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Rights of minors in court proceedings

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Romania



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1. The child's legal capacity

Legal capacity (*capacitatea de folosință*) is the ability of the person to have civil rights and obligations. Legal capacity begins when the person is born and ends when they die.

Capacity to act (*capacitatea de exercițiu*) is the ability of the person to conclude civil legal acts independently. Full capacity to act begins when the person reaches the age of 18.

Minors also acquire full capacity to act through marriage.

On reasonable grounds, the custody court (*instanța de tutelă*) may recognise the full capacity to act of minors who have reached the age of 16. For this purpose, the minor's parents or guardians will also be heard, considering, where appropriate, the opinion of the family council as well.

Minors who have reached the age of 14 have restricted capacity to act.

The legal acts of a person with restricted capacity to act are concluded by that person with the consent of their parents or, where applicable, their guardian, and, in the cases provided for by law, also with the opinion of the family council, if any, and the authorisation of the custody court.

Natural persons who do not have the capacity to act (minors under the age of 14, persons subject to special guardianship measures) will be represented by a legal representative.

In criminal matters, minors under the age of 14 are not criminally liable. Minors aged between 14 and 16 are criminally liable only if it is proven that they committed the act with discernment, while minors who have reached the age of 16 are criminally liable in accordance with the law.

A non-custodial educational measure is taken in respect of a minor who was between 14 and 18 years old when the offence was committed. A custodial educational measure may be taken in respect of a minor aged between 14 and 18 in the following cases:

1. if they committed another offence in respect of which an educational measure was applied and has been executed, or its execution began before the offence for which they are being tried was committed;
2. when the punishment prescribed by law for the offence committed is imprisonment of 7 years or more or life imprisonment.

2. Access to appropriate procedures; Child-specific support mechanisms and procedures

The Braşov Minors and Family Court (*Tribunalul pentru Minori și Familie Braşov*) is the only specialised court of this kind in Romania.

The specialised court has jurisdiction to hear both criminal cases (in which at least one of the defendants or one of the injured parties/civil parties are minors) and civil cases (placement and adoption disputes).

In terms of territorial jurisdiction, the Braşov Minors and Family Court has jurisdiction in Braşov County, with other cases involving minors being heard by the ordinary courts.

In the case of child victims, assessment and provision of support and protection services is the responsibility of the specialised departments within the Directorates-General for Social Assistance and Child Protection (Direcțiile Generale de Asistență Socială și Protecție a Copilului) responsible for intervention in cases of abuse, neglect, trafficking, migration and repatriation under Law No 272/2004 on the protection and promotion of the rights of the child and Government Decision No 49/2011 approving the Framework Methodology on prevention and intervention in multidisciplinary teams and networks in cases of child and domestic violence and the Methodology on multidisciplinary and interinstitutional intervention in cases involving exploited children and children at risk of labour exploitation, child victims of human trafficking, and Romanian migrant children who are victims of other forms of violence in other states.

A working group dedicated to issues concerning victims was set up in 2020 within the Ministry of Justice (*Ministerul Justiției*). Among the most important objectives pursued by the working group are the following: establishing special hearing rooms for minors, specialised training of professionals in dealing with different types of crime and victims, creating an informal network of professionals responsible for dealing with victims of sexual crime, and improving forensic services for victims of crime.

Save the Children Romania (Salvați Copiii România), in partnership with the Directorate-General for Social Assistance and Child Protection Sector 6 (Direcția Generală de Asistență Socială și Protecția Copilului Sector 6) in Bucharest, opened the first Barnahus pilot centre for child victims of sexual abuse and extreme domestic violence. The Centre is based on the Barnahus integrated model of complex services, psychological and medical assessment, hearing and protection of child victims of sexual abuse and extreme domestic violence.

The Prosecutor's Office attached to the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*), in partnership with the European Union Agency for Fundamental Rights (FRA), the Ministry of Justice and the Directorates-General for Social Assistance and Child Protection started in early 2022 to implement a project with the general objective of ensuring an efficient, accessible and qualitative criminal justice system for children who are victims of crime and victims of hate crimes. The work of the project involves renovating, arranging and equipping 35 hearing rooms for minors, developing two thematic analyses on the situation with regard to hate crime and the situation with regard to children as victims of crime, developing guides (identifying and prosecuting hate crimes/hearing minor victims and prosecuting crimes against them), and providing specialised training for prosecutors and other professional categories to improve knowledge and awareness of the needs of victims of hate crimes and child victims of crime, including those belonging to the Roma minority.

In the context of the implementation of the predefined professional judicial training and capacity building project, the Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) currently provides 47 hearing rooms for minors in courts nationwide, in line with international standards for hearing minors.

At the same time, the Code of Criminal Procedure (*Codul de procedură penală*) provides that, in order to protect the privacy or dignity of the injured party, or where the release or escape of the perpetrator may endanger the privacy or dignity of the injured party or cause them harm, regardless of its nature and extent, the criminal prosecution body may order the protection measures provided for by law against the injured party. Children, victims who are dependent on the perpetrator, victims of terrorism, organised crime, human trafficking, violence which occurred within a close relationship, sexual violence and exploitation, victims of hate crimes, discrimination and prejudice which may relate in particular to their personal characteristics, persons with disabilities and victims who have suffered considerable harm due to the seriousness of the offence, are presumed vulnerable.

The Code of Criminal Procedure also contains provisions on the hearing of minors.

