

## Αρχική σελίδα>Τα δικαιώματά σας>Δικαιώματα των ανηλίκων στο πλαίσιο δικαστικών διαδικασιών

### Rights of minors in court proceedings

Child-friendly justice refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level

Approximately 19% of the EU population (95 million) is under the age of 18. Minors can become directly or indirectly involved with the justice systems of Member States in a number of ways, for example when they commit offences, when they witness or are victims of a crimes, when they seek asylum, when they are the subject of adoption proceedings or when their parents disagree over custody.

Judicial proceedings can have a considerable impact on the lives of minors and the absence of a child-friendly response can result in restrictions or violations of their rights. Furthermore, when the national judicial systems lack child-friendly procedures and practices, the most vulnerable children (e.g. children with disabilities or migrant children) face particular barriers in the enjoyment of their rights.

The right of access to justice should be guaranteed for all minors. Furthermore, throughout their engagement with the justice system, children should be treated with respect for their age, their special needs, their maturity and level of understanding and with consideration of any communication difficulties they may have.

Clearer information on the people and procedures involved in justice affecting minors, as well as a special overview ensuring the respect of the rights of minors, is needed. In this regard, two categories have been identified: **children as judicial persons** and **specific procedures** in place in EU countries, depending on the branch of law.

The first category would bring together the general elements relating to the child's personal capacity, such as criminal or civil responsibility, access to legal support, relation to school/education, decision taking in terms of healthcare, specialised courts/institutions or financial support when going to court.

The second category aims to gather information how minors are treated in the context of judicial proceedings and the specific nature of criminal, civil and administrative procedures in the Member States.

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### Rights of minors in court proceedings - Bulgaria

#### 1. The child's legal capacity

In Bulgaria the minimum age of criminal responsibility is 14. For all matters, the minimum age at which a plaintiff can bring a case to court in their own right is 14.

#### 2. Access to adapted proceedings

There is no specialisation in the area of child justice in general courts of justice. In courts where the staffing is sufficient to guarantee the principle of random allocation of cases judges are allocated to a civil and a criminal divisions and only deal with the respective cases. Divisions can be set up in regional and district courts, and the allocation of judges to them takes place at the discretion of the administrative head of the court.

Bulgarian legislation provides for a legal definition of a "child". A minimum age is also required to bear criminal liability and there are special rules governing imposing of sentences on minors. Within the meaning of the Child Protection Act "a child shall be any natural person who has not reached the age of 18". Minors are divided in two groups – from 14 to 16 years of age and from 16 to 18 years of age. Their criminal liability is mitigated compared to the adults' criminal liability, as the degree of mitigation is lower in the 16-18 age categories.

Minors who have attained 16 years of age can bear administrative liability under the Administrative Offences and Punishments Act and under special acts such as the Decree on Combating Minor Hooliganism.

#### 3. Multidisciplinary aspects

All relevant organisations must coordinate their activities in order to obtain a comprehensive understanding of the children. The Child Protection Act regulates the competencies of the Child Protection Bodies, which are the State Agency for Child Protection, the Social Assistance Directorates at local level, the Minister of Labour and Social Policy, the Minister of the Interior, the Minister of Education and Science, the Minister of Justice, the Minister of Foreign Affairs, the Minister of Culture, the Minister of Health Care and the mayors of the municipalities.

#### 4. Training of professionals

Professionals who are involved in the judicial process have to be qualified and with an extensive experience, especially of working with children. There are no any legal training requirements, but almost all of the specialists took qualification courses and trainings, which give them specific skills.

On the other hand, the social workers and policemen take part in different studies, seminars and meetings hosted by public institutions, NGOs, etc. The Social Assistance Agency, as a main governmental institution, which is responsible for implementing the policies for child protection, on a local level, organises many trainings for improving the qualifications of its officials - the social workers.

#### 5. Best interests of the child

According to the Child Protection Act securing the best interest of the child is one of the main principles of protection. Child's best interest is the main principle for the children involvement in judicial proceedings. National legislation gives the children an opportunity to have a proactive role, expressing an opinion and taking part in making decisions.

#### 6. Access to remedies

The Child Protection Act provides that the child has a right to legal aid and appeal in all proceedings, affecting his or her rights or interests.

Children without legal capacity can address complaints and legal appeals through their parents or legal representatives, who exercise their rights on their behalf. The legislation provides an opportunity for these representatives to make decisions, keeping child's best interest. In case of child victim, who decide not to prosecute, a prosecutor can make this on his/her behalf, starting a pre-trial proceeding.

There are no specific rules on legal aid for children. The common rules of the Law on Legal Aid apply.

#### 7. Future developments

The Ministry of Justice with the participation of broad scope of stakeholders drafted a new *Law on the Diversion from Criminal Proceedings and Imposition of disciplinary measures for minors*. The aim of the draft Law is to encourage the lawful behaviour of minors in conflict with law and to secure support for their integration into society through the imposition of disciplinary measures and for their inclusion in appropriate educational programs. In accordance with international standards and best practices the draft Law governs the new system of measures to ensure secondary and repeated offences prevention for minors with illegal behaviour.

An essential element of the proposed legislative changes is the envisaged possibility of using mediation. This will allow the introduction of recovery (restorative) justice in diverting juveniles from criminal proceedings in order to achieve the removal of damages caused by the unlawful conduct and to the extent possible to restore the relationship between the offender, the victim and society.

