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Rights of minors in court proceedings

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Croatia



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Legal capacity of children

Children in Croatia have legal capacity (the capacity to have rights and obligations) and litigation capacity (the capacity to be a plaintiff or a defendant in legal proceedings). Children acquire the capacity to perform legal acts (the capacity to conclude contracts and to produce the legal effects they would normally produce from the age of 18) only if they get married, become parents (from 16 years of age), or enter into employment contracts (from 15 years of age).

Access to special proceedings

The following stakeholders may take part in criminal proceedings in which children are involved:

- the Ombudsman for Children (*pravobranitelj za djecu*);
- specialised police officers in the Ministry of the Interior, who have been trained to work with children who are crime victims or offenders;
- youth courts and judges in criminal proceedings involving children;
- public prosecutors for youth within the public prosecutor's office;
- specialised lawyers for proceedings involving children, appointed by the president of the court, as necessary, from the list of the Croatian Bar Association (*Hrvatska odvjetnička komora*) (usually as defence lawyers);
- social workers, who play a major role in criminal proceedings involving children;
- special clinics and hospitals for children;
- numerous specialised NGOs, non-legal expert assistants (at juvenile courts and the public prosecutor's office), volunteers, etc.

The participation of children and minors (up to the age of 23) in court proceedings in cases when they have committed a criminal offence is regulated by the Juvenile Courts Act (*Zakon o sudovima za mladež*).

Municipal courts (*općinski sudovi*) conduct civil proceedings, including those involving children, because no special courts have been set up to adjudicate exclusively disputes involving children and minors. Municipal courts are competent at first instance for adjudicating cases of maintenance, the existence or non-existence of marriage, annulment of marriage and divorce, establishing or disputing paternity or maternity, as well as child custody and parental care.

Centres for Social Care (*Centri za socijalnu skrb*) are public bodies which operate to protect and support children and which can influence court decisions. In court proceedings Centres for Social Care may have the legal status of a party or participate as interveners. Since they play a significant role in the protection of children in judicial proceedings, these Centres have various opportunities to advocate for the children's best interests.

The Ombudsman for Children is an independent authority accountable solely to Parliament which has the task of protecting, monitoring and promoting the rights and interests of children.

No separate courts or institutions have been set up to deal exclusively with the rights of children and minors in administrative proceedings. The existing administrative courts (*upravni sudovi*) have general competence to

settle all administrative disputes, including those involving children/minors.

All competent authorities that take part in criminal proceedings involving children or minors as defendants or victims need to act urgently to complete their work as soon as possible. According to the Juvenile Courts Act (*Zakon o sudovima za mladež*), criminal proceedings against juveniles or young adults or in cases of legal protection of children are urgent and must be launched – and the relevant decisions taken – without undue delay. Court proceedings against juvenile offenders, and investigations and procedures by the police and public prosecutors are urgent.

Delays in enforcement of penalties imposed on juveniles must be kept to a minimum, and it is for the court to commence such proceedings without undue delay after a court decision has become final and where there are no legal impediments to its enforcement.

Proceedings in which the personal rights of a child are to be decided are urgent, and the first hearing should be held within fifteen days from the date of initiation of the proceedings. Decisions in proceedings on interim measures, parental custody and a personal relationship with a child, and decisions on the return of a child, are to be rendered and delivered within thirty days from the date of initiation of the proceedings. A second-instance court is to render and deliver a decision within thirty days from the date of receipt of the appeal.

In accordance with the Code of Criminal Procedure (*Zakon o kaznenom postupku*), when the victim is a child or minor, they have the right to be heard, to testify and to participate in criminal proceedings. Moreover, children or minors are entitled to be informed of the relevant facts, to submit evidence in relation to the criminal offence and the criminal proceedings, and to appeal. They are entitled to put questions to suspects, witnesses and expert witnesses during court sessions and to submit their comments and explanations regarding such testimony.

In practice, the specialists involved in child protection proceedings assess the child's best interests and can propose a child protection measure to the court. The assessment of the child's best interests is based on the principles and working methods of social workers, psychologists, teachers and others.

In order to ensure compliance with the European Convention on the Exercise of Children's Rights, a court may appoint a special representative for a child in cases where the holder of parental responsibility is not authorised to represent the child due to a conflict of interest. Such a representative is usually a lawyer with relevant experience in proceedings involving children. Special representatives may be appointed in certain judicial proceedings concerning the detention of a child or minor, divorce and adoption and in cases that concern the protection of a child's personal rights and interests.

Protecting the best interests of the child is one of the principles enshrined in the Croatian Constitution, which states, among other things, that parents bear responsibility for the upbringing, welfare and education of their children and are responsible for ensuring that their children exercise their right to full and harmonious personal development. Under the relevant legislation, the state must take special care of orphans and minors neglected by their parents, and everyone has a duty to protect children and to inform the competent authorities of any possible harm caused to them. Young people, mothers and disabled persons are entitled to receive special protection at work. Everyone should have access to education on equal conditions. Compulsory education is free, in accordance with the law.

Monitoring of enforcement of decisions in proceedings involving children

Croatia has adopted the Act on the Enforcement of Penalties Imposed on Juveniles Convicted of Crimes and Offences (*Zakon o izvršavanju sankcija izrečenih maloljetnicima za kaznena djela i prekršaje*).

The purpose of that Act is to lay down:

- the conditions for enforcing penalties imposed on a child/minor in criminal proceedings for crimes committed, especially correctional measures, detention in a secure centre for young people, and security measures; and
- the conditions for enforcing penalties for misdemeanours committed by a child/minor.

