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Rights of minors in court proceedings

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Germany



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In Germany special rules and procedures apply to legal cases involving minors that are brought before a court. These are intended to protect the rights and interests of the young people concerned. Minors are children and young people under the age of 18.

1. Legal capacity of minors

In principle, children can be involved in civil proceedings from birth as either a claimant or defendant. Civil proceedings are proceedings brought before a court to enforce private rights, such as rights arising from a tenancy agreement.

Generally speaking, however, capacity to act before a court is only acquired on reaching the age of 18. This means that it is only possible to act independently in proceedings from this point onwards, for example to bring actions or submit claims. Before minors turn 18, their legal representatives, generally their parents, must carry out these procedural acts on their behalf.

Certain exceptions apply, however:

- In the case of disputes concerning the employment relationship of minors, a minor may be deemed to have capacity to act before a court from the age of 7.
- In proceedings before the family courts, concerning, for example, maintenance claims or rights of access, minors are considered to have capacity to act from the age of 14. This means that, with effect from their 14th birthday, they are able to exercise their procedural rights themselves. They may then request the initiation of proceedings and receive written submissions relevant to the proceedings themselves, for example, and they have their own right of access to documents.

2. Adapted procedural rules for proceedings involving minors

2.1. Civil proceedings

If a child is involved in civil proceedings as a claimant or defendant, a legal representative, generally the child's parents, is questioned instead of the child. If, however, a claimant or defendant who is a minor has already reached the age of 16, the court may decide, at its own discretion, also to question the minor themselves.

2.2. Proceedings before the family courts

In the case of proceedings before the family courts, in particular in matters relating, for example, to custody and access, special rules apply, which have been drawn up with the participation or involvement of minors in mind. These include, first and foremost, the obligation for the court to hear the child in person, regardless of their age, and acquire its own impression of them. This hearing is generally held without the child's legal representatives present. In addition, the court often has to hear the youth welfare office (*Jugendamt*) and also the parents in person. If the child's interests so require, the court must appoint an appropriate guardian ad litem for the child. This person is also referred to colloquially as the 'child's counsel' (*Anwalt des Kindes*) and is intended to represent the child's interests in the proceedings.

2.3. Criminal proceedings

2.3.1. Young defendants

Minors may only appear as a defendant in criminal proceedings if they were at least 14 years of age at the time the offence was committed. Special juvenile criminal law (*Jugendstrafrecht*) applies to defendants who were over 14, but had not yet reached the age of 18, at the time of the offence. In the case of adolescents who were over 18, but had not yet turned 21, at the time of the offence, juvenile criminal law may apply, depending on the level of the individual's personal development or the nature of the offence. Juvenile criminal law not only provides for a greater range of measures and possible penalties than adult criminal law, but also contains special stipulations on the course of the court proceedings. The provisions of juvenile criminal law are intended to take into account the level of development of young defendants. Special juvenile courts (*Jugendgerichte*) are competent to hear criminal proceedings against minors. In principle, the juvenile legal support agency (*Jugendgerichtshilfe*), a social service of the municipal child and youth welfare agency (*Kinder- und Jugendhilfe*), is also involved in the court proceedings. Juvenile court hearings are not open to the public. Further information on the rights of minor defendants can be found [here](#).

2.3.2. Minors as victims and witnesses

In criminal proceedings there are special rules on the protection of children and young people under the age of 18 who have witnessed or been the victim of a criminal offence. These rules are intended to prevent the individual from experiencing further trauma. Hearings, interviews and other investigative measures involving a minor victim should be conducted particularly expeditiously, for example. During a court hearing, witnesses under the age of 18 may only be questioned by the judge. All other parties involved in the proceedings who are entitled to ask questions must ask their questions via the judge. To avoid repeated questioning, the possibility of making video and audio recordings should be used for witnesses under the age of 18. In many cases, video recordings of a statement made by a minor victim before an investigating judge can replace the witness statement during the court hearing. Individuals under the age of 18 who have been victims of sexual offences or certain violent crimes are entitled to request psychosocial support for the trial. This intensive support comprises qualified guidance and the provision of information, as well as support during the criminal proceedings, and is free of charge for the person concerned. If there are concerns that the presence of the accused could have an extremely detrimental impact on the well-being of a minor witness, the court can order that the accused must leave the courtroom while the witness is being questioned. In the case of minor witnesses, the public must be excluded at the request of the person concerned. In certain cases, minor victims may also join the action as a joint claimant and will be assigned a lawyer free of charge.