## 8. Family life

The Bulgarian legislation of the adoption has been revised in consequence of the ratification of the Convention on protection of children and co-operation in respect of intercountry adoption (Hague Convention). The entry of adoptions and adoptive parents in special registers was introduced as a condition for the admission of full adoptions with the amendments. An exception to this rule was anticipated at the adoption of a child of a spouse and the adoption of a grandchild by a grandfather and a grandmother.

According to the Bulgarian legislation the adoption may be either "full" or "simple":

In case of **full adoption**, between the adopted child and his/her descendants – on one part and the adopting parent and his/her relatives– on the other, shall occur rights and obligations such as between relatives by origin, and the rights and obligations between the adopted child and his/her descendants with their relatives by origin shall be interrupted.

In case of **simple adoption**, rights and obligations shall occur as between relatives by origin only between the adopted child and his/her descendants – on one part and the adopting parent – on the other, and the rights and obligations between the adopted child and his/her descendants with their relatives by origin shall be kept. The parental rights and obligations shall pass on the adopting parent.

[Child-friendly justice in Bulgaria](#) (324 Kb)[en](#)

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## Rights of minors in court proceedings - Denmark

### 1. The child's legal capacity

In Denmark the minimum age at which a plaintiff can bring a case to court in their own right is 18.

### 2. Access to adapted proceedings

In criminal law cases, specialist institutions are not in place to deal with child victims and child witnesses. The normal police, prosecution and court services deal with such children.

In civil law, there are no specialized institutions dealing with children in civil judicial proceedings in Denmark.

As a main rule, the Danish legal system is based on the presumption that judges and bailiffs are "generalists". Thus, no specialized judges or bailiffs are involved in proceedings that concern children.

The courts are under a general obligation to pursue any case with the necessary speed.

In 2013 the Danish Government decided to strengthen the protection of children and young people from abuse. Where it must be assumed that a child or a young person is in need of special support, the municipal council shall ensure that the conditions of the child or the young person are examined.

For criminal justice, specialist institutions are not in place to deal with child victims and child witnesses.

Denmark considers unaccompanied minors as a particularly vulnerable group and guidelines for the processing of these applications have been drawn up.

Child plaintiffs are represented by their parents or guardians during the civil judicial proceedings as they do not have procedural legal capacity to act.

Children being called as witnesses in ordinary civil courts do not have the right to request a lawyer free of charge.

### 3. Multidisciplinary aspects

In 2013 the Danish Government allocated funding to initiatives strengthening the protection of children and young people from abuse. One of the initiatives was the establishment of 5 special "Children's Houses" covering all municipalities in Denmark.

A cooperation mechanism to enhance cooperation in high conflict cases between the Regional State Administration and the municipalities has been set up.

### 4. Training of professionals

Deputy Judges participate in a series of obligatory basic training courses. These courses include training in handling custody cases.

With regard to judges this subject in general is incorporated in training courses and seminars where relevant.

There is no mandatory training of attorneys-at-law that represent children in civil cases, criminal cases or cases within the administrative system.

The Director of Public Prosecution offers a seminar as part of the supplementary training of prosecutors who are in contact with children during proceedings.

The Danish Government continuously supports the municipalities in their work to provide the right service for vulnerable children, young persons and their families. Therefore annual funding has been allocated to the further education of municipal social workers.

### 5. Best interests of the child

Pursuant to the Danish Act on Social Services the municipality is obliged to provide a child with the needed support in accordance with the best interests of the child. Support must hence be adapted to the specific situation and needs of the child, provided at an early stage and on a continuous basis so that any problems as far as possible may be remedied in the home of the child or in the child's immediate environment. Furthermore support must be based on the child's own resources.

### 6. Monitoring and enforcement of decisions in proceedings involving children

For criminal justice, as regards to the victim, when an alleged offence is reported to the police, the police is under a general obligation to provide guidance and information to the victim regarding, inter alia, the right to legal assistance.

Civil judgments involving children as plaintiffs are enforced according to the normal enforcement rules by the Bailiff's courts. Child plaintiffs do not have procedural legal capacity to act, thus need to be represented by their parents or guardians who exercise the rights of the child plaintiff.

In family law cases, enforcement of judgments on the custody and residence of the child takes place by the Bailiff's courts. Enforcement cannot take place if the child's mental and physical health is exposed to serious danger.

## 7. Access to remedies

For criminal law, when an alleged offence is reported to the police, the police are under a general obligation to provide guidance and information to the victim regarding, inter alia, the right to legal assistance and information about complaints. Compensation claims can be dealt with during the criminal trial.

A child may have the status of plaintiff, but do to his/her lack of procedural capacity to act, cannot independently bring a case before domestic courts in his /her own name.

A child may have the status of defendant, but all procedural actions must be taken by the child's parents or guardian on his/her behalf.

Everybody, including children, is obliged to testify in a court procedure if he/she is invited by the court to attend as witness. An agreement of a parent /guardian is not necessary for the participation of the child in the proceedings as a witness.

Children can have the status of plaintiffs and defendants in civil law proceedings. Children do not in general have procedural legal capacity to act and therefore their parents or guardians will exercise the rights of child plaintiffs and defendants, including the right to appeal.

## 8. Family life

Before an approval as Prospective Adoptive Parents is granted, the secretariat of the Joint Council a thorough investigation of the applicants. The outcomes of the investigation are presented to the Joint Council, who, based on the investigation, decides whether or not the applicants can be approved as PAPs.

The Danish Adoption Act of December 2015 only allows full adoption. At present time the Danish AAB only cooperates with states of origin whose legislation allows strong adoptions.

In relation to national adoptions the Danish Adoption Act states that all children over the age of 12 must consent to an adoption.

