the damages caused to the individual by the public body.⁴⁶

In the case of an amparo complaint, the execution of the act that constitutes the rights violation must be suspended until the resolution of the complaint is definitive. The court may also dictate any cautionary measures to ensure the integrity of the matter and the protection of rights⁴⁷ or other intermediary measures.⁴⁸ If the court finds that rights have been violated, it can find in favour of restitution of the violated right and rehabilitation; it may also order that the act is no longer effective.⁴⁹

Courts may also request from other authorities the use of public force and other means necessary to implement their decisions. Furthermore, citizens are obliged to cooperate with the judiciary.⁵⁰

The Supreme Court's decisions are mandatory. If a decision is issued under habeas corpus or amparo and a person does not comply with it, criminal liability may be imposed with potential sanctions including between three months to two years imprisonment.⁵¹

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 legal system of Costa Rica requires that a specific victim be named. Article 13 of the Childhood and Adolescence Code establishes that any challenge of an action that violates children's rights must be brought through a complaint made by the affected child.

Nevertheless, Article 117 of the Childhood and Adolescence Code states that any public employee or a private person may report any violation to the rights contained in that code.

Article 5 of the Judiciary Organic Law provides that procedures must be initiated only at the request of the interested party, and once the procedure is started, the judiciary must act ex officio.

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

⁴⁴ Article 20, Constitutional Jurisdiction Law.

⁴⁵ Article 21, Constitutional Jurisdiction Law.

⁴⁶ Article 26, Constitutional Jurisdiction Law.

⁴⁷ Article 41, Constitutional Jurisdiction Law.

⁴⁸ Article 47, Constitutional Jurisdiction Law.

⁴⁹ Article 49, Constitutional Jurisdiction Law.

⁵⁰ Article 7, Judiciary Organic Law.

⁵¹ Articles 71 and 72 Constitutional Jurisdiction Law.

The Civil Procedural Code provides for the possibility of a collective or joint action (litisconsorcio) only as long as there is a joinder of causes. This can be both a mandatory⁵² or voluntary⁵³ joint action. A mandatory joint action arises from a given legal disposition or from the nature of the legal relationship, i.e. if the decision necessarily effects all relevant parties. A voluntary joint action can be entered into at the discretion of the parties if they pursue a joint interest.

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?

Registered social organisations which are legally constituted are able to act on behalf of children to protect their rights where there is a legitimate interest. According to the Childhood and Adolescence Code, such organisations may act as an ancillary party (coadyuvante) in order to protect the rights of their beneficiaries.⁵⁴ In addition, any public official or private entity can present a complaint against any act that violates or potentially violates children's rights.⁵⁵

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?

In civil proceedings, according to the provisions of Costa Rica's Civil Procedural Code which apply to minors, typically cases will be brought through a complaint, depending on the request. All such cases must be presented before the family court.⁵⁶ The Childhood and Adolescence Code establishes that judicial proceedings regarding special protection processes, complaints or other claims regarding actions or omissions that threaten or interfere with children's rights must be presided over by family judges, with the exception of criminal cases.⁵⁷ Also, family courts ought to preside over complaints against public or private entities that provide attention to minors, and order or recommend the appropriate cautionary measures to ensure children's rights.⁵⁸

Administrative proceedings (Proceso Especial de Protección en Sede Administrativa) may be instigated in order to claim a violation of children's rights based on an omission or action of the state, the child's parents, the child's guardians or people otherwise responsible for the child's safety, or regarding actions or omissions of the child against him- or herself.⁵⁹ This process must be brought before the local office of the National Childhood Patronage.⁶⁰ In urgent cases, this procedure can be initiated ex officio, or by

⁵² Article 106, Civil Procedural Code.

⁵³ Article 107, Civil Procedural Code.

⁵⁴ Article 108b), Childhood and Adolescence Code.

⁵⁵ Article 117, Childhood and Adolescence Code.

⁵⁶ Article 106, Judiciary Organic Law.

⁵⁷ Article 116, Childhood and Adolescence Code.

⁵⁸ Ibid.

⁵⁹ Article 130, Childhood and Adolescence Code.

⁶⁰ Article 129, Childhood and Adolescence Code.

the complaint of any person, authority or NGO.⁶¹ When the National Childhood Patronage presides over cautionary measures, such as medical treatment or provisional custody, this process must be settled in a judicial venue (Proceso de Protección en la Vía Judicial).⁶²

- 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 Civil Procedural Code provides for the possibility of obtaining so-called ‘benefit of poverty’ (beneficio de pobreza) which is intended to benefit people with limited economic resources including cases in which minors are involved.⁶³ On top of that, the Childhood and Adolescence Code, which takes precedence over this rule, establishes that every procedure in which children are involved must be free, and the State has the obligation to provide free technical defense and legal representation.⁶⁴

- 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?

Every procedure where a child is involved must be free, and the state has the obligation to provide free technical defense and legal representation.⁶⁵

- 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?

Adolescents over fifteen years of age may personally bring cases before the courts.⁶⁶ According to the Childhood and Adolescence Code, there is no specific time frame in which a complaint regarding children’s rights must be presented.

In the case of amparo proceedings, a claim can be presented at any time as long as the violation, menace, disturbance or restriction of rights continues, and subsequently up to two months after the effects have ceased.⁶⁷

Because of the nature of the claim of habeas corpus, since it is brought to guarantee the liberty or personal integrity of a person against official acts, the Constitutional Jurisdiction Law does not provide any limitation of time regarding its initiation.

