

ACCESS TO JUSTICE FOR CHILDREN: AZERBAIJAN

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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?

Azerbaijan has ratified the CRC and has acceded to numerous relevant treaties.

Azerbaijan has been a member of the United Nations since 1992. The legislative branch of the government, the Parliament of Azerbaijan, ratified Azerbaijan's accession to the CRC without any reservations. The CRC entered into force in Azerbaijan on August 13, 1992.¹ Azerbaijan submitted its initial report in 1996 and two subsequent periodical reports in 2004 and 2009 to the Committee on the Rights of the Child.²

Azerbaijan also acceded to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and to the Optional Protocol to the Convention on the involvement of children in armed conflict.³

Azerbaijan acceded to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice in 1993,⁴ the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages in 1996,⁵ the European Social Charter in 2004,⁶ and the Convention on Elimination of Discrimination in Education Sphere in 2006.⁷

Azerbaijan is a member of the International Labour Organisation (ILO) and has acceded to several ILO conventions, including the Minimum Age Convention (No. 138) of 1973 and the Abolition of Forced Labour Convention (No. 105) of 1957. In January 2004, Azerbaijan ratified ILO Convention concerning the

¹ Resolution of the Parliament of Republic of Azerbaijan №236, 21 July 1992.

² *Initial report of Azerbaijan to the UN Committee on the rights of the child*, CRC/C/11/Add.8, 20 May 1996. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.8&Lang=en ;

Second periodic report of Azerbaijan to the UN Committee on the rights of the child, CRC/C/83/Add.13, 7 April 2005. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f83%2fAdd.13&Lang=en ; *Combined third and fourth periodic report of Azerbaijan to the UN Committee on the rights of the child*, CRC/C/AZE/3-4, 26 April 2011. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAZE%2f3-4&Lang=en.

³ Resolution of the Parliament of Republic of Azerbaijan №285-IIQ, 2 April 2002.

⁴ Resolution of the Parliament of Republic of Azerbaijan №652, 28 July 1993.

⁵ Law of the Republic of Azerbaijan №107-IQ, 31 May 1996.

⁶ Law of the Republic of Azerbaijan №575-IIQ, 6 January 2004.

⁷ Law of the Republic of Azerbaijan №146-IIIQ, 2 October 2006.

Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182).

In addition, Azerbaijan acceded to the following conventions that relate to the rights of the child: The International Convention on the Rights of All Migrant Workers and Members of Their Families, on 11 January 1999; the 1993 Hague Convention No. 33 on the Protection of Children and Cooperation in Respect of Intercountry Adoption, on 22 June 2004; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime 2000, on 30 October 2003; and the Council of Europe Convention on Action against Trafficking in Human Beings on 11 May 2010.

Under the Constitution of Republic of Azerbaijan (the Constitution), the President submits an international agreement for approval to the Parliament.⁸ The Parliament has authority to approve or disapprove international treaties.⁹ Once ratified by the Parliament, an international treaty becomes a part of national law.

B. Does the CRC take precedence over national law?

International treaties to which Azerbaijan is a party constitute integral parts of the national law.¹⁰ When there is a disagreement between domestic laws of Azerbaijan and international treaties to which Azerbaijan is a party, provisions of international treaties take precedence over domestic laws.¹¹ However, constitutional provisions and legislation accepted by referendum are exempt from this rule. Therefore, the CRC takes precedence over domestic laws, except the provisions of the Constitution and legislation accepted by referendum. In the same vein, national laws usually contain a specific provision indicating that international treaties apply directly to the legal relationships regulated by such law and take precedence over domestic law in case of a conflict.¹²

C. Has the CRC been incorporated into national law?

Yes, the CRC is incorporated into national law.

Furthermore, in 1998, Azerbaijan promulgated the Law on the Rights of the Child harmonising its legislation with the principles set forth in the CRC.¹³ However, the Committee on the Rights of the Child highlighted a number of areas of national law to be in need of reform in order to bring them into conformity with the Convention. For instance, it noted that “national legislation does not contain any provision concerning the periodic review of placement for children”¹⁴ as well as failings in the legislation on juvenile justice, and in the

⁸ Constitution of the Republic of Azerbaijan, Art.109(17) (1995). Available at: <http://www.jlc.gov.az/Law/AR/eKonst.pdf>.

⁹ Constitution of the Republic of Azerbaijan, Art. 94-I (22) (1995).

¹⁰ Constitution of the Republic of Azerbaijan, Art. 148-II (1995).

¹¹ Constitution of the Republic of Azerbaijan, Art. 151 (1995).

¹² See e.g., Law of the Republic of Azerbaijan on the Rights of the Child №499-IG, 19 May 1998, Art. 45.

¹³ Law of the Republic of Azerbaijan on the Rights of the Child №499-IG, 19 May 1998.