In case the child is under the age of 12 the State Administration must, where the maturity of the child and nature of the case allows, provide information on the child's attitude towards the adoption.

The Minister for Social Affairs and the Interior is responsible for the legislation concerning adoption.

### [Child-friendly justice in Denmark](#) (499 Kb)[en](#)

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## Rights of minors in court proceedings - Estonia

### 1. The child's legal capacity

According to the General Part of the Civil Code Act all persons have passive legal capacity. Persons under 18 years of age have restricted active legal capacity. A court may extend the restricted active legal capacity of children 15 years of age and above if this is in the interests of the child and the child's level of development permits it. In Estonia, the minimum age at which a plaintiff can bring a case to court in their own right is 15.

### 2. Access to adapted proceedings

Regarding the on [judicial systems](#) please see respective e-Justice portal page.

Children below the minimum age for criminal responsibility (14 years) who have committed offences are dealt with by juvenile committees. Decisions by the committees are first reviewed by the county governor and subsequent appeals in administrative judicial proceedings by administrative courts. It is possible to apply for an appropriate measure where the case has been in court for nine months or more and the court has not yet made a necessary proceeding based on reasonable justification. Also, if the hearing is postponed for longer than three months without the consent of the parties, the parties can appeal the decision. There are specific rules concerning provisional measures, which can be ordered by the court in order to protect the child from harm and secure the action, and the law provides an exemption from hearing children with special needs.

### 3. Multidisciplinary aspects

Child protection is organised by the Government of the Republic, child protection council, Ministry of Social Affairs, Social Insurance Board, county governors and local governments based on the functions provided for in Child Protection Act.

### 4. Training of professionals

The training of judges is organised by the Judicial Training Council that operates under the Supreme Court in accordance with the Estonian Court Act. Estonian Bar Association is a member of European Bar Association and communicates with other Member States about training through it.

### 5. Best interests of the child

Many legal acts refer to the child's interests. [The Child Protection Act](#) (section 21) enacts the obligation to set the best interests of a child a primary consideration.

### 6. Monitoring and enforcement of decisions in proceedings involving children

As children do not have active procedural capacity, they are not personally informed of the judgement and its enforcement by the court. Once the judgement becomes enforceable, the child's legal representative can submit an application for enforcement to the bailiff. Communication of the information regarding the enforcement proceedings to the child is presumed to be the responsibility of the legal representative.

### 7. Access to remedies

In Estonia children involved in civil judicial proceedings are represented by their legal representatives who are presumed to act in their best interests.

Therefore, in principle the child's legal representatives can make submissions and bring appeals to the court on behalf of their children without the child's consent. However, it can be inferred from the law that a child can also submit an application/appeal to court in his/her own right. Generally, his/her legal representative is expected to join immediately. In family matters on petition, a child of 14 years of age and above with sufficient understanding of the proceedings has the right to appeal against court rulings without being represented by his/her legal representative.

### 8. Procedure for adoption, including international adoption

A person wishing to adopt files a petition for adoption to a county government. If the county government presumes that the conditions required for adoption are complied with, the person wishing to adopt files a petition for adoption to the court. A petition for adoption is filed with the court of the residence of the adoptive child. If the residence of the adoptive parent or the child is not in Estonia, a court shall not decide on adoption without the consent of the committee for international adoptions formed at the Ministry of Social Affairs of the Republic of Estonia. A child who is at least 10 years of age may be adopted only with his or her consent.

### [Child-friendly justice in Estonia](#) (469 Kb)[en](#)

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## Rights of minors in court proceedings - Greece

### 1. The child's legal capacity

In Greece the minimum age of criminal responsibility is 15. A child that is aged between 12 and 15 and has committed an offence has the right to file a complaint against an administrative decision; once he or she turns 17 this right is enjoyed exclusively by the child.

The minimum age at which a plaintiff can bring a case to court in their own right is 15 for employment, 18 for asylum, migration, administrative sanctions and health, 12 in termination of adoption cases, 16 in non-contentious proceedings and 18 in all other cases, unless the child is recognized as having limited procedural capacity.

### 2. Access to adapted proceedings

In Greece there exists a Criminal Judge of Minors, an Investigative Judge of Minors and a Public Prosecutor for Minors in every Court of First Instance and every Court of Appeal, who specialise in criminal cases involving minors. The Juvenile Court, composed by Criminal Judges of Minors, hears cases of minors offenders.

Furthermore, minors are protected by "Societies for the Protection of Minors" which are set up in every Court of First Instance and are staffed by Judges, Prosecutors, Sociologists, Teachers etc.

There are specialised Chambers of family law Judges in every Court of First Instance and some Courts of Appeals. These Judges specialise in family law in the sense that, when seating as Civil Law Judges, they only hear family law cases. These duties are assigned for a period between 2 and 4 years.

In administrative justice there are no special provisions or institutions for family law and minors.

### 3. Multidisciplinary aspects

Social service and family courts are in close cooperation between themselves at any stage. Reports for Judges are prepared and sessions with psychologists are held, so that a case reaches the Judge at a mature stage. If needed, the Judge may always request the child or/and his/her parents to be put under a special examination by a professional so that living conditions and family environment are thoroughly examined.

### 4. Training of professionals

Basic judicial qualification training does not include family law separately as to other areas of law. However, family law forms part of continuous training organised by bodies such as the National School of Judges, the Ministry of Justice, the Bar Associations, Academics, etc. Judges and Public Prosecutors who specialise in this area are encouraged to take part in these awareness raising activities.