- 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

⁶¹ Article 132, Childhood and Adolescence Code.

⁶² Article 142, Childhood and Adolescence Code.

⁶³ Articles 254 and 256 Civil Procedural Code.

⁶⁴ Article 114 a), Childhood and Adolescence Code.

⁶⁵ Ibid.

⁶⁶ Article 108, Childhood and Adolescence Code.

⁶⁷ Article 35, Constitutional Jurisdiction Law.

presented by children?

Article 105 of the Childhood and Adolescence Code provides that minors shall have direct participation in proceedings which they are involved in and that administrative and judicial authorities must hear them directly.⁶⁸ Nevertheless, there are some procedures for dealing with evidence that is produced or presented by children. As a general procedural rule regarding proceedings in which children are involved, judges must evaluate the evidence available.⁶⁹ As part of this assessment, the judge can act in the best interest of the child and order alternative measures of evidence from the child for the best understanding of the case.

During hearings in court, children must be assisted by a social worker, a psychologist or any other required professional according to the nature of the procedure.⁷⁰

Concerning any sexual offense committed against minors, the judicial authority shall request information from the Social Work Department and the Psychological Department of the Judiciary. This document must be presented before the court within fifteen days.⁷¹

Regarding depositions or statements under oath, children must be examined by trained personnel and they only have to refer to information essential to the case in order to guarantee their dignity, honor, reputation and well-being.⁷² Also, pursuant to Article 125 of the Childhood and Adolescence Code, judicial and administrative authorities must avoid persistent and reiterative depositions of minors. When a further examination is needed, the court must hear the opinion of the victim.

Additionally, when a minor is involved in proceedings, the judicial authorities must take the appropriate precautions regarding the privacy of any hearings if emotional distress of the minor must be avoided. This is to be assessed in light of the nature of the case.⁷³

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

In proceedings before a family judge, governed by the Childhood and Adolescence Code,⁷⁴ wherein the judge must decide on whether to apply restraining measures or change those decided in the administrative process (Proceso Especial de Protección en Sede Administrativa),⁷⁵ the hearing must be held within five days of the initiation of the process. The judge must provide the final decision within another five days of the hearing.⁷⁶

According to information published in 2011 by the Judicial Power of Costa Rica, 13,096 decisions and conciliations were achieved that year. The duration of family court

⁶⁸ Article 105, Childhood and Adolescence Code.

⁶⁹ Article 113h, Childhood and Adolescence Code.

⁷⁰ Article 107c, Childhood and Adolescence Code.

⁷¹ Article 122, Childhood and Adolescence Code.

⁷² Article 124, Childhood and Adolescence Code.

⁷³ Article 126, Childhood and Adolescence Code.

⁷⁴ See Supra Section II.B.

⁷⁵ See Supra Section II.B.

⁷⁶ Articles 143 and 146, Childhood and Adolescence Code.

proceedings in the first instance ranged from ten to 14 months approximately, including proceedings regarding children and adolescents.⁷⁷

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

In Costa Rica, decisions may be appealed to a higher court, depending on subject matter jurisdiction and territory. Children's right to appeal judicial and administrative decisions is granted by Article 107b of the Childhood and Adolescence Code.

Article 559 of the Civil Procedural Code provides the possibility of appealing a civil resolution to a higher court. The appeal must be presented within five days following notification of the decision. The Superior Family Court handles appeals of orders of the family courts and minor tutelary.⁷⁸ The Second Chamber of the Supreme Court of Justice is in charge of the resolution of appeals and revisions that proceed in ordinary or abbreviated procedures regarding family and inheritance proceedings and universal trials.⁷⁹

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?

Article 9 of the Civil Code states that all judicial decisions (jurisprudencia) will contribute to the development of the legal framework of Costa Rica based on the statements made by the Supreme Court of Justice.

Article 13 of the Constitutional Jurisdiction Law provides that jurisprudencia and decisions of the constitutional courts have mandatory effect erga omnes except as to themselves. Decisions can thus have a long term impact since they need to be observed by the lower courts.

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

According to information provided by the Judicial Power of Costa Rica, of the 3016 decisions handed down by the Constitutional Chamber of the Supreme Court of Justice in 2012, the vast majority had been complied with while 466 had not been fulfilled.⁸⁰

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.

In light of the adoption of the CRC, the Patronato Nacional de la Infancia (PANI),⁸¹ a public institution with the main goal of promoting and applying the CRC, was created by the Ley Orgánica del Patronato Nacional de la Infancia.⁸² Article 4 k) of the statute

⁷⁷ The 2011 judicial statistics are available at:

<http://sitios.poder-judicial.go.cr/planificacion/Estadisticas/Anuarios/judiciales/2011/index.htm>.

⁷⁸ Article 99, Judiciary Organic Law.

⁷⁹ Article 55, Judiciary Organic Law.

⁸⁰ <http://sitios.poder-judicial.go.cr/salaconstitucional/Documentos%20de%20interes/PRESENTACION%20DE%20SENTENCIAS.pdf>.

⁸¹ Website of the Patronato Nacional de la Infancia, available at: <http://www.pani.go.cr/>.

⁸² Ley Orgánica del Patronato Nacional de la Infancia, available at:

provides that PANI can intervene in judicial proceedings and according to Article 32 e) PANI can refer child rights cases to the judicial authorities.⁸³

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http://www.pgr.go.cr/scij/Busqueda/Normativa/Normas/nrm_repartidor.asp?param1=NRTC&nValor1=1&nValor2=41328&nValor3=43559&strTipM=TC.

⁸³ Ibid.