¹⁴ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Azerbaijan*, CRC/C/AZE/CO/2, 17 March 2006. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAZE%2fCO%2f2&Lang=en.

legislation on refugees and asylum seekers.¹⁵ The UN Committee on the rights of the child and the Commissioner for Human Rights of the Republic of Azerbaijan (Ombudsman) recommended the adoption of law on juvenile justice. The law has not been adopted yet, but a working group composed of representative of state bodies, international organisations and civil society organisations was set up to work on the issue.¹⁶

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

International treaties like the CRC can be enforced directly in the courts after ratification. A legislative text usually contains a provision indicating that relevant international treaties ratified by the State would apply directly to the matters governed by that text. In practice, however, courts have been hesitant to apply or use the CRC or other international treaties in their decisions. In its 2012 Concluding observations, the Committee expressed concerns over reports that law-enforcement and judicial bodies have refused to directly apply the provisions of the Convention, "particularly in the context of legislation relating to juvenile justice, rights of children with disabilities and children without parental care."¹⁷

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

The Appellate Court of Baku has rendered at least eight decisions using the CRC as a source in its legal reasoning.¹⁸ The court has invoked Articles 3, 9, 18, and 27 of the Convention.

However as documented in the Alternative report of the Azerbaijan NGO Alliance for Children's Rights to the Committee on the Rights of the Child (ahead of the examination of the combined third and fourth report), Azerbaijan courts are not accustomed to the direct application of international treaties.¹⁹ This report and the Reply of Azerbaijan to the Committee's the list of Issues in 2005, (ahead of the examination of the Second periodic report) both indicate that, at least until 2010, the CRC had never been directly applied. In fact, there

¹⁵ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Azerbaijan*, CRC/C/AZE/CO/3-3, 12 March 2012, para.66-68. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAZE%2fCO%2f3-4&Lang=en.

¹⁶ Information from the Human Rights Commissioner (Ombudsman).

¹⁷ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Azerbaijan*, CRC/C/AZE/CO/3-3, 12 March 2012, para.9. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAZE%2fCO%2f3-4&Lang=en.

¹⁸ See Republic of Azerbaijan, Appellate Court of Baku, Civil Law Chamber, Decision in Case No. 2(103)-4924/2010, 1 December 2010; Decision in Case No. 2(103)-3469/2011, 25 August 2011; Decision in Case No. 2(103)-5575/2011, 22 November, 2011; Decision in Case No. 2(103)-191/2012, 12 January 2012; Decision in Case No. 2(103)-1843/2012, 5 April 2012; Decision in Case No. 2(103)-2770/2012, 23 May 2012; Decision in Case No. 2(103)-3054/2012, 7 June 2012; Decision in Case No. 2(103)-5256/2012, 24 October 2012.

¹⁹ See The NGO Alliance For Children's Rights, Alternative NGO, *Report on situation of children in Azerbaijan Republic and on the implementation of the UN Convention on the Rights of the Child*, January 2011, p.8. Available at: http://www2.ohchr.org/english/bodies/crc/docs/ngos/Azerbaijan_NGOACR_CRC.pdf.

are instances where judicial and administrative bodies have refused direct application of the CRC, particularly in the area of juvenile justice.²⁰

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?

Yes. According to the Law on the Rights of the Child and the Family Code, when a child's rights and interests are violated, including failure of parents in their responsibilities in a child's education and upbringing, the child has the right to apply to a number of non-judicial state bodies, as well as the courts. A child can apply individually or through their representative depending on the right that has been violated and the corresponding procedural rules thereof.²¹

In addition, the Family Code allows parents as legal representatives of the child to bring cases to challenge violations of the child's rights without the consent of the child.²² Similarly, under the Criminal Procedure Code, the rights of injured children may be exercised by their legal representatives on their behalf.²³

A child can apply to state bodies, namely the Commission on Minors' Issues under the Cabinet of Ministers of the Republic of Azerbaijan, the Cabinet of Ministers of Nakhichevan Autonomous Republic, the Commissions on Minors' Issues and Rights under district and town executive authorities, the State Committee on Family, Women and Children Problems, and the Ministry of Internal Affairs of the Republic of Azerbaijan.²⁴ Although these bodies cannot exercise any judicial powers, they are responsible for taking measures to prevent violations of children's rights and may bring an action on behalf of the child in domestic courts.²⁵

The Commissions on Minors' Issues and Rights may apply to the courts for the imposition of a lighter penalty and relief from punishment for children who have committed "an offence that does not represent a great social danger" and who are below the age of criminal liability designated by the criminal law.²⁶ Under the Criminal Code, criminal liability starts at the age of sixteen, and children between fourteen and sixteen are subject to liability only for serious crimes

²⁰ Reply of Azerbaijan to List of Issues CRC/C/AZE/Q/2/Add.1, 20 December 2005, part 1.B. para.2. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAZE%2fQ%2f2%2fAdd.1&Lang=en.