Cross-border training is ensured via the regular channels, ie EJTN, ERA or other bodies or institutions who deal with judicial training at a European level.

### 5. Best interests of the child

All measures to be taken and all actions adopted by state bodies or entities, as well as courts, have to comply with the principle of serving the best interests of the child. In court, it is up to the Judge to actualise this notion on a case by case basis.

### 6. Access to remedies

As with adults, children are given all rights and are briefed of all procedures that they can be put into when they are involved in a criminal or civil case. Especially in criminal proceedings, the Public Prosecutor may "freeze" a criminal procedure after hearing the child, if this could avoid causing irreparable damage to his/her personality.

### 7. Family life

Under Greek law, interested people in adopting a particular child have to apply to the First Instance Court of the residence of the child for the adoption to be legally pronounced. The biological parents have to give their consent for the adoption of their child by the applicants before a Judge in his/her chamber. The child to be adopted who has reached the age of twelve years has also to give his/her consent. A witness has to testify in the court hearing that the applicants are in a capacity to take care and raise the particular child bearing in mind among other things their education and their financial resources. The same applies to international adoptions. This procedure is set out in articles 1542 et seq of the Greek Civil Code and article 800 of the Greek Code of Civil Procedure.

There exists the adoption of minors and the adoption of adults. Adoption of adults is exceptional and concerns only relatives up to the fourth degree (ie cousins) (articles 1579 of the Greek Civil Code). In addition, married adults can only be adopted with the consent of their spouse (article 1583 of the Greek Civil Code).

The Multimember First Instance Court of the place of residence of the child is competent for national and international judicial proceedings of adoption (article 800 of the Code of Civil Procedure). Especially for international adoption, there also exists the Central Authority of Intercountry Adoptions, which falls under the competence of the Greek Ministry of Labour (article 19 of Law 3868/2010).

[Child-friendly justice in Greece](#) (326 Kb) [en](#)

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## Rights of minors in court proceedings - Spain

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 proceeding 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)[en](#)

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## Rights of minors in court proceedings - France

### 1. Legal capacity of minors

Minors under the age of 18 are not legally capable under French law. They must be represented by their legal representatives (usually their parents) when exercising their rights. Minors must be involved in all decisions that affect and are of relevance to them, depending on their age and level of judgment.

### 2. Access to appropriate procedures

Specialised staff, in particular the specialised judges of the children's court, are responsible for cases involving minors. Youth Legal Protection (*Protection judiciaire de la jeunesse*) and authorised associations may intervene during proceedings involving a minor.

The law provides that a minor can enter into a dispute with their parents. In this case, an independent individual may be appointed as an ad hoc administrator.

**In criminal matters**, minors have the right to consult a lawyer without the need for parental permission. Legal aid is provided free of charge. Lawyers are considered to be the first point of access to information, and play a supportive and protective role as regards minors. They can ask that a judgment be held in closed session, that a minor be positioned so as not to see the accused, that any additional medical examination is replaced by a review of the file and that certain investigative acts (e.g. 'confrontation') do not take place.

— **Where a minor is a defendant or a party to the procedure** and one of their rights is infringed, the procedure or detention may be annulled. Minors (over the age of 10) may be detained under the supervision of specially trained professionals in premises reserved for minors.

— **Where a minor is a witness** in a case, the judges and criminal police officers must take into account their vulnerability. Minors under the age of 16 do not have to swear an oath.

— **Minors who are victims are accorded special protection.** Furthermore, if a minor is a claimant in a civil procedure, they may claim damages for the harm suffered. If the convicted offender is not solvent, the victim may receive compensation from a [guarantee fund](#) (depending on the circumstances), the Criminal Injuries Compensation Board (CIVI) and/or the Victims of Crime Recovery Assistance Service (SARVI).

**In civil matters**, minors must in general be represented by their legal representative. An administrator is appointed if there is a conflict of interest between a minor and their parents. Parents have 15 days in which to appeal the appointment of an administrator.

In certain situations, the law expressly provides that minors may act on their own account (particularly as regards minors at risk in relation to educational assistance, applications for an affidavit for the purposes of establishing parentage, applications for emancipation and applications for establishment of nationality of unaccompanied foreign minors).

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

**In criminal matters**, the Public Prosecutor may order the immediate appearance of the minor before the children's court, to ensure that the hearing takes place within a period of 10 days to two months. This procedure is only possible if an investigation into the facts is no longer necessary, in relation to specific offences and according to the age of the minor and the penalty incurred. Moreover, an earlier appearance allows the Public Prosecutor to order a hearing before the children's court within one to three months.

**In civil cases**, there is no specific provision for speeding up proceedings at first instance in cases involving minors, but where an appeal is lodged against a decision of the children's court, the law provides that the case should be heard as a matter of priority.

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

The interests of the minor are of central importance in court proceedings involving children. The law frequently reaffirms that judges must justify their decisions on the basis of the essential criteria of safeguarding the interests of children. They must take into account the family, social and economic situation of the child and the opinions expressed. However, there are no protocols or guidelines in which the best interests of the child are defined.

**In criminal matters**, the judicial authority is alerted by the regional authorities where a minor has been or is presumed to have been the victim of mistreatment. Where the minor has been the victim of sexual abuse, the Public Prosecutor must immediately inform the children's court judge and request assistance with rehabilitation.

The obligations arising from professional privilege do not apply in cases of abuse or deprivation of minors. Various crimes against minors have longer limitation periods, which only start to run when the victim reaches the age of majority. Hearings involving an accused who is a minor must be held in closed session. Publication of the content of hearings is prohibited.

