

ACCESS TO JUSTICE FOR CHILDREN: CYPRUS

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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?

Cyprus signed the CRC on 5 October 1990.¹ The CRC forms part of the domestic legal order in Cyprus.²

B. Does the CRC take precedence over national law?

Based on the provisions of the Constitution of Cyprus treaties, conventions and agreements including the CRC have superior force to national law.³

C. Has the CRC been incorporated into national law?

As mentioned above the CRC forms part of the national law in Cyprus. A children's rights perspective is incorporated in all relevant laws of Cyprus.⁴

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

As mentioned in Section I.B above, Article 169 of the Cyprus Constitution grants increased authority upon international treaties that have been ratified by the Republic, effectively making them superior to national law; provided, that the counterparty of such international treaty agrees with this treatment. Furthermore, the CRC has been used as inspiration to modernise the domestic law of Cyprus.

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

In *Christos Tsilikides v Republic of Cyprus*,⁵ the Supreme Court made its most recent reference to the CRC as one of the pieces of legislation that it considers in relation to the deportation of a minor. Even though in the aforementioned case the Court was not required to rule on the use of the CRC, it still indicated that the provisions of the CRC are one of the considerations the Court will take into account when making decisions.

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

² Law Reform and Implementation of the Convention on the Rights of the Child, UNICEF, p.7. Available at: http://www.unicef-irc.org/publications/pdf/law_reform_crc_imp.pdf

³ The Constitution, Article 169(3). Available at: [www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY_Constitution.pdf](http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf).

⁴ http://www.unicef-irc.org/publications/pdf/law_reform_crc_imp.pdf.

⁵ Case No. 5944/2013, *Christos Tsilikides v Republic of Cyprus*, Supreme Court decision of 26 September 2013.

Furthermore, in *Dias Public Ltd. v Republic of Cyprus*⁶, there is direct mention to the ratifying law No. 243/1990 in relation to the protection of the privacy rights of children.

Other international instruments, such as the Convention on the Civil Aspects of International Child Abduction (Ratification) Law of 1994, have been cited in Family and Civil Courts.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?

Access to court for every person is guaranteed by the Constitution.⁸

In civil proceedings there are two ways for initiating proceedings: either through a guardian or via a “next friend.”⁹

Also, the new draft of the Law for the Welfare, Care and Protection of Children incorporates the principle of respect for the child's opinion. Specifically, the draft Law stipulates that a child who is capable of forming his or her own opinion must be given the opportunity to be heard in any administrative or judicial procedure which concerns him or her and due weight must be given to his or her views, in accordance with the age and maturity of the child.¹⁰

Research papers suggest that the existing judicial system in Cyprus provides the child, where possible, with the opportunity to express his or her views and to be heard in matters that affect his or her welfare. The maturity of the child is not connected to age and is a matter for judicial consideration. If the court considers the child to be mature and refuses to hear him or her, its decision is subject to appeal.¹¹

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?

As mentioned above in Section II.A, proceedings can be initiated either via a guardian of the child or through an individual that has been identified as his or her “next friend” in the pleadings.

Also, in accordance with the Commissioner for the Protection of Children's Rights Law, 2007, the Commissioner may:

⁶ Case No. 595/2010, *Dias Public Ltd. v Republic of Cyprus*, Supreme Court decision of 24 January 2013.

⁷ Minister of Justice & Public Order v Xenophon Costas Ioannou. Available at: <http://www.cylaw.org>.

⁸ The Constitution, Article 30.

⁹ Civil Procedure Rules, Order 9(12). Available at: <http://www.cylaw.org/cpr.html>.

¹⁰ UN Committee on the Rights of the Child, *Consideration of Combined Third and Fourth Periodic Reports of Cyprus*, CRC/C/CYP/3-4, 14 September 2011, para. 86. Available at: http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.CYP.3-4_en.pdf

¹¹ <http://www.law.yale.edu/rcw/rcw/jurisdictions/asw/cyprus/frontpage.htm>.

- submit applications on behalf of any child for the appointment of a special representative in court proceedings affecting the child, when the law or the court precludes the holders of parental responsibility from representing the child due to conflicts of interest; or
- represent children and their interests in proceedings affecting the child, when this is provided for in legislation, as well as in court proceedings where the Commissioner may be appointed representative of the child by the court.¹²

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

A legal guardian of the child can bring cases in court. As mentioned above, in case there is no guardian of a child then the “next friend” of the child will bring the proceedings in court on behalf of the child.¹³ Therefore, there is a need for an authorised individual to bring the case in court.