²¹ Family Code of the Republic of Azerbaijan №781-IQ, 28 December 1999, Art. 51.5; Law on the Rights of the Child, Art. 12.

²² Family Code of the Republic of Azerbaijan, Art. 59.

²³ Criminal Procedure Code of the Republic of Azerbaijan №907-IQ, 14 July 2000, Art. 87.8.

²⁴ Law on the Rights of the Child, Art. 12; Family Code, Art. 51.5.

²⁵ Law of the Republic of Azerbaijan on Procedures for Review of Citizens' Applications №314-IG, 10 June 1997, Art. 5.

²⁶ Order on Commissions on Minors' Affairs and Protection of Their Rights (approved by the Order on Commissions on Minors' Affairs and Protection of their Rights (Approval) Act), Arts. 4-7; *Second periodic report of Azerbaijan to the UN Committee on the rights of the child*, CRC/C/83/Add.13, 7 April 2005, paras. 436-37. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f83%2fAdd.13&Lang=en

prescribed by the law.²⁷ However, according to NGOs, the Commissions on Minors' issues are understaffed and under-resourced, lack specialised training and most often fail to appear in legal proceedings involving children.²⁸

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.²⁹ 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,³⁰ but the complaint will be admissible only if all domestic remedies have been exhausted.³¹ Anonymous complaints are not permitted.³² 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.³³ After examining the case, the Court renders a judgment which is binding on the State³⁴ and also has powers to award monetary compensation to the victims of human rights abuses.³⁵ 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. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Under the Law on the Rights of the Child, the child obtains the right to individually bring cases in domestic courts upon reaching the age of fourteen.³⁶ The general rule under the Civil Procedure Code is that a minor (under the age of eighteen) has limited "procedural action capacity" and his or her rights shall be protected in court by his or her legal representatives. However, a Court can invite minors over 14 years of age to participate in the proceedings in person.³⁷ In cases specified by law and concerning civil, family, labor, or administrative relationships children can personally protect their rights.³⁸

²⁷ See Criminal Code of the Republic of Azerbaijan №787-IQ, 30 December 1999, Art. 20.

²⁸ See NGO Alliance for Children's Rights, *Monitoring the Juvenile Justice Administration in Azerbaijan*, Baku, 2007, p. 13. Available at: <http://www.osce.org/baku/28433?download=true>; See also NGO Alliance For Children's Rights, *Alternative report on situation of children in Azerbaijan Republic and on the implementation of the UN Convention on the Rights of the Child*, January 2011. Available at: http://www2.ohchr.org/english/bodies/crc/docs/ngos/Azerbaijan_NGOACR_CRC.pdf

²⁹ 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>.

³⁰ Ibid., Article 34.

³¹ Ibid., Article 35.

³² Ibid.

³³ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

³⁴ European Convention on Human Rights, Article 46.

³⁵ Ibid., Article 41.

³⁶ Law of the Republic of Azerbaijan on the Rights of the Child, Art. 12; Civil Procedure Code of the Republic of Azerbaijan, Art. 49.

³⁷ Civil Procedure Code of the Republic of Azerbaijan №780-IQ, 28 December 1999, Arts. 49.3, 49.4.

³⁸ Civil Procedure Code, Art. 49.5.

Similarly, pursuant to the Criminal Procedure Code, a child victim may exercise rights through a legal representative.³⁹

The legal representatives of a minor are his or her parents, adoptive parents, tutors or guardians. If a minor against whom an administrative or criminal proceeding has been instituted or who is an injured party has no legal representatives of his or her interests, the competent official handling the proceedings (the court or the administrative body) designates the tutorship and guardianship agencies to be the legal representatives of such person's interests.⁴⁰

Under the Code of Civil Procedure, state bodies and individual persons are entitled in certain cases to apply to the courts for protection of the rights and freedoms of other persons. An action for protection of the rights of minors may be brought even when the person concerned has not requested it.⁴¹

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

Children under age of 14 cannot bring cases in courts individually.⁴² In such a case, the legal representatives of the child must challenge the violation of the right of the child.⁴³ Under the Family Code, parents are obliged to protect their children's rights and interests and, according to the Law on the Rights of the Child, all natural and legal persons must accord preference in their activities to the best interests of the child and create conditions for the exercise of children's rights.⁴⁴

Parents may defend their children's rights as their legal representative against any person, without special authorisation from the child. In the event of a conflict between the rights of parents and their child, the competent local authority is required to appoint a representative to defend the child's rights and interests.⁴⁵

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

According to the Civil Procedure Code, minors are relieved from court expenses for filing petitions to protect their rights.⁴⁶ The Constitution of Azerbaijan ensures Azerbaijani citizens legal protection of their rights and liberties and provides everyone with the right to obtain qualified legal representation.⁴⁷ It also states that in specific cases designated by the laws, legal representation shall be rendered free, at the governmental expense.⁴⁸

³⁹ Criminal Procedure Code, Arts. 87.8.