**In civil matters**, the children's court judge is responsible for rehabilitation assistance where a minor is at risk. Furthermore, the Civil Code confers broad powers on family court judges, who must take «particular care to ensure the protection of the interests of children».

### 5. Enforcement of decisions concerning minors

**In criminal matters**, the parents and the lawyer of the minor are directly involved in the implementation of any measures. A number of measures may be ordered by the children's court judge or the investigating judge during the investigation phase (for minors aged between 10 and 18: placement measures, probation, reparations and daytime activities; for minors aged between 13 and 18: pre-trial detention, court supervision and residential surveillance using electronic monitoring).

The children's court may order the surrender of minors aged between 10 and 18 to their family, reparations, suspension with probation, daytime activities, placement measures or court protection. For minors aged between 13 and 18, the court may also issue an admonishment or warning, order reparation activities, a daytime activity (which may, for minors aged between 16 and 18, consist of community service), probation or court protection. A penalty may be imposed on **minors aged between 10 and 18**: a ban on entering certain places, meeting certain persons, placement and, as a last resort for **minors over the age of 13**, imprisonment (in the minors' section of a remand centre or a young offender institution; specialised case workers must be present).

**In civil matters**, decisions on parental responsibility, maintenance allowance or the protection of minors at risk are immediately enforceable. Depending on the minor's level of judgment, in most cases parents have to enforce the judgment. In the event of a conflict with the parents and in cases in which a court has not already ruled on this issue (e.g. by appointing a guardian), an administrator will be responsible for the enforcement of the measures in the interests of the minor.

## 6. Adoption

Adoption involves several stages: obtaining approval, the match and connection between the child and the adopter and the legal procedure creating the parent-child relationship. There are two types of adoption in France: simple adoption (retention of the original parent-child relationship) and full adoption (only for children under 15; substitution of original parent-child relationship by relationship with adoptive parents).

The High Court (*Tribunal de Grande Instance*) has jurisdiction in both cases and adoption can only be approved if it is in the interests of the minor. A minor over the age of 13 must consent to their adoption.

[Child-friendly justice in France](#) (749 Kb) 

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## Rights of minors in court proceedings - Croatia

### 1. The child's legal capacity

Children in Croatia have legal capacity (capacity to have rights and obligations) and judicial capacity (capacity to be the plaintiff or the defendant). Children may acquire capacity to act (capacity of contracting and producing legal effects usually acquired with age of 18 years old) and judicial capacity to act before the age of 18 only if they get married, become parents - emancipate children (16 years of age), or enter into employment contracts (15 years of age).

### 2. Access to adapted proceedings

The relevant stakeholders involved in criminal proceedings with the participation of children are as it follows:

the Ombudsman for Children;

specialised police officers within the Ministry of the Interior, trained in dealing with child victims and offenders;

Youth Courts in criminal proceedings involving children;

youth judges who are specialised judges working in Youth Courts;

a specialised State Attorney for Youth within the State Attorney's Office;

lawyers specialising in children's proceedings, appointed by youth judges when needed from the list of the Croatian Chamber of Attorneys (usually as defence lawyers);

social workers who have an extensive role in criminal proceedings involving children;

specialised clinics and hospitals for children;

numerous specialised NGOs, non-legal expert assistants (at Youth Courts and the State Attorney's Office), volunteers, etc.

The participation of the child or minor (up to the age of 23) in court proceedings, in cases when the child is the perpetrator of the criminal offence, has been regulated by the Juvenile Courts Act.

Civil law cases have been conducted by the courts and there are no special courts adjudicating only civil law cases involving children. 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.

The Centres for Social Care are public bodies operating with the aims of protecting and supporting children and they have the possibility to influence court decisions. Centres for Social Care have the legal status of a party and they can also participate as the courts' auxiliary authorities or interveners sui generis. Since they play a significant role in the protection of children in judicial proceedings, these centres have different opportunities to advocate for the children's best interests.

The Ombudsman for Children is an independent authority responsible solely to the Parliament which has been established with the exclusive objective of protection, monitoring and promotion of rights and interests of children. There are no special courts or institutions in Croatia dealing with children/minors in administrative judicial proceedings. The administrative courts are courts with general competence established to settle administrative disputes, including those concerning children/minors. In addition to the general governmental authorities that hold the overall responsibility for the protection of the rights of children (Ministry of Social Policy and Youth, Ministry of Health, Ministry of Labour and Pension System, Ministry of Justice), there are specialised competent authorities such as the Ombudsman for Children.

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

All competent authorities involved in potential criminal proceedings involving children or minors need to act urgently to finalise their activities as soon as possible. According to the Juvenile Courts Act commencement of proceedings and relevant decisions brought by courts should take place without undue delay in criminal proceedings against juveniles, young adults and for crimes committed against children.

Namely, court proceedings against juvenile offenders, and pre-trial proceedings such as police and public prosecutors investigations and proceedings are of urgent nature. Delays in enforcement of sanctions against juveniles are minimised also by duty of the court to commence such proceedings without undue delay after court decision has become final and there are no legal impediments for its execution.

The procedures in which the personal rights of the child shall be decided are urgent and the first hearing shall be held within fifteen days from the day of the initiation of the procedure. The decision in the procedures on provisional measures and enforcement, to exercise parental care and personal relationship with the child, as well as to hand over the child, shall be rendered and delivered within thirty days from the day of initiation of the procedure. The second-instance court shall render and delivered the decision within thirty days from the day of receipt of the appeal.