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

According to the Constitution every person has the right to have free legal assistance where the interests of justice so require and as provided by law.¹⁴

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)?

When commencing a civil action no writ will be sealed for a child unless it is endorsed by a statement of consent of the guardian of the child. In case no such consent is granted a judge may stay the proceedings.¹⁵

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?

Civil cases can be brought according to Civil Procedure Rules.

If there is a violation against the written Constitution, a legal challenge may be brought under the following laws:

- Domestic law:
 - The Children Law (Cap. 352, 83(I)/1999, 143(I)/2002).

¹² http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.CYP.3-4_en.pdf, para. 15.

¹³ Civil Procedure Rules, Order 9(12).

¹⁴ The Constitution, Article 30(3).

¹⁵ Civil Procedure Rules, Order 2(15).

- The Violence in the Family (Prevention and Protection of Victims) Laws of 2000 and 2004.
- The Penal Code (various articles on offences against the person) Cap. 154.
- Conventions:
 - CRC.¹⁶

The Violence in the Family (Prevention and Protection of Victims) Laws of 2000 and 2004 explicitly prohibit corporal punishment against children (0-18 years) by a parent or any other family member or any person with parental authority over children.

The Penal Code Cap.154: The Penal Code has many provisions which penalize actions against the person. So in the hypothetical case when a teacher hits a student he will be charged with assault or causing bodily harm or similar offences contained in the Penal Code Cap.154.¹⁷

Children or their representatives may submit complaints to the Commissioner for the Protection of Children's Rights, who may hear those complaints and pursue claims on behalf of children.¹⁸ In particular, the Commissioner may submit complaints about violations of children's rights to the competent authorities for investigation.¹⁹

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.²⁰ 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,²¹ but the complaint will be admissible only if all domestic remedies have been exhausted.²² Anonymous complaints are not permitted.²³ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.²⁴ After examining the case, the Court renders a judgment which is binding on the State²⁵ and also has powers to award

¹⁶http://www.coe.int/t/dGHI/monitoring/Socialcharter/Complaints/CC97CaseDoc2_en.pdf

¹⁷http://www.coe.int/t/dGHI/monitoring/Socialcharter/Complaints/CC97CaseDoc2_en.pdf

¹⁸ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Cyprus*, CRC/C/CYP/CO/3-4, 24 September 2012, para. 13. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCYP%2fCO%2f3-4&Lang=en.

¹⁹ Commissioner for the Protection of Children's Rights Law 2007, section 4.

²⁰ 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>.

²¹ *Ibid.*, Article 34.

²² *Ibid.*, Article 35.

²³ *Ibid.*

²⁴ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf

²⁵ European Convention on Human Rights, Article 46.

monetary compensation to the victims of human rights abuses.²⁶ 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?

The Supreme Court in the exercise of its functions as a Constitutional Court has the authority to adjudicate on the constitutionality of laws and review the legality of administrative decisions, acts, or omissions of organs, authorities or persons exercising executive or administrative authority. However, no direct recourse lies to the Supreme Court for the review of the constitutionality of statutes or regulatory acts. Their constitutionality may be the subject of review incidentally if it is material for the determination of any matter at issue in the particular proceedings pending before the Court. Laws and decisions contradicting the Constitution, including laws contravening human rights, can be declared unconstitutional. Moreover, the Supreme Court may void or annul the objectionable act, decision or omission.²⁷

The Civil Procedure Rules envisage the following remedies: judgment or order to pay money, to deliver or transfer any property movable or immovable to another.²⁸

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?

In order to bring proceedings against any individual the identification of the plaintiff is required. When submitting the application to the Court one would submit (a) the name of the plaintiff and (b) the name of the “next friend” that is pursuing the action for the child. If the child is a defendant then there is a need for the guardian or next friend to act ad litem.²⁹

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

There is the possibility for group litigation as specified by the Civil Procedure Rules. Any plaintiff who has a “right to relief” can join an action. Nonetheless, if such joinder would lead to delaying the trial or result in any other negative consequences in connection with the proceedings, then it is up to the discretion of the judge whether to allow the joinder.³⁰ As for the anonymity of the plaintiffs, as mentioned above, it would appear from the Civil Procedural Rules that the plaintiff has to be named whether the submission is brought by a next friend or guardian.

²⁶ Ibid., Article 41.

²⁷ <http://www.confueconstco.org/reports/rep-xii/Cyprus-EN.pdf>.

²⁸ Civil Procedure Rules, Order 40(1).

²⁹ Civil Procedure Rules, Order 9.