⁴⁰ Second Report of Azerbaijan to the UN Committee on the Rights of the Child, CRC/C/83/Add.13, 7 April 2005, para. 94.

⁴¹ Civil Procedure Code, Art. 59.1; *see also* Second Report of Azerbaijan to the UN Committee on the Rights of the Child, CRC/C/83/Add.13, 7 April 2005, para. 81.

⁴² Law on the Rights of the Child, Art. 12; Civil Procedure Code, Art. 49.

⁴³ Civil Procedure Code of the Republic of Azerbaijan, Art. 49.

⁴⁴ Second Report of Azerbaijan to the UN Committee on the Rights of the Child, CRC/C/83/Add.13, 7 April 2005, para. 50.

⁴⁵ Family Code, Art. 59.

⁴⁶ Civil Procedure Code, Art. 110.1.12.

⁴⁷ Constitution of the Republic of Azerbaijan, Arts. 60-I, 61-I (1995).

⁴⁸ Constitution of the Republic of Azerbaijan, Art. 61-II (1995).

Free or subsidised legal assistance is available in criminal cases in the form of court appointed defense counsel. The state budget for legal aid was around three million US dollars in 2012.⁴⁹

A proposed law on legal aid envisages free legal assistance for litigants in civil matters.⁵⁰

- 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)?

As explained in II.B above, legal representatives of the child and, in certain cases, state bodies or third parties may bring cases without specific authorisation from the child.

NGOs also report that it is difficult, if not impossible, to challenge or review decisions of placement in institution made by the Commissions on Minors' issues, the administrative body in charge of child protection. The Commissions have been criticised to overuse institutionalisation measures at the parents' request, and can consider placement in either open or closed educational institutions.⁵¹

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?

In Azerbaijan, children, their representatives, and third parties may initiate legal proceedings in civil courts to challenge violations of children's rights under domestic law. Generally a case is commenced in a District Court, the first instance court with general jurisdiction.⁵²

The judicial power of Azerbaijan is exercised by the District Courts, Appellate Courts, the Supreme Court (the "Court of Cassation"), and the Constitutional Court.

The Constitutional Court reviews the compliance of laws with the Constitution based on inquiries of the President, the Parliament (*Ali Majlis*), the Cabinet of Ministers, the Supreme Court, the Procurator's Office or the Ali Majlis of Nakhichevan Autonomous Republic.

Furthermore, individuals claiming that a decision of the legislative, executive, judiciary, or a municipal act violates their rights and freedoms may appeal to the Constitutional Court.⁵³

The Human Rights Commissioner of the Republic of Azerbaijan (the "Ombudsman") is a state authority that may bring a case in competent courts or apply to the Constitutional Court in cases where the rights and liberties of a

⁴⁹ Work Group for Promotion of Legal Aid in Azerbaijan, *On the Proposed Law on Legal Aid*, 2012, p. 31. Available at http://www.lawreform.az/upload/file_17102012_az.pdf (in Azeri) (last visited 7 August 2014).

⁵⁰ See Work Group for Promotion of Legal Aid in Azerbaijan, *On the Proposed Law on Legal Aid*, 2012.

⁵¹ NGO Alliance for Children's Rights, *Monitoring the Juvenile Justice Administration in Azerbaijan*, Baku, 2007, p. 6, 13. Available at: <http://www.osce.org/baku/28433?download=true>

⁵² Civil Procedure Code, Art. 34.

⁵³ Ramil Iskandarli, *A Guide to the Republic of Azerbaijan Law Research* (update), April 2012. Available at: <http://www.nyulawglobal.org/globalex/azerbaijan1.htm#constitutionalcourt>.

person have been violated by legislation in force, acts of executive power, and court decisions.⁵⁴

Citizens also have the right to submit individual or collective written applications to challenge a state action to the particular state agency that is responsible for the action.⁵⁵ The agencies review these applications and adopt measures for termination of causes for recurring complaints by citizens concerning violation of their rights.⁵⁶

Finally, Azerbaijan is a party to the European Convention on Human Rights. The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.⁵⁷ 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,⁵⁸ but the complaint will be admissible only if all domestic remedies have been exhausted.⁵⁹ Anonymous complaints are not permitted.⁶⁰ 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.⁶¹ After examining the case, the Court renders a judgment which is binding on the State⁶² and also has powers to award monetary compensation to the victims of human rights abuses.⁶³ 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 District Courts may issue judgments and rule for interim measures.⁶⁴

Victims of crime are entitled to state funded compensation under article 191.1 of the Criminal Procedural Code. However, as of 2013, the necessary legal reforms for this provision to come into force had not been achieved.⁶⁵

On the appellate level, the Appellate Courts and the Court of Cassation may affirm, quash or alter the decisions of the lower instance courts. The Constitutional Court strikes down unconstitutional legislation.