Representatives of the competent Centre for Social Care play a significant role in ensuring that children/minors

who have committed an offence are treated properly.

The Centre for Social Care is also responsible for summoning children and referring them for any correctional measures and for providing any information and support required. The purpose of correctional measures is to give juvenile offenders protection, care, help, supervision and general and vocational education, thereby influencing their upbringing, the development of their overall personality and improving their sense of responsibility so that they do not reoffend.

The types of correctional measures are: court reprimand, special obligations (such as to apologise to the injured party; to remedy the damage caused by the criminal offence insofar as possible for the child; to attend regular schooling; not to miss work; to attend training for an occupation appropriate to their abilities and preferences; to accept a job and persist in it; to use their income under the supervision and with the advice of the manager of the correctional measure; to become involved in the work of humanitarian organisations or local or environmental protection activities; to refrain from visiting certain places, attending certain events or keeping the company of certain individuals who are a bad influence on them; with the agreement of the minor's legal representative, to follow medical treatment or treatment for drug addiction or other addictions; to participate in individual or group psychosocial therapy at a youth counselling centre; to take part in vocational training courses; not to leave their place of permanent or temporary residence for an extended period of time without the approval of the Centre for Social Care; to be referred to the competent driving test centre for an examination of knowledge of traffic regulations, not to approach or harass the victim), extra care and supervision, extra care and supervision during day-care at a correctional institution, referral to a disciplinary centre, referral to a correctional institution, referral to a detention centre, referral to a special correctional institution.

Custody in a secure centre for young people is a specific kind of deprivation of liberty in terms of the conditions that have to be met for imposing it, its duration and purpose, and the constraints of the penalty. Older child offenders (minors who were at least 16 but not yet 18 years of age when the crime was committed) may be sentenced to custody in a secure centre for young people if they have committed a crime subject to a statutory sanction of at least three years' imprisonment and, due to the nature and seriousness of the offence and the high level of guilt, a correctional measure cannot be justified.

Children or minors who lack legal capacity are represented by their legal representatives, who provide them with information on court decisions and the enforcement of penalties.

During enforcement proceedings courts have the power to order protective measures to protect children or minors from coming to unnecessary harm after out-of-court proceedings have been conducted. These protective measures are: limitation of inappropriate contact or limited contact with a parent, grandparent, brother or sister (or half-brother or half-sister) of the child, or with the child's spouse.

Access to remedies

a) Criminal proceedings

Everyone has the right to appeal against a judgment of the competent court in accordance with the applicable provisions of the Code of Criminal Procedure. When children or minors are victims of a crime, they — like the public prosecutor, the defendant and the defence lawyer — are entitled to appeal against the judgment of the court of first instance. The injured party may appeal against the judgment on the grounds of the court's decision regarding the costs of the criminal proceedings or the claim for damages. However, if the public prosecutor has taken over prosecution from the injured party acting as private prosecutor, the latter may appeal on any grounds on which a ruling may be challenged.

All persons who are entitled to appeal against a judgment imposing a sentence on a minor, a decision imposing a correctional measure on a minor or a decision suspending the proceedings may do so within eight days of the receipt of the judgment or decision. A defence lawyer or public prosecutor, the spouse, a relative in the direct line, an adoptive parent, a guardian, a brother, a sister or a foster carer may appeal in favour of the minor even against the will of the minor. The second-instance court may alter the decision of the first-instance court by imposing a harsher penalty on the minor only if that is proposed in the appeal.

b) Civil proceedings

Children and minors involved in judicial proceedings have the right to file a complaint, an appeal or an action under the general rules laid down in the Code of Civil Procedure (*Zakon o parničnom postupku*) and the Civil Obligations Act (*Zakon o obveznim odnosima*).

As, in general, children and minors do not have legal capacity, their parents or guardians undertake specific actions in their name and on their behalf as their legal representatives. The child's legal representative is entitled to undertake all procedural actions in the child's name, including the lodging of an appeal. An appeal may be lodged against judgments issued by courts of first instance, and an appeal stays the execution of the relevant court decision. An appeal may be lodged on account of a material infringement of the provisions on civil proceedings, incorrect or incomplete establishment of the facts and misapplication of substantive law. The time limit for submitting an appeal against the judgment of a court of first instance is usually 15 days from the date of receipt of the judgment.

Adoption

The Family Act (*Obiteljski zakon*) regulates adoption as a special form of family and legal care and protection of children who lack adequate parental care, which creates a lasting relationship between the parents and the child and grants parental authority to the adoptive parents. Adoptive parents must be Croatian citizens (in exceptional cases they may be foreign citizens if this is in the child's particular interests), at least 21 years old, and at least 18 years older than the adopted child. A child may be adopted jointly by married couples or unmarried spouses, by one spouse/unmarried spouse if the other spouse/unmarried spouse is the other parent or adoptive parent, with the consent of the other spouse/unmarried spouse, or by a person who is not married or in a non-marital partnership.

Adoption may be established up to the child's eighteenth birthday, and a child may be adopted if they meet the legal requirements for adoption and if adoption is in the interests of their well-being. A child who has reached the age of 12 years must give their written consent to adoption.

The adoption procedure is carried out by the Centre for Social Care of the place of permanent or temporary residence of the prospective adoptive parents.

If the adoptive parent or the child is a foreigner, adoption may be established only with the prior consent of the ministry responsible for social welfare.

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