³⁰ Civil Procedure Rules, Order 9(1).

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?

The possibility of filing challenges or intervening in cases by non-governmental organisations has not been found during the research.

The Pancyprian Coordinating Committee for the Protection and Welfare of Children (PCCPWC) is one example of notable non-governmental initiatives for the expansion of opportunities for children to express their views and to be heard.³¹ According to Section 4(2)(f) of the Protection of Children's Rights Law [L. 74(I)/2007], the Commissioner supports the work of non-governmental organisations, which defend children's rights or provide services to children, and contributes to the formulation and implementation of guidelines for the effective protection of children's rights.

Cyprus has ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints³², meaning that complaints of violations of children's rights contained in the European Social Charter³³ can be made to the European Committee of Social Rights. Such complaints of unsatisfactory application of the Charter may only be submitted by international NGOs that have participatory status with the Council of Europe.³⁴ The Committee reviews the information provided by both sides and writes a report with its conclusions, which is sent to the Committee of Ministers of the Council of Europe that adopts a resolution and makes a recommendation to the State.³⁵ The State then must provide information about the steps taken to comply with the recommendation in its next report under the Charter.³⁶

IV. Practical considerations

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Cyprus employs a two tier court system. The first tier is constituted by the District Court as the Court of first instance for civil matters and the Criminal Court as the Court of first instance for criminal matters. The second tier is the Supreme Court where appeals can be submitted.³⁷

The judicial system of Cyprus also provides for four Family Courts as first instance courts.³⁸

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

³¹ http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.CYP.3-4_en.pdf.

³² Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

³³ Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

³⁴ Additional Protocol for a System of Collective Complaints, Article 1. See also:

http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

³⁵ Additional Protocol for a System of Collective Complaints, Articles 8-9.

³⁶ Additional Protocol for a System of Collective Complaints, Article 10.

³⁷ <http://www.cypruslawdigest.com/topics/judicial-system>.

³⁸ <http://www.lawyersincyprus.com/article/293-cyprushague-convention-on-international-child-abduction>.

or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

Any person who cannot bear the costs of proceedings without affecting the basic needs and obligations is entitled to receive legal aid.

Legal aid is granted particularly in:

- Criminal proceedings before the District Court, the Tribunal Court, the Military Court and the Supreme Court;
- Civil and criminal proceedings for specific violations of human rights;
- Proceedings before the Family Court in relation to matters of family relations, parental responsibility, alimony, recognition of child, adoption, property relations of spouses and any other dispute in the marriage or in the family;
- Cross-border disputes.³⁹

The lawyer is chosen by the person entitled to legal aid from a list of lawyers who are willing to offer their services. In the case where the person entitled to legal aid does not indicate a lawyer of his or her own choice, the Court that issues the certificate of legal aid calls this person to choose a lawyer of his or her preference from the list of lawyers, interested to offer their services within the framework of the institution of legal aid, prepared by the Cyprus Bar Association.⁴⁰

- 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?

Pro bono legal services are available from certain law firms. The said law firms can either be approached directly or through organisations that protect the rights of the child.

The Hope for Children – UNCRC Policy Center provides services entitled National Legal Advisers on Children.⁴¹ The aim of the project is to facilitate the contact between children with problems with legal advisers that are specialised in children's rights.

It is noted that hiring lawyers on a non-pro bono basis could be extremely costly. Even if the lawyer agrees to a “no win, no fee” agreement, there is still a need to pay the court costs, which could be substantial.

- 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?

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[http://www.mjpo.gov.cy/mjpo/mjpo.nsf/B48720EF992B7010C22579B30024567D/\\$file/LEGAL%20AI D%20IN%20CYPRUS.pdf](http://www.mjpo.gov.cy/mjpo/mjpo.nsf/B48720EF992B7010C22579B30024567D/$file/LEGAL%20AI D%20IN%20CYPRUS.pdf)

⁴⁰ Ibid.

⁴¹ <http://www.uncrcpc.org/activities-projects/national-legal-advisers-on-children-nlac>.

The general limitation period is 10 years from the day of completion of the basis of the claim.⁴²

The limitation period is 6 years for civil wrongs; 3 years in relation to negligence, nuisance or breach of statutory duty; 6 years for contracts; and 1 year in relation to defamation or malicious falsehood.⁴³

The limitation period does not start to run or is suspended as regards children only in the following cases:

- Between parents and children during the period that the children were under 18 years of age;
- Between trustees and beneficiaries during the period that the beneficiary was under 18 years of age or had not yet been born;
- Between executors of a will or administrators of property of a deceased person and the heirs of the deceased, during the period that the heirs were under 18 years of age.