⁵⁴ Law of the Republic of Azerbaijan on Constitutional Court №561-IIIG, 23 December 2003, Arts. 32-34.

⁵⁵ Constitution of the Republic of Azerbaijan, Art. 57.

⁵⁶ Law on Procedures for Review of Citizens' Applications, Art 5.

⁵⁷ 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>.

⁵⁸ Ibid., Article 34.

⁵⁹ Ibid., Article 35.

⁶⁰ Ibid.

⁶¹ Rules of Court, July 2014, Rule 36, available at:

http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁶² European Convention on Human Rights, Article 46.

⁶³ Ibid., Article 41.

⁶⁴ Civil Procedure Code, Arts. 15.1, 157.1.

⁶⁵ *Reply of Azerbaijan to the European Commission for the Efficiency of Justice's evaluation of judicial systems*, 2013, item 32. Available at:

http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Azerba%C3%AFdjan_2014.pdf.

In addition, a party may apply to the District Court for interim measures at any stage of the hearing.⁶⁶ Azerbaijani courts may issue preliminary injunctions, temporary restraining orders prohibiting a defendant or third party from engaging in activities disputed by the claimant, writs of attachment or garnishment, and stays of execution. Preliminary injunctions, temporary restraining orders and writs of attachment can be appealed immediately by the party against whom the relief has been obtained. The court which provided interim relief may, at its own discretion or at parties' request, re-examine and reverse its decision.⁶⁷

In administrative cases, provisional remedies may include the suspension of an administrative act until a decision is reached.⁶⁸ Definite remedies may include ordering the administrative body concerned to liquidate an administrative act, or to adopt an administrative act in line with the court's decision.⁶⁹ It can also order the administrative body to eliminate any consequence of the liquidated administrative act, or, in the event that it is not possible, to pay a compensation to the claimant.⁷⁰

In 2009, an amendment to the Civil Procedure Code withdrew an article which obliged legal entities, state authority, local self-governing body or other organisation, official or physical person to take remedial measures within one month when a court had established a breach of the law and issued a special ruling. Courts do not have that power anymore.⁷¹

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?

Laws can generally be challenged, for instance in administrative courts or in the constitutional courts, by the person whose rights have been violated.

The general rule is that physical persons and legal entities filing a claim for the protection of their rights, or rights of a third party, must be named as claimants in legal proceedings.⁷² Therefore, the legal representative of a child, or any party entitled by the law to bring an action to challenge a violation of the rights of a child, may do so without naming the child (though the court practice may differ). Also, the courts are required by law to observe the privacy of the children in legal proceedings. For instance, courts may close trials in cases concerning children to the public.⁷³ Similarly, the Ombudsman is required to

⁶⁶ Civil Procedure Code, Art. 157.1; for a brief review of court procedures in Azerbaijan, see Baker & McKenzie, *Dispute Resolution around the World: Azerbaijan*, 2010, p. 6. Available at http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw_azerbaijan_2009.pdf (last visited 7 August 2014).

⁶⁷ Civil Procedure Code, Art. 162.1.

⁶⁸ Administrative Procedure Code, Art. 41.

⁶⁹ Administrative Procedure Code, Art. 70.

⁷⁰ Administrative Procedure Code, Art. 71.

⁷¹ Article 19, *Time To Reset The Locks: Realising the Right to Know in Azerbaijan after the Adoption of the 2005 Law on the Right to Obtain Information*, October 2009, p.31. Available at: <http://www.article19.org/data/files/pdfs/publications/azerbaijan-freedom-of-information-report.pdf>.

⁷² Civil Procedure Code, Art. 50.

⁷³ Civil Procedure Code, Art. 10.

keep information about a plaintiff (child or adult) confidential upon their request.⁷⁴

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

Under the Civil Procedure Code, a claim may be brought jointly by multiple claimants and/or against multiple respondents.⁷⁵ Each and every claimant or respondent shall participate in court individually and independently.⁷⁶ Thus, a collective action, though available, cannot take the form of a representative action such as class action. However, the law on consumers rights allows public organisations of consumers (union of consumers) to “protect rights of citizens that are not member of public organisations of consumers (union of consumers) in the court pursuant to the legislation”.⁷⁷ This appears to be the only instance where group litigation is possible.

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 Civil Procedure Code is silent on whether non-governmental organisations are permitted to file challenges to potential children’s right violations.