2.3.3. Child-appropriate information on criminal proceedings

The Federal Ministry of Justice (*Bundesministerium der Justiz*) offers numerous child-appropriate information brochures, such as 'Du bist nicht allein' ('You are not alone'), for children of preschool and primary-school age, and 'Ich habe Rechte' ('I have rights'), for young people. These publications provide information about criminal proceedings in an age-appropriate way. Further information on criminal proceedings can be found on the website of the Federal Ministry of Justice and at <http://www.hilfe-info.de/>. Additional information on the rights of minor victims of crimes is available [here](#).

3. Measures to accelerate proceedings involving minors

3.1. Proceedings before the family courts

Proceedings relating to a child's residence, or access to or the surrender of a child, as well as proceedings arising from a risk to child welfare, are prioritised and accelerated. A hearing during which the court will discuss the matter with the persons concerned should be held within a month. The court should aim to achieve an agreement between the parents. To this end, it can also order that the parents must participate in counselling offered by the youth and welfare agency's counselling services or in an information meeting on the subject of mediation, for example. In the case of proceedings relating to access, the court should make provisional access arrangements to cover this period.

3.2. Criminal proceedings

In Germany special regulations apply to the enforcement of penalties against young people. The key objective of juvenile criminal law, that of rehabilitation, is also decisive when it comes to implementing the penalties imposed. This requires the specific needs and the level of development of young offenders to be taken into account. Under juvenile criminal law various possible penalties are available to the juvenile courts, including warnings, instructions on how the offender may conduct their life or instructions to participate in social training courses, orders to carry out work or make payments to compensate for damage, (short-term) detention and – as a last resort in serious cases – juvenile custodial sentences. Juvenile custodial sentences are served in special young offenders' institutions designed to offer age-appropriate support and education.

4. Multidisciplinary approach

4.1. Impact on minor defendants

To achieve the primary objective of juvenile criminal law, namely to prevent the defendant from reoffending, it is particularly important that the various professional agencies work together in a coordinated way within juvenile criminal proceedings. Thanks to this coordinated approach, youth welfare measures and the courts' responses can be tailored to the defendant's individual situation in a targeted way. The juvenile legal support agency, for example, already provides a report on the defendant's personality and life situation during the public prosecutor's investigation. On the basis of this information, consideration is given at an early stage as to how best to respond to the offence. In practice, various models for cooperation between the youth welfare agencies, police and public prosecutor have become established and can help to optimise and accelerate prescribed procedures.

4.2. Childhood Houses of the World Childhood Foundation

The '[Childhood Houses](#)' of the World Childhood Foundation are specially tailored to the needs of children and young people who have been victims of physical or sexual violence. These facilities are child-friendly, multidisciplinary contact points for minor victims of physical and sexual violence. The aim, by ensuring close collaboration between doctors, psychologists, child and youth welfare agencies, the police and the judiciary under one roof, is to prevent the repeated questioning or examination of minor victims. The first Childhood House in Germany was opened in 2018 in Leipzig and others can be found in Berlin, Düsseldorf, Heidelberg, Ortenau, Munich, Flensburg, Schwerin and Hamburg.

5. Training of professionals

5.1. Lawyers

Germany offers a wide range of training courses for lawyers, which also cover the rights of minors in court proceedings. In particular, information on these rights is conveyed through specialist mandatory courses for lawyers working in the fields of family law, criminal law and road traffic law.

5.2. Judges and prosecutors

The German Judicial Academy (*Deutsche Richterakademie*) offers numerous training courses on the rights of minors in court proceedings. These courses are intended both for young, new entrants and also experienced professionals. Participants acquire specialist knowledge and receive training in psychological skills.

The courses cover themes such as the hearing and questioning of children and young people, child abuse and juvenile criminal law. The aim is to make judges more aware of the situation and needs of children and young people and equip them with practical skills to deal with and communicate with them. Participation in these training courses is voluntary.