For as long as they are under 18, limitation periods do not run against child defendants who do not have legal representatives.⁴⁴

In accordance with Article 146(3) of the Cyprus Constitution, in order to apply for judicial review of any decision, act or omission of any organ, authority or person, there is a time-limit of 75 days from the day the decision in question has been published or, if the decision has not been published, from the date the decision has come to the knowledge of the claimant.⁴⁵

Additionally, the writ of summons issued by the Court expires within 12 months if it is not served to the defendant. Upon expiration, there is a need to renew the writ.⁴⁶

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 burden of proof shifts depending on whether the case is a criminal or a civil one and in a similar manner the burden of proof differs in relation to the related cause of action. For civil actions the burden of proof is on the “balance of probabilities” whereas for criminal actions a heightened burden of proof is required that is “beyond reasonable doubt.”

The claimant has the onus of establishing, to the requisite evidentiary burden, his case through various pieces of evidence, specifically, through documents that are submitted as primary evidence in any form of pleadings.⁴⁷

The court, however, has discretion in relation to documents that are

⁴² <http://www.triantafyllides.com/news/88/75>.

⁴³ <http://www.triantafyllides.com/news/88/75>.

⁴⁴ Law on the Limitation Period for Actionable Rights N.66(I)/2012, Article 16.

⁴⁵ The Constitution, Article 146.

⁴⁶ Civil Procedure Rules, Order 4(1).

⁴⁷ Law on Evidence, Article 34. Available at: http://www.cylaw.org/nomoi/enop/non-ind/0_9/full.html.

inadmissible in the interest of justice; this discretion can be found in Article 36 of the Law on Evidence.

Special legal provisions exist to assist and support vulnerable witnesses, such as children, during criminal proceedings and to facilitate the gathering and giving of evidence by such witnesses.⁴⁸

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

Due to the structured nature of proceedings with possibilities for a number of postponements and alterations in the time-frame, there is no specified time-limitation between proceedings. In light of the severity of the offence the requisite time to form a resolution will fluctuate. Therefore, depending on the offence the resolution duration will differ. However, no clear mandatory requirements exist and it is mostly left to the discretion of the courts as evidenced in Order 33(11) in which it is stipulated that “the Court may give judgment against either party on the close of his case without any further proceedings, unless it shall think fit to adjourn the trial so as to enable further evidence to be adduced.”⁴⁹

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

Decisions that are undertaken by the District Court and the Criminal Court can be appealed to the Supreme Court based on Article 25 of Law No. 14/1960.⁵⁰ Article 25(1) deals with the civil aspect of the proceedings and Article 25(2) addresses any potential criminal aspects. The specific provisions governing civil appeals can be found in Order 35 of the Civil Procedure Rules. On appeal, the appellate court shall have full jurisdiction over the case together with full discretionary power to hear cases of fact.⁵¹

- 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?

The guidance provided by the Civil Procedure Rules and the Criminal Procedure Rules is informative in relation to both the criminal and civil aspect of cases brought in relation to children. However, both in relation to procedure and substance it needs to be reminded that in Cyprus, a common law jurisdiction, case law precedent plays an important role in the justice system. Therefore, a judgment is binding for other courts to follow. Although there is still a possibility for the judges to distance themselves from a wrong judgment by differentiating the case on its facts and holding it as exceptional, majority of the cases lead the judges to uphold set precedents due to the conservative nature of the judiciary.

⁴⁸ UN Committee on the Rights of the Child, *Consideration of Combined Third and Fourth Periodic Reports of Cyprus*, CRC/C/CYP/3-4, 14 September 2011, para. 87.

⁴⁹ Civil Procedure Rules, Order 33(11).

⁵⁰ http://www.cylaw.org/nomoi/arith/1960_1_014.pdf.

⁵¹ Civil Procedure Rules, Order 35(8).

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

The Children Law is currently being revised to better reflect the principles of the CRC, so there is a need to wait and see how the revamping of the law will take place. However, positive developments can be observed, for example, the adoption of the new law regarding child sexual abuse.⁵²

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.

As mentioned above there is a legislative framework that ultimately derives from international law, including the CRC. These are the legislative instruments that need to be consulted in relation to any procedure relating to child rights. In addition, the fact that the Civil Procedure Rules are in English creates an approachable system that could be of use to international practitioners for some level of consultation.

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

⁵² The Law for the Prevention and Punishment of Sexual Abuse and Sexual Exploitation of children and child pornography No. 91(I)/2014, adopted in June 2014.