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# Rights of minors in court proceedings

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Portugal

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## 1. Legal capacity of minors

Under the Civil Code (*Código Civil*), minors, that is, persons who have not yet reached the age of 18, as a rule, lack legal capacity. The capacity of minors may be effected through parental responsibility and also through guardianship. These are forms of legal representation where someone acts on behalf and in the interest of the minor.

Minors under the age of 18, also as a rule, lack legal capacity. They may be represented in court by their representatives, except in respect of acts which they may perform personally and freely. Minors whose parental responsibilities are shared by both parents shall be represented in court by their parents, and the consent of both parents is required for bringing legal action.

The consequences for children and young people of committing acts deemed a crime under criminal law take into account age brackets, which depend on the application of different legal schemes. Thus, if such acts are committed:

- by persons under the age of 12, the scheme under the Law on the Protection of Children and Young People in Danger (*Lei de Proteção de Crianças e Jovens em Perigo*) (Law No 147/99 of 1 September 1999) applies, a law with solely protective purposes;
- by persons between the ages of 12 to 16, the Educational Guardianship Law (*Lei Tutelar Educativa*) (Law No 166/99 of 14 September 1999) applies. Under this law, protective and educational measures are implemented for educating minors in the application of the law and their integration into community life in a dignified and responsible manner;
- by persons over the age of 16, such persons are criminally liable and may be subject to a penalty, with criminal liability assessed under the Code of Criminal Procedure (*Código do Processo Penal*). Young people between the ages of 16 and 21 are subject to a special criminal scheme provided for in Decree-Law No 401/82 of 23 September 1982.

## 2. Access to appropriate procedures

The Portuguese judicial structure includes specialised courts for minors that deal with matters such as the regulation of parental responsibilities, maintenance obligations, adoption, the application of protective measures, and other matters. Asylum, immigration and refugee cases involving minors are examined by administrative courts.

Points 3 and 4 are examples of adaptations of court proceedings involving minors. Another example are the amendments to the Code of Criminal Procedure resulting from the transposition of Directive (EU) 2016/800:

- in proceedings concerning the trafficking of human beings or offences against sexual freedom and self-determination, procedural acts involving minors, including trial hearings, are generally not open to the public;
- the consultation of the court files in which the defendant is a minor, by a person who is not a party to the proceedings is prohibited, regardless of their legitimate interest;
- the accused minor has the right to be accompanied during the proceedings by the holders of parental

responsibility, their legal representative or a de facto guardian, or, if these persons cannot be contacted, or if special circumstances in the interest of the minor or the needs of the proceedings so require, and only for as long as such circumstances persist, by another suitable person designated by the minor and accepted by the competent judicial authority.

### 3. Laws and measures to reduce time limits in cases involving minors

In civil matters:

- the legal processing of the adoption procedure is urgent (Article 32 of Law No 143/2015 of 8 September 2015);
- under the Legal Framework on Civil Guardianship Proceedings (*Regime Geral do Processo Tutelar Cível*) (approved by Law No 141/2015 of 8 September 2015) *i)* civil guardianship proceedings whose delay may adversely affect the interests of the child shall continue to be conducted during judicial holidays; *ii)* orders considered urgent shall be issued within no more than two days; *iii)* if a constraint measure or an ancillary sanction prohibiting contact between the parents is imposed, or if the rights and safety of victims of domestic violence and other forms of violence within the family, such as physical or sexual abuse of children, are at serious risk, the Public Prosecutor's Office shall, within 48 hours of becoming aware of the situation, request the regulation or modification of the regulation governing the exercise of parental responsibility of the minor; *iv)* the hearing and trial shall be continuous and may be interrupted only for reasons of force majeure or absolute necessity.

In criminal matters:

- under the Educational Guardianship Law (Law No 166/99 of 14 September 1999), *i)* proceedings concerning a minor placed under protective custody in a public or private institution or in a detention centre or interned for the purpose of obtaining an expert opinion on the minor's personality shall continue to be conducted during judicial holidays; *ii)* where the delay in the proceedings could adversely affect the minor, the court shall decide, by reasoned order, that the proceedings be considered urgent and conducted during judicial holidays; *iii)* where an internment measure is applied, and it is appealed, the proceedings shall be deemed urgent and be conducted during judicial holidays; *iv)* orders considered urgent must be issued within two days.

### 4. Specific mechanisms and procedures for supporting the child and the best interests of the child

In civil judicial proceedings and in matters relating to the regulation of the exercise of parental responsibility, the minor must be heard if they are over the age of 12 or if they are younger and have the capacity to understand the matters under discussion, taking into account the child's age and maturity. In addition, the principle of hearing and participation of children is one of the guiding principles of the civil guardianship procedure governed by the Legal Framework on Civil Guardianship Proceedings. Article 5(1) of this framework provides that '*children may be heard and their opinion shall be taken into account by the judicial authorities in determining the best interests of the child*'.