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

In accordance with the Criminal Procedure Act, an alleged child/minor victim has the right to be heard, to testify and to participate in criminal proceedings. They have the right to inform appropriate authorities on relevant facts and propose evidence with respect to the crime and the criminal proceedings, as well as to exercise their right to legal remedies. In this respect they have the right to ask questions to suspects, witnesses and to expert witnesses during court sessions and submit their comments and explanations regarding their testimony.

In practice, the assessment of the best interests of the child is considered as a judgement of specialists involved in the procedures for child protection and they can propose to the court a measure of protection for the child. The assessment of the best interests of the child is based on the principles and methods of work of professional experts (social workers, psychologists and others). To comply with the European Convention on Children's Rights, the court may appoint a special representative to the child in a case where the holder of parental responsibility is excluded from the representation of the child as a result of his/her conflict of interest with the child. Such a representative is usually a lawyer with a significant track record in proceedings involving children. Special representatives may be appointed in certain judicial proceedings concerning family rights, such as custody over the children in divorce cases and adoptions, as well as cases that concern the protection of children's personal rights and interests.

Protecting the best interests of the child is one of principle enshrined in the Constitution, where has been stated, among the others, that parents bear responsibility for the upbringing, welfare and education of their children and are responsible for ensuring the right of their children to a full and harmonious personal development. The state must devote special care to orphans and minors neglected by their parents and everyone has a duty to protect children and the right to inform the relevant authorities about potential harm caused to children. Young people, mothers and disabled persons are entitled to receive special protection at work. Everyone should have access to education under equal conditions. Compulsory education is free, in conformity with law.

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

Croatia adopted the Act on the Execution of Sanctions Imposed on Juveniles Convicted of Crimes and Offences. The purpose of the above mentioned Act is to regulate the following:

conditions for the execution of sanctions imposed on child offenders and young adults in the criminal procedure in particular correctional measures, 'juvenile' prison and security measures; and

conditions for the execution of sanctions imposed on child offenders in the offence procedure in particular correctional measures, 'juvenile' prison and protective measures.

Representatives of the competent centre for social care play a significant role in ensuring the proper treatment of child offenders. The centre for social care is also responsible for summoning and instructing the child on the execution of any correctional measure and it provides all necessary input and support.

Correctional measures have the purpose to provide protection, care, help general or specific education to convicted children. They should have a positive impact on offenders' education, development, and personality in order to strengthen them and enable him/her to refrain from committing new offences.

The types of correctional measures are:

- court reprimand;
- special obligations such as: apologising to the injured party, compensation or remedy of the damage inflicted by the criminal offence to the extent possible for the child, regular schooling, training and work qualification, accepting a job and persisting in it, supervised usage of child offender's income, involvement in the work of humanitarian organisations or activities of municipal or ecological significance, refraining from visiting certain places, events or company with certain individuals, submission to medical treatments such as detoxification from drugs or other addictions, counselling or psychosocial treatments, professional training courses, etc.

Imprisonment in a juvenile prison may also be imposed as a last measure and subject to specific conditions with regard to the use of such a measure, its duration, purpose and content. Only older child offenders (aged from 16-18) may be sentenced to juvenile prison and only for a criminal offence punishable by a term of imprisonment of three years or more, where, due to the nature and seriousness of the offence and 'high level of guilt' (for example where there has been extreme persistence in committing the crime or the action has been particularly inhumane), a correctional measure cannot be justified.

Children who lack procedural capacity to act have been represented by their legal representatives in which cases a child receives information about court decisions and the enforceability thereof via his/her legal representative.

Certain protective measures can be put in place, by courts, during the enforcement procedure to protect children from unnecessary harm after conducting a non-contentious proceeding. Protective measures are: restraining order of non-contact or limited contact with the parent, grandparent, brother or sister of a child (or half-brother or half-sister).

#### 6. Access to remedies

a) All persons have the right to appeal against a judgment of the competent court as set out in the general rules and conditions on legal remedies established by the **Criminal Procedure Act**. A child victim, in addition to a state attorney, defendant and defence counsel, may appeal a judgment of the court of first instance. A child victim, as a party in the criminal proceedings, may appeal the decision of the court on the costs of the trial and the decision of the court on his/her financial claims.

All persons having the right to an appeal against a judgment may file an appeal against a judgment issuing punishment, a correctional measure against a minor, or a decision suspending the proceeding, within eight days of the receipt of the judgement or decision. The defence attorney, the public prosecutor, the spouse, a relative in the vertical line, an adopted parent, guardian, brother, sister and foster-parent may submit an appeal in favour of the minor even against his/her will. An appeal shall not postpone enforcement of the decision.

The second-instance court may alter the decision of the first-instance court by issuing a stricter sanction against a minor only if that is proposed in the appeal.

b) Children involved in judicial proceedings have a right to file a complaint, or an appeal or claim under the general rules set by the **Civil Procedure Act** and the **Civil Obligation Act**.

As children, in general, do not have procedural capacity, typically their parents or guardians act as their legal representatives on their behalf. The child's legal representative is entitled to undertake all procedural actions on behalf of the child, including submission of appeal. An appeal can be filed against first instance judgments of courts by the parties. Appeals against first instance decisions suspend the enforceability of court decisions. An appeal can be filed challenging the judgement of the first instance court based on the following grounds: substantial violation of civil procedure rules, wrongful or incomplete establishment of the facts and wrongful application of the relevant law. Usually the timeframe for filing the appeal against the judgment of the first instance court is within 15 days from the date when a copy of the judgement has been served.