The law governing the activities of the Ombudsman expressly states that “complaints may be made by third parties or non-governmental organisations upon the agreement of the person whose human rights have been violated” (and without consent if obtaining consent is impossible due reasons such as death and incapacity).⁷⁸ The Ombudsman may apply to relevant bodies to commence legal proceedings, approach the state agencies possessing the right to refer to the Court of Cassation, refer the issue to the court to restore the rights and freedoms violated as a consequence of an action (or failure to act) or decision of a state or local self-governing body or official, and make inquiries from the Constitution Court if a person’s rights and freedoms are violated by the laws in force.⁷⁹

Under article 46, 56 and 57 of the Code of Civil Procedure, non governmental organisations can participate as third parties in legal proceedings. One such , organisation, the Juvenile Center of Socio-Psychological and Legal Aid⁸⁰ intervened in the court hearings on several occasions in criminal proceedings involving children in order to avoid prison sentences and seek alternatives such as rehabilitation centers working closely with the families and police.

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:

⁷⁴ Law of the Republic of Azerbaijan on the Human Rights Commissioner №246-II KQ, 28 December 2001, Art 9.5.

⁷⁵ Civil Procedure Code, Art. 51.1.

⁷⁶ Civil Procedure Code of the Republic of Azerbaijan, Art. 51.1.

⁷⁷ Law of the Azerbaijan Republic On protection of consumer rights №415-IVQD, as amended on 29 June 2012, Art. 27.

⁷⁸ Law on the Human Rights Commissioner, Art. 8.

⁷⁹ Law on the Human Rights Commissioner, Art. 13.

⁸⁰ http://www.enpi-info.eu/enpi/userfiles/FT114%20Juvenile_RU_EUNeighbourhood.pdf

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

There is no specialised court for the child (e.g., family or juvenile courts) in Azerbaijan. Thus, a case may commence in the District Courts of general jurisdiction. In general, a legal action may commence in the appropriate court of the district in which the defendant has his or her registered residential address or, if the defendant is a legal entity, the district in which such legal entity has its registered address.⁸¹ Pursuant to the Civil Procedure Code, a claim shall be submitted to the court at the domicile of a defendant who is a natural person, and to the court at the place of registration of a defendant who is a legal entity.⁸² A counterclaim shall be submitted to the court reviewing the initial claim.⁸³ Claims against a respondent, whose place of residence is unknown, or whose place of residence is outside the boundaries of the Azerbaijan Republic, shall be submitted at the place of location of his property or at his or her last known place of residence.⁸⁴ Alimony lawsuits and lawsuits concerning establishment of paternity can be filed at the place of residence of the plaintiff.⁸⁵

District courts have jurisdiction over civil, family, labour, land, tax, administrative, and some criminal cases. Most serious criminal offences are within the jurisdiction of the Grave crime courts. Specialised courts are limited to local economic courts and military courts.

All appeals are heard in the Courts of appeals, and further appeals are heard by the Supreme court, which has four departments (civil, criminal, economic and military).⁸⁶

Although there are no specialised courts dealing with cases involving children, the current work on a juvenile justice reform (see above I.C) led to the appointment of three judges, two public prosecutors and two lawyers specialised in children in conflict with the law, and the creation of a children's chamber in the Baku Court on Grave crimes.⁸⁷

- 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?

As explained II.D above, legal aid is generally limited to criminal cases. However even in criminal cases, one of the main concerns regarding the protection of the rights of the child is the incapacity of the system to provide free legal aid to children victims or witness of crimes and juvenile offenders.⁸⁸

⁸¹ Civil Procedure Code, Art. 35.

⁸² Civil Procedure Code, Arts. 35.1-35.2.

⁸³ Civil Procedure Code, Art. 35.3.

⁸⁴ Civil Procedure Code, Art. 36.1.

⁸⁵ Civil Procedure Code, Art. 36(3).

⁸⁶ See Judicial system of Azerbaijan at http://bakuappealcourt.gov.az/img/jud-system_full_eng.jpg ; see also Aker & McKenzie, *Dispute Resolution around the World: Azerbaijan*, 2010 and Ramil Iskandarli, *A Guide to the Republic of Azerbaijan Law Research* (update), April 2012.

⁸⁷ Information from the Human Rights Commissioner of the Republic of Azerbaijan.

⁸⁸ See Azerbaijan Young Lawyers Union, *Juvenile Justice in Azerbaijan* available at http://www.un.org/esa/socdev/unyin/documents/wpaysubmissions/azerbaijan_english.pdf (last visited 7 August 2014).

Furthermore, legal aid applies to representation in court only, not to legal advice.
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Under the Civil Procedure Code, minors are exempt from paying court fees when filing petitions to protect their rights.

- 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?