If a child is a victim of a crime, the Victim's Statute (*Estatuto da Vítima*) (approved by Law No 130/2015 of 4 September 2015 transposing Directive 2012/29/EU) establishes, in particular,

*i)* the child's right to be heard in criminal proceedings, and that their age and maturity must be taken into account;

*ii)* the mandatory appointment of a lawyer where the interests of the child and those of their parents, legal representative or de facto guardian are conflicting, and when a child with appropriate maturity requests this from the court; and

*iii)* their statements in the course of criminal investigations are recorded by audio or audiovisual means so that they can be used as evidence at trial. To this end, statements are taken in an informal, private setting to ensure, in particular, spontaneity and sincerity of response.

The right of children to participate and be heard is set out in the Law on the Protection of Children and Young

People in Danger in four types of provisions:

- a) those considering children of 12 years of age or older;
- b) those referring to children younger than 12,
- c) those that do not refer to any age, and
- d) those that indicate only the maturity criterion.

One of the general principles that characterises the guardianship procedure provided for in the Educational Guardianship Law is that of the hearing of children (Article 47). This law also establishes the right of the minor to participate in any proceedings, even if they are under detention or in custody; this participation shall take place in such a manner that the minor feels free and as much at ease as possible (Article 45).

## 5. Enforcement of decisions concerning minors

As a rule, decisions handed down in civil proceedings involving minors as plaintiffs or defendants are enforced in the same way as those involving adults as plaintiffs or defendants in the same conditions.

Nevertheless, there are matters and circumstances that justify the existence of a specific legal framework. Thus, with regard to the regulation of the exercise of parental responsibility, in cases where there is a risk of failure to comply with the decision, the judge may order that the implementation of the arrangement established by the technical advisory services be monitored for a set period of time (Legal Framework on Civil Guardianship Proceedings). In the case of maintenance obligations, failure to comply with the obligation to pay maintenance is punishable by law, although a complaint is required to bring criminal proceedings (Article 250 of the Criminal Code (*Código Penal*)).

Under criminal law, the three precautionary measures provided for in the Educational Guardianship Law (return of the minor to the parents, the legal representative, the foster family, the de facto guardian or another suitable person, with obligations imposed on the minor; custody of the minor in a public or private institution; and custody of the minor in a detention centre), on the court's own motion or on request, are replaced if the judge concludes that the measure applied does not achieve the intended purposes. In any case, they are reviewed on the court's own motion every two months.

In its decision, the court designates the body responsible for monitoring and ensuring the enforcement of the measure applied. Except in cases where the law determines the body responsible for monitoring and ensuring the implementation of the measure, the court may entrust the enforcement of the measure to a public service, a welfare institution, a non-governmental organisation, an association, a sports club or any other public or private entity or person it deems appropriate. The designated body must inform the court, under the conditions and at the intervals stipulated by law or, where the law is silent, at the intervals established by the court, of the enforcement of the measure applied and of the progress of the minor's educational process, and of any circumstances which may justify a review of the measures.

## 6. Adoption

Adoption is a form of establishing a relationship of kinship between a child deprived of a family and a person or a couple and must be decided by a judgment. The court's decision on the adoption is only handed down where there are legitimate grounds for adoption; the decision brings real benefits for the child; does not impose unfair sacrifices on the other children of the adopter(s), and there is reasonable expectation that the bond between the adopter(s) and the child or young person will be identical to that of kinship.

With the adoption judgment, the adopted child or young person:

- acquires the status of a child of the adopter(s) for all legal purposes, with rights and obligations identical to those arising from a natural kinship relationship, and becomes part of the family of the adopter(s);
- family relationships and contact with the birth family cease, except in cases provided for by law, in particular with biological siblings, if the adoptive parents consent and when it is in the best interests of the adopted child to maintain such contact;

- loses their original surnames and acquires the surnames of the adopter(s) ;
- may, at the request of the adopter(s) and if the court considers it to be in their best interest and to facilitate integration into the family, change their first name.

Under the Civil Code, the following persons may adopt a child:

- two persons (even if of the same sex), aged 25 or older, who have been married for more than four years (including the time spent in a non-marital partnership immediately prior to marriage), provided they are not legally separated;
- a person aged 30 or older, or over the age of 25 if the adoptee is their spouse's child.

It should be noted that, as a rule:

- the adopter should not be over 60 years of age at the time when the child or young person is formally entrusted to them for adoption;
- from the age of 50, the age difference between the adopter and the adoptee must not be more than 50 years, unless there are serious grounds for doing so and the interests of the adoptee so justify (e.g. the adoptee is a sibling of other adoptees and the 50-year age difference only applies to the adoptee).

An adoptee over the age of 12 must consent to the adoption. The adoptee must be heard by the judge in the presence of the public prosecutor, under the conditions and in accordance with the rules laid down for the hearing of children in civil guardianship proceedings.

Under Law No 143/2015 of 8 September 2015, adoptees under the age of 16 may not request access to information about their origins. After turning 16, the adoptee may explicitly request such access; however, until they reach the age of 18 the consent of the adoptive parents or legal representative is always required. If the request for access to the information is made based on serious reasons, in particular if the health of the adopted minor is at stake, the court may, at the request of the parents or the Public Prosecutor's Office, authorise access to information about the adopted minor's personal history.

Law No 143/2015 of 8 September 2015 regulates national and international adoption procedures and the intervention of the competent authorities in these procedures.

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