#### 7. Adoption



The Family Act regulates adoption as a special form of family-legal care and protection of children without adequate parental care, which allows parenting to the adoptive parents. The adoptive parent should be a Croatian citizen (exceptionally a foreigner if it is of particular interest for the child) and persons aged at least 21, and at least 18 years older than the adopted child. A child can be adopted by married couples and common-law partners jointly, one spouse /common-law partner if the other spouse/common-law partner is the parent or adoptive parent, a spouse/common-law partner with the consent of the other spouse/common-law partner, as well as by a person who is not married. Adoption may be established up to the eighteenth years of age of the child, and a child can be adopted if s/he meets the legal requirements for adoption and if it is in accordance with the child's well-being. A child who is 12 shall give a written consent for the adoption.

The adoption procedure is carried out by the social welfare centre of the place of permanent or temporary residence of persons who intend to adopt. If the adoptive parent or a child is a foreign citizen, adoption may be established only with the prior consent of the ministry responsible for social welfare.

[Child-friendly justice in Croatia](#) (690 Kb) [en](#)

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## Rights of minors in court proceedings - Cyprus

### 1. The child's legal capacity

In Cyprus, the minimum age of criminal responsibility is 14. For all matters, the minimum age at which a plaintiff can bring a case to court in their own right is 18.

### 2. Access to adapted proceedings

#### 2.1. Criminal justice

In general, a child has no legal capacity to sue and thus can only bring an action through his/her parents/guardian.

As far as the Courts are concerned, criminal cases where the victim is a child are dealt with by the ordinary criminal courts at present. However, specific Laws with specialised child-sensitive provisions for the protection of child victims/witnesses exist.

#### 2.2. Civil justice

There are no specialist institutions dealing with children in civil judicial proceedings.

#### 2.3. Administrative justice

The Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance provide services for the protection and support of children throughout the judicial process. All the services provided and policies implemented by the Social Welfare Services have as a primary consideration the best interests of the child.

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

There are no time limits concerning when civil judicial proceedings must be commenced or terminated, regardless of whether a child or an adult is involved. In ordinary civil cases, the Courts will try to prioritise cases involving children as far as this is possible, having regard to the huge case load. Any requested interim orders will be dealt with without undue delay.

#### 2.5 Child specific support mechanisms

In the case of civil judicial proceedings, no arrangements are in place to ensure that court premises are suitable for children and no psychological or other support is offered, unless a particular need for such support is diagnosed.

There are no regulations requiring court sessions to be adapted to the child's pace and attention span. If there are images or other material to be presented in court that may be deemed as harmful for the child, the judge may order that the child be removed from the courtroom. The only protective measure for civil proceedings is the conducting of the trial in camera.

### 3. Multidisciplinary aspects

In cases of violence in the family the Social Welfare Services cooperate with all the other relevant services based on a manual of interdepartmental proceeds, approved by the Council of Ministers in 2002. In cases of sexual abuse against children the Social Welfare Services cooperate with the other relevant services establishing a multidisciplinary approach.

### 4. Training of professionals

Cyprus Police Academy, which is the educational institution of Cyprus Police, provides lectures on handling juveniles related cases, at all levels of Police training. Such lectures aiming to educate police officers of all ranks, are offered at the basic training Program for recruit Police Officers, at advanced courses as well as at specialized courses.

The Social Services Officers receive initial as well as on going training on issues related to children, i.e. interview with a child, handling cases involving children, etc.

Concerning judges in ordinary civil and criminal courts, there are no training requirements pertaining to the treatment of children during court proceedings. Judges generally attend training seminars and conferences in Cyprus and abroad as and when organised.

### 5. Best interests of the child

In cases where the court needs to take a decision on the best interests of the child, the court may take into consideration a report prepared by the Social Welfare Services, which contains not only the observations made by the Social Services Officer, but also the views of the child.

### 6. Monitoring of decisions in proceedings involving children

The Juvenile Offenders Law is expected to be comprehensively revised with the aim to ensure more specifically procedures in favour of children and young persons. This will improve and strengthen the proceedings involving children, for the best interests of the child.

### 7. Access to remedies

A child may access any complaint, legal appeal or judicial review under normal procedures, through their parent, legal guardian or legal representative. Concerning claims for damages/compensation during or after criminal proceedings in which the child was a victim, if an ordinary civil claim is made for damages/compensation it will have to be made on behalf of the child by their parent or legal guardian. As for orders for compensation of victims within the actual criminal proceedings, the ordinary criminal courts have limited powers.

In case where there is a conflict of interests between the child and his/her parents/guardians, the Social Welfare Service may take the child under the care of the Director of Social Welfare Services, who is the guardian of the child and is deemed necessary will assign a legal representative for the child.

## 8. Family life

In the Republic of Cyprus there are different types of adoption:

National adoptions

Intercountry adoptions

Adoption of his/her spouse's child from a previous marriage.

In all cases of an adoption, the child's best interests are taken as the paramount consideration, based on article 21 of the UN Convention on the Rights of the Child.

**Child-friendly justice in Cyprus** (572 Kb) [en](#)

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## Rights of minors in court proceedings - Luxembourg

### 1. Child's legal capacity

In Luxembourg the minimum age at which a plaintiff can bring a case to court in his own right is 18 for all areas of law. An exception exists for emancipated children who can file a complaint on their own behalf.

In Luxembourg, a specialized judicial system deals with offences committed by children below minimum age of criminal responsibility (MACR). The MACR in Luxembourg is 18 years of age. Therefore a child below the age of 18 does not commit "crimes" under the Luxembourgish law system; rather they commit "acts qualified as crime", for which a specialized jurisdiction, the Juvenile Court, is responsible to apply measures of protection, care or/and education.

