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# Rights of minors in court proceedings

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Spain

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The Article 12 of the Spanish Constitution has set the age of majority of the Spaniards in 18 years. In Spain minors/children are considered all those who are under the age of 18 years.

## 1. Child's legal capacity

- The minimum age at which plaintiffs can bring a case to court in their own right in Spain is 18.
- Only emancipated children can bring a claim in their own. In general emancipation is reached at the age of 18, or at the age of 16 through judicial authorization, parental authorization or marriage. In some regions emancipation can be obtained at the age of 14.
- The minimum age of criminal responsibility, in Spain, is 14 according with the Law regulating the Criminal Responsibility of Minors. Measures applied to children under the minimum age of criminal responsibility (below 14 in Spain) are voluntary or fall under the domain of placement into care.

## 2. Access to adapted proceedings

- Juvenile Courts: specialist courts called "*Juzgados de menores*" hear cases concerning crimes and petty offences committed by persons aged between 14 and less than 18 in accordance to Organic Law 5/2000, of 12 of January, regulating criminal responsibility of minors. Criminal proceedings against child offenders are conducted by specialized magistrates/prosecutors.

The Public Prosecutor's Office (PPO) is responsible for defending the rights of minors recognized by law. The measures that can be taken against juvenile offenders between 14-18 years are collected in a specific law (Organic Law 5/2000, of 12 of January, regulating criminal responsibility of minors).

When the perpetrator is under fourteen years, the mentioned Organic Law governing criminal responsibility of minors is not applied but the specific articles of Civil Code and the rest of the current regulation.

- In cases involving children as victims or witnesses are dealt with by regular courts, specific safeguards are provided by law according to age of children, for example the depositions of the most vulnerable children are made to a specialized psychologist and recorded to avoid having to repeat them in court and in any case it avoids visual confrontation between the child and the alleged perpetrator.
- Civil justice: The Ordinary Civil Courts (*Juzgados de Primera Instancia*) deal with children's claims under the civil procedural laws, in addition there are specialized civil courts dealing exclusively with family matters, called Family Courts (*Juzgados de Familia*).

The Public Prosecutor's Office is entitled to participate in civil judicial proceedings children or persons with disabilities are involved, until a guardian is appointed for them.

Although minors generally lack capacity to initiate civil proceedings themselves, the Act provides that where a measure may affect their interests and have sufficient maturity, they should be heard, and in any case, when they are 12 years or more.

Regarding separation or divorce, during the proceedings the court shall always consider the best interest of the child.

The following are administrative proceedings involving children: child protection, adoptions, Asylum, migration, health, education, administrative sanctions.

### 3. Legal and policy measures to avoid undue delay in the handling of cases involving children

In general and for all jurisdictions, in order to avoid delays in proceedings involving minors, the Organic Law 1/1996 of 15 January, on Legal Protection of Minors (LOPJM) states that in judicial or administrative proceedings, the appearance or hearings of minors will have priority and be conducted the way appropriated to their situation and evolutionary development, with the assistance, if necessary, of qualified professionals or experts, preserving their privacy and using a language understandable by them, in accessible formats and adapted to their circumstances, informing them both the content of the questions and the consequences of their opinions, with full respect for all procedural safeguards.

- Criminal cases; the legal and policy measures in place vary according to the circumstances: child as a victim and child as an offender.
- Civil justice: claimants may request to the court the imposition of precautionary measure. As a general rule, children cannot request the court to order precautionary measures in their own right and they need the assistance of their legal representatives.

When children are involved in family proceedings, precautionary measures are generally taken before the judgment, to the best interest of the affected children, such as custody, food, visitation, financial support measures etc.

### 4. Child specific support mechanisms and procedures and best interest of the child

Spanish legislation contains some important provisions that reinforce measures to facilitate the exercise of the rights of minors and an appropriate legal framework concerning *foreign minors* is established, recognizing, for those who are in Spain and regardless of their administrative status, their rights to education, health care and social services under the same conditions as Spanish minors. Related to *minors protected by Public Entities*, recognition of their insured status in relation to health care assistance is made ex officio.

Public authorities are obliged to ensure that vulnerable groups, such as unaccompanied minors, those presenting international protection needs, children with disabilities and those who are victims of sexual abuse, sexual exploitation, child pornography, human trafficking, are protected and to ensure that the rights provided by law have been observed.

LOPJM states, as guiding principle of administrative action, the protection of children against all forms of violence, including one produced in their family environment, gender violence, human trafficking and female genital mutilation, among others. The protection of child victims of domestic violence is one of the pillars of the new Law on protection of children and adolescence published on 28 July 2015.

The Victims Assistance Offices as units dependent on the Ministry of Justice or on the Autonomous Communities have assumed competencies in the subject. These offices make an individual assessment of victims to identify their special protection needs, and assist the victim in the legal, psychological and social areas, aiming to minimize primary and avoid secondary victimizations. Specific child support services are provided.

Regarding children's involvement in judicial proceedings; the Spanish legislation recognizes to minors the right to be heard in any case, without discrimination on age, disability or any other circumstances, both in the family and in any proceeding administrative, judicial or mediation that is affected and leads to a decision that affects their personal, family or social sphere, with due regard to their views, depending on their age and maturity. Therefore, the child must receive the information that allows the exercise of this right in an understandable language, and in simple formats adapted to their circumstances.

As the principle of "best interest of the child" has been a priority, considering: a substantive right, a general principle of interpretation and as a rule of procedure; Spanish legislation (LOPJM) requires that any measure in

the interest of the child shall be adopted, and safeguards especially the protection of privacy of the child.

The general idea is that the best interest of each child has to be evaluated and determined individually for each child, taking into account all the circumstances which concern him/her.

The definition and criteria that determine the child's best interests are regulated and detailed in art 2 of the LOPJM.

## 5. Monitoring enforcement of decisions in proceedings involving children

Child as an offender: The ultimate aim of criminal regulations for children is their reinsertion in society. This reinsertion must be facilitated by educational measures and specialized personnel. The provision of child-friendly justice after judicial proceedings is to a large extent a competence of the Autonomous Communities which have the prime responsibility about those necessary rehabilitation measures, community service or education.

Child as a victim: Children who are victims of criminal offences are provided with social services adapted to their particular case.

Civil Justice:

Children can be parties in civil judicial proceedings and therefore any judicial decision is communicated to them and they can seek enforcement of a court judgment, all through their legal representatives ( as they lack the legal capacity to act), unless they are emancipated.

As defendant: Children may be responsible for the breach of contracts made by them, being liable with their own property.

## 6. Access to remedies

It is important to note that under Spanish law, both the regime access to resources such as measures to safeguard the rights of the child in case of conflict of interest with their parents, it is the same in all jurisdictions.

Criminal Justice:

Recourse in case of decision not to prosecute: There is a very broad legal framework for the protection of victim under age in Spain, Law 4/15.

All children are entitled to receive information, to complaint, legal appeal or judicial review mechanisms and to claim damages/compensation during or after criminal proceedings in which the child was a victim. Any child who lacks resources will have recognized the right of the free legal assistance.

Civil Justice:

To defend their rights and guarantee, the child can:

- Request the protection and guardianship of the competent public entity
- To inform the public prosecutor about the situations
- Ask complaints to the Ombudsman
- Request the available social resources of public administrations
- Request legal assistance and the appointment of a judicial defender
- To submit individual complaints to the Committee on the Rights of the Child.

In case of conflict of interest law provides for the appointment of a judicial guardian.

At the civil courts can be formulated opposition to administrative decisions regarding the protection of minors.

[Child-friendly justice in Spain](#)  (606 Kb) 

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