As reported by the American Bar Association, “[t]he lack of available advocates, resources and an infrastructure to provide legal aid services results in thousands of individuals, especially the indigent and those deprived of their liberty, being deprived of their right to legal services.”⁹⁰ The Azerbaijan Bar Association has fewer than 1,000 registered members.⁹¹ There are only a handful of international law firms active in Azerbaijan.

Under these circumstances, pro bono services are provided through a handful of organisations. Several non-governmental organisations, lawyers, and the Ombudsman have been working together to establish legal clinics to provide people with access to legal assistance. For instance, UNICEF and the NGO Alliance for Children’s Rights in cooperation with the Ombudsman and OSCE office in Baku established the Children’s Rights Legal Clinic in 2007 to provide, among other things, free legal assistance to children and their families in cases relating to the issues of alimony, social assistance, identification of birth, arrangement of documents for the children, placing children under guardianship, and ensuring the right to housing and education.⁹² Other organisations that are active in providing free legal services to children and their families are the Reliable Future Youth Organisation⁹³ and Save the Children Azerbaijan Office.⁹⁴

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The general statute of limitations in the Civil Code is ten years for a violation of civil rights, and three years for a violation of rights arising out of a contractual relationship.⁹⁵ Under the Criminal Code, the statute of limitations is two years for misdemeanors; seven years for less serious crimes; twelve years for minor serious crimes; and fifteen years for serious crimes, starting from the date of the

⁸⁹ *Reply of Azerbaijan to the European Commission for the Efficiency of Justice’s evaluation of judicial systems*, 2013, item 16. Available at:

http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Azerba%C3%AFdjan_2014.pdf.

⁹⁰ American Bar Association and Central European and Eurasian Law Initiative, “Legal Profession Reform Index for Azerbaijan,” page 32 (2005) available at

<http://www.americanbar.org/content/dam/aba/directories/roli/azerbaijan/azerbaijan-lpri-2005.authcheckdam.pdf> (last visited 7 August 2014).

⁹¹ Azerbaijan Bar Association, available at <http://www.barassociation.az> (last visited 7 August 2014).

⁹² Uşaq Hüquqları Klinikası, available at <http://www.crlc.az> (last visited 7 August 2014).

⁹³ Reliable Future Youth Organisation, available at <http://www.childhelpline.az> (last visited 7 August 2014).

⁹⁴ Save the Children, available at

<http://www.savethechildren.org/site/c.8rKLIXMGIpI4E/b.6153119/k.2DDD/Azerbaijan.htm> (last visited 7 August 2014).

⁹⁵ Civil Code №886-IG, 1 September 2000, Art. 373

commitment of the crime.⁹⁶ Once the statute of limitations runs out, the claim is no longer valid and liability terminates.

Under the Civil Code, periods of limitations are suspended “where a person without action capacity does not have a legal representative”⁹⁷ and “until that person attains full action capacity or until a representative has been appointed for him.”⁹⁸ Therefore, statutes of limitations are not suspended for children, unless they have no legal representative or the case relates to a dispute with their parents or guardians.⁹⁹

On the appellate level, all rulings of trial courts which have not yet entered into legal force can be appealed within one month of the relevant party receiving the court decision.

- 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?

Legal proceedings in Azerbaijan are inquisitive rather than adversarial. Each party must provide evidence to support its claims and objections, and the evidence can take forms of written and material evidence, expert opinions, on-site examinations, audio and video recordings, testimony of witnesses, and statements of persons participating in the case.¹⁰⁰

A minor witness may be questioned regardless of his or her age if he or she can give either orally or in some other way information relevant to the case.¹⁰¹

Questioning of witnesses who are under age of 14 (or 16 at court’s discretion) must take place in the presence of a representative of the educational establishment attended by the witness, and the parents, adoptive parents, tutors or guardians may be summoned at the questioning.¹⁰²

In criminal cases, witnesses under the age of 16 are merely informed of their duty to tell the truth, but not of their liability as witness.¹⁰³

Criminal courts shall appoint the guardianship institution as a legal representative for witnesses under the age of 14 and older under-aged witnesses without a legal representative.¹⁰⁴

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

There is no expedited procedure for cases concerning the rights of the child, and both criminal and civil cases can last anywhere between a couple of months to three or more years. Lengthy proceedings bring significant concerns, particularly in criminal cases. Over the course of a criminal proceeding, for instance, children are often held in preliminary detention without being fully separated

⁹⁶ Criminal Code, Art. 75.

⁹⁷ Civil Code, Art. 379.1.4.

⁹⁸ Civil Code, Art. 379.6.

⁹⁹ Civil Code, Art. 379.5.

¹⁰⁰ Civil Procedure Code, Arts. 89-95.

¹⁰¹ Second Report of Azerbaijan to the UN Committee on the Rights of the Child, CRC/C/83/Add.13, 7 April 2005, para. 85.