Thus, the Code of Criminal Procedure provides that the hearing of injured parties and witnesses who are minors under 14 years old takes place in the presence of one of their parents, a guardian or the person or representative of the institution entrusted with the child's upbringing and education, and in the presence of a psychologist selected by the judicial body. The psychologist will provide expert advice to the minor throughout the legal proceedings.

In the case of injured parties for whom specific protection needs have been established under the law, the

judicial body orders one or more of the following measures without prejudice to the proper conduct of the proceedings or to the rights and interests of the parties:

1. hearing them in premises designed or adapted for this purpose;
2. hearing them through or in the presence of a psychologist or other specialist in victim counselling;
3. their hearing and any possible re-hearing being carried out by the same person, if possible and if the judiciary body considers that this does not affect the proper conduct of the proceedings or the rights and interests of the parties.
4. hearing them by videoconference or other technical means of communication at the place where they benefit from the temporary accommodation protection measure.

Hearing and, where appropriate, rehearing by criminal investigation bodies of injured parties who have been victims of offences of ill-treatment of minors, domestic violence, offences concerning trafficking and exploitation of vulnerable persons, offences against sexual freedom and integrity, etc., as well as in other cases where, due to the circumstances of the offence, this is deemed necessary, are only performed by a person of the same sex as the injured person. If this is not possible, without prejudice to the proper conduct of the proceedings or to the rights and interests of the parties, the hearing of such injured parties and, where appropriate, their rehearing may be carried out by a person who is not of the same sex as the injured party, with the consent of the lawyer and of a psychologist or other specialist in advising victims.

According to the Code of Criminal Procedure, cases involving injured parties who are minors, victims of offences of ill-treatment of minors, domestic violence, offences concerning trafficking and exploitation of vulnerable persons, offences against sexual freedom and integrity, etc., are dealt with as a matter of urgency and as a priority. When the injured party is a minor under the age of 16, who is a victim of offences of ill-treatment of minors, domestic violence, offences concerning trafficking and exploitation of vulnerable persons, offences against sexual freedom and integrity, etc., if the court considers that the handling of certain evidence may have a negative effect on them, it will order the minor to be removed from the hearing.

At the same time, the Code of Criminal Procedure provides that arrest and pre-trial detention may be ordered against a minor, by way of exception, only if the effects that the deprivation of liberty would have on their personality and development are not disproportionate to the aim pursued by the measure.

The duration of the pre-trial detention measure is determined taking into account the age of the accused person as of the day the measure is ordered to be taken, extended, or maintained.

The Civil Code (*Codul civil*) provides that during administrative or judiciary procedures which concern a child, it is compulsory to hear a child who has reached the age of 10 years. However, a child who is under 10 years old can also be heard, if the competent authority considers it necessary for adjudicating on the case. The right to be heard entails the possibility for the child to request and receive any information, according to their age, to express their opinion and to be informed about the consequences that this may have, if it is respected, and about the consequences of any decision that concerns them. The opinions of the child being heard will be taken into account in relation to their age and maturity.

3. Training of professionals

The Superior Council of Magistracy, as the project promoter, in partnership with the National Institute of Magistracy (*Institutul Național al Magistraturii*), the National School of Clerks and the Norwegian Courts Administration, implements the predefined project 'Judicial Training and Capacity Building', financed by the 'Justice' Programme, the Norwegian Financial Mechanism (NFM) 2014-2021.

As part of this project, the Superior Council of Magistracy and the National Institute of Magistracy announced the launch of the procedure to select an expert with a view to developing a long-term training curriculum in the field of *Techniques for hearing minors (child-friendly justice) - civil aspects*. The expert will be selected from among the experts selected as training staff for training activities dedicated to the field of *Techniques for hearing minors*, which are organised within the project, with a particular focus on the specificities of the Roma population.

The deliverable will be a useful tool for the National Institute of Magistracy for the long-term continuous training of judges and prosecutors in techniques for hearing minors, both in civil and criminal judicial procedures, and will

lay the foundation for a consistent approach from the perspective of national and European practice.

The long-term training programme (curriculum) for techniques for hearing minors (child-friendly justice) will be developed in order to provide practical support to the training staff of the National Institute of Magistracy, namely to ensure a consistent approach to the hearing of minors, in order to promote child-friendly justice as an overriding concern of the Romanian judicial system, by assimilating techniques for interviewing children.

4. Access to remedies

There are no special provisions applicable to minors.

In civil matters, parties to the proceedings who justify an interest, as well as in cases provided for by law, other bodies or persons dissatisfied with the judgment, may appeal against it. The prosecutor may seek redress against court judgments, whenever necessary, to defend the rights, freedoms and legitimate interests of minors, persons receiving legal advice or subject to special guardianship measures, and of missing persons, as well as in other cases expressly provided for by law.

In criminal proceedings, legal aid is mandatory when the suspect or accused person is a minor. Legal aid for the injured party is mandatory when they have no capacity to act or restricted capacity to act, as well as when the injured party is the victim of offences of ill-treatment of minors, domestic violence, offences concerning trafficking and exploitation of vulnerable persons, offences against sexual freedom and integrity, etc.

5. Adoption

Adoption is the legal operation creating a parent-child relationship between the adopter and adoptee, as well as family ties between the adoptee and the relatives of the adopter.

Adoption is subject to all of the following principles: the best interests of the child, the need to ensure the upbringing and education of the child in a family environment, the continuity of the child's upbringing and education, taking into account their ethnic, linguistic, religious and cultural origin, and expediency in the performance of any acts relating to the adoption procedure.

The adoption procedure is governed by the Civil Code (Articles 451 to 482).

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