Family cases are heard before the family courts. In such proceedings family court judges assume a particularly responsible role. The law sets out specific requirements relating to their qualifications. In addition to relevant legal knowledge, such judges should also have demonstrable knowledge of psychology, in particular child developmental psychology, or of communication with children, or should acquire these skills without undue

delay.

Judges and prosecutors working at juvenile courts in the field of criminal law should have educational skills and specific qualifications.

6. Best interests of the child

Proceedings in parent and child cases – such as those relating to custody and access – are characterised by the principle of ex officio investigation (*Amtsermittlungsprinzip*) and are geared towards safeguarding the best interests of the child. The principle of serving the best interests of the child is laid down as a guiding principle in the Civil Code (*Bürgerliches Gesetzbuch*) and decisions in parent and child cases must take it into account. It is an important principle for all provisions in the area of parental responsibility.

For certain decisions there are individual regulations containing more detailed stipulations on how the best interests of the child should be taken into account. This can mean that a decision:

- must best correspond to the best interests of the child (e.g. if sole parental care is transferred),
- must serve the best interests of the child (e.g. in the case of contact with attachment figures other than the parents),
- may not be contrary to the best interests of the child (e.g. if joint parental care is established) or may not jeopardise the best interests of the child (e.g. if parental care is withdrawn).

The principle of ex officio investigation means that the court is obliged to determine all facts that are important to the decision of its own motion. The court therefore has an active obligation to ensure that all relevant facts and circumstances are taken into account in the proceedings, so that the best possible decision can be made in the child's best interests. The main task of the family courts in such proceedings is thus to make a decision in each individual case that allows the child's best interests to be taken into account in the best possible way.

7. Enforcement of decisions concerning minors

7.1. Enforcement of judgments in civil cases

In principle, it is possible for a judgment to be enforced against a minor. If the minor has assets, for example as a result of an inheritance, which can be used to settle debts, these assets may be subject to enforcement. When taking such measures the bailiff may not directly contact a minor who lacks capacity to act before a court, but only the minor's legal representative.

7.2. Criminal proceedings

In Germany special regulations apply to the enforcement of sentences against young people. Juvenile criminal law pursues the objective of rehabilitation and takes the specific needs and levels of development of young offenders into account. Young offenders are placed in special young offenders' institutions designed to offer age-appropriate support and education. Sentences are generally more lenient than those imposed on adults and should aim to reintegrate young offenders into society. Under juvenile criminal law various possible penalties are available to judges, including warnings, instructions, community service, (short-term) detention and juvenile custodial sentences.

8. Challenging court decisions

8.1. Proceedings before the family courts

In family cases minors who lack the capacity to act before a court have access to the relevant legal remedies via their legal representative. The legal remedies available allow the person concerned to challenge a court decision. Children from the age of 14 also have the right to lodge appeals in all matters concerning them. If the child has been assigned a guardian ad litem, their task is to discuss the court decision with the child and consider whether an appeal should be lodged in the child's interests.

8.2. Criminal proceedings

Minor defendants have extensive rights to request a review of measures and decisions taken at any point in the juvenile penal process, if they believe that their rights have been infringed. This includes lodging special appeals against judgments. Such appeals may also be lodged by the minor's parents or legal representatives. Further information on the rights of minor defendants can be found [here](#).

9. Adoption

Decisions relating to adoptions are taken by the court. If a child is to be adopted, the child and youth welfare agency is involved in the process. As a rule, an adoption placement procedure therefore takes place ahead of proceedings before the family court. The adoption placement may be carried out by youth welfare offices, federal-state youth welfare offices and authorised adoption agencies only.

All international adoption procedures commenced after 1 April 2021 must be arranged by an international placement agency. International placement agencies include the central adoption agencies of the federal-state youth welfare offices and state-approved international placement agencies. If the adoption has taken place without an adoption placement procedure, the foreign adoption decision may be recognised in Germany only in exceptional cases and under strict conditions. Such recognition must be pronounced by a court.

Under German law, children are required to consent to the adoption from their 14th birthday. The consent of the legal representative must also be obtained. In the case of children under the age of 14 consent may only be granted by the legal representative. The wishes of the child are also important in such cases.

From their 16th birthday onwards adoptees are personally entitled to inspect their documents to obtain information about their family background and biography. They are also legally entitled to support from the adoption agency if they wish to find out about their family background.

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