¹⁰² Civil Procedure Code, Art. 197; Second Report of Azerbaijan to the UN Committee on the Rights of the Child, CRC/C/83/Add.13, 7 April 2005, para. 82.

¹⁰³ Criminal Procedure Code, Art. 228.

¹⁰⁴ Criminal Procedure Code, Art. 104.1.

from adult detainees and with no system in place to ensure the child's right to protection from torture or other cruel treatment.¹⁰⁵

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

The Courts of Appeal hear most civil, criminal, and administrative appeals from the District Courts. Since 2012, there are five courts of Appeal located in Baku, Ganja, Sumgait, Ali-Bayramli, and Sheki.¹⁰⁶ Each Court of Appeal has separate chambers for civil disputes, economic disputes, military crimes, criminal cases, and administrative cases. An appeal may be filed against all resolutions reached in first instance "except for disputes where a claim amount does not exceed an amount equal to 100 minimum monthly salaries or disputes specifically provided in law."¹⁰⁷

The Courts of Appeals re-hear the entire case on the merits.¹⁰⁸ Parties are entitled to submit new evidence to the Court of Appeals unless the court "deems new evidence not submitted by party to court of first instance as belated or directed at delaying appellate process or not submitted due to gross negligence."¹⁰⁹

The Court of Appeals may (i) uphold the decision of the trial court and reject the appeal or (ii) quash, in full or in part, the decision of the trial court and issue a new decision or alter the trial court's decision on the basis of the evidence established in the trial court or additional, newly submitted evidence.¹¹⁰

The Court of Appeals may quash the decision of a lower court if it finds (i) incorrect application of substantive or procedural rules of law; (ii) failure to investigate all factual circumstances relevant to the decision of the trial court; (iii) failure by the trial court to prove key facts; and (iv) inconsistency with the facts established at the trial.¹¹¹

The Court of Cassation hears appeals for all types of cases. The Board of the Court of Cassation regularly gives binding directions to lower courts regarding judicial practice. Since July 2007, the Court of Cassation has the right to revoke a decision of an appellate court and issue a new decision. Prior to July 2007, cases had to be sent back to the appellate court.

As a general rule, the Constitutional Court does not review any laws or regulations prior to their adoption and issues its judgments only on the application of an authorised body. With the adoption of the law on applications to the Constitutional Court, government bodies, individual citizens, and legal entities can apply to the Constitutional Court.¹¹²

¹⁰⁵ The NGO Alliance For Children's Rights, *Alternative report on situation of children in Azerbaijan Republic and on the implementation of the UN Convention on the Rights of the Child*, January 2011, p.11. Available at: http://www2.ohchr.org/english/bodies/crc/docs/ngos/Azerbaijan_NGOACR_CRC.pdf.

¹⁰⁶ Organisation for Security and Co-operation in Europe, *Conditions of Applying to Courts*, 2012. Available at: <http://www.osce.org/az/baku/41650?download=true> (in Azeri) (last visited August 7, 2014).

¹⁰⁷ Civil Procedure Code, Art. 359.

¹⁰⁸ Civil Procedure Code, Art. 372.1.

¹⁰⁹ Civil Procedure Code, Art. 371.2.

¹¹⁰ Baker & McKenzie, *Dispute Resolution around the World: Azerbaijan*, 2010, p. 9.

¹¹¹ Baker & McKenzie, *Dispute Resolution around the World: Azerbaijan*, 2010, p. 8.

¹¹² Law on Constitutional Court, Arts. 32-34.

- 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?

There have been no identified cases of a political backlash or repercussion from a negative or positive decision regarding children's rights. The political stance appears to be supportive of children's rights, and legislative and judicial bodies together with the President of Azerbaijan have been working on developing legal framework and jurisprudence concerning children's rights.

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

Judgments must be implemented in an "obligatory, timely and precise manner by all natural and legal persons on the territory of the Republic of Azerbaijan."

¹¹³ However, there are instances where decisions are not enforced; one relevant example is non-enforcement of decisions of child support. The courts don't have mechanisms allowing to control the enforcement of the court ruling. For example, in alimony cases the courts do not take into account respondent's solvency. If the respondent fails to comply with the court decision, they can be subject to administrative or criminal responsibility, but the child's interests will not be observed, as the court ruling concerning the alimony payments will not be executed.

- 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.

Despite the proliferation of pro-children's rights legislation, judges and prosecutorial bodies are reluctant or not trained to observe these rights. As reported by the Azerbaijani government and the UN Committee on the rights of the child, the mechanisms and tools required for effective exercise of these rights are insufficient. More importantly, educating the people of Azerbaijan is critical to increase people's awareness of children's rights and the ways to protect them.

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

¹¹³ Law of the Republic of Azerbaijan on Courts and Judges №310-IG, 10 June 1997, Art. 5.