### 2. Access to adapted proceedings

Except for some family and child protection matters, civil law cases are tried before civil courts. There are no special family and youth courts in the field of the administrative justice. Only asylum and migration decisions are reviewed by administrative courts.

A specialized Court, the Juvenile Court, is competent to deal with child suspects and offenders, as well as ordering protection measures for children in need of assistance and protection. The Juvenile Court (Tribunal de la jeunesse) adopts education and preservation measures. Child suspects/offenders are not considered as offenders but as children who need protection and help. Consequently, criminal law does not apply as such to children.

The Youth Protection section of the prosecution office treats in general everything that affects children and their families. When child victims are involved in judicial proceedings, prosecutors work closely with the Youth Protection section of the judicial police.

Luxembourg has a specialized judiciary, the Juvenile Court, to deal with family law issues, child protection and guardianship cases. Juvenile and Guardianship Courts operate with specialized judges. Juvenile judges are competent to enforce the laws on youth protection, and in order to modify or enforce divorce decisions if they concern the parental authority of children. Guardianship judges are competent to hear cases related to the parental authority of children whose parents are separated and have not been married to each other. Guardianship judges also exercise supervision over the work of legal representatives or guardians. In this role, guardianship judges may ask a child's legal representatives and guardians for clarification, as well as the child him/herself.

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

There are no specific provisions in place to ensure that civil judicial proceedings involving children, take place without undue delay. In terms of procedural deadlines, the general rules (rules applicable to adults) apply. These rules differ depending on the court that hears the case.

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

Persons, including adults and children, can receive free of charge legal information from the legal information service <https://justice.public.lu/fr/aides-informations/accueil-info-juridique.html>

They can provide support to the child in accessing legal remedies. The child can also be assisted by a lawyer.

The meaning of the term "best interests", is not defined in applicable legislation.

The assessment of the child's best interests falls under the competence of judges. Judges may take into account several factors, while assessing the child's best interests, including, for example, the child's well-being, social factors, etc. Despite the legal requirement in place, the court may take into account the child's views while defining his/her best interests. The child can express his/her views while being heard in civil matters for example concerning the parental authority.

All the courts comply with International legal instruments such as the *European Convention on the Exercise of Children's Rights*, and the case law of the European Court of Human Rights.

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

Children cannot seek the enforcement of a court's judgement in their own right. Their legal representative exercises this right on their behalf.

When a decision has been issued against a child defendant, enforcement of the decision must take place against the child's property. Child defendants, who do not fulfil their obligations arising from the court decision, cannot be subject to the coercive measure of detention.

In child protection cases, the child represented by a lawyer can seek enforcement of a Court's judgement in his/her own right.

### 6. Access to remedies

The child who wants to file a complaint, a legal appeal or a notion for judicial review in front of an ordinary court must be represented by his/her legal representative. An exception is made for emancipated children who can file a complaint on their own behalf.

As the child's legal representative represents the child and takes every act in his/her name, he/she can make submissions or appeals without the child's consent. The court can appoint an ad-hoc administrator if there is a conflict of interest between the parents and the child.

Also decisions taken by the Juvenile Court can be appealed by the child with the support of a lawyer.

### 7. Institutions in charge of child support:

Office national de l'enfance (ONE) <http://www.men.public.lu/fr/aide-assistance/aide-enfance/01-demandeur-aide/index.html>

Service d'assistance sociale (SCAS)-Service de la protection de la jeunesse (SPJ) : <https://justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-de-la-protection-de-la-jeunesse.html>

Ombuds-Comité fier d'Rechter vum Kand (ORK): <http://ork.lu/index.php/en/>

Its mission is to ensure the implementation of the Convention on the Rights of the Child signed on the 20th November 1989 in New York without interfering in any judicial proceedings.

## 8. Adoption

In Luxembourg, adoption is open to all Luxembourg residents, whether or not they are nationals, as well as to non-residents who wish to adopt a person residing in Luxembourg.

Requirements for adoption are governed by the national law of the adopter(s).

In the case of adoption by two spouses who do not share the same nationality or who are stateless, the applicable law is that of their common habitual residence at the time of the request.

For adoptees, the legislation of their country of origin is applied, unless the planned adoption confers the adopter's nationality on them. If there are conflicting jurisdictional rules, the law of the country where the adoption is validly concluded applies.

Anyone wishing to adopt a child must first contact the Ministry of National Education, Children and Young People (MENJE) in order to file an adoption application. The "*adoption preparation course*" comes before an assessment is made of applicants' suitability to adopt.

The *Maison de l'Adoption* is an advisory service on adoption for people concerned by adoption (prospective adopters, adoptees, adoptive families, professionals involved in adoptions).

It provides support both during and after the adoption procedure through personalised consultations.

The procedure of adoption in Luxembourg involves various stages.

Link to legislation: <http://legilux.public.lu/>

**Child-friendly justice in Luxembourg (in English and French)** (712 Kb)[en](#)

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## Rights of minors in court proceedings - Malta

There are various definitions of what the law deems as a 'child' (Child's legal capacity) across the Maltese legal framework.

### 1. Child's legal capacity

In Malta the minimum age of criminal responsibility is 14. For all matters, the minimum age at which a plaintiff can bring a case to court in their own right is 18.

### 2. Access to adapted proceedings

With reference to juvenile offenders the specialised court dealing with minors in the Criminal Field is the Juvenile Court. With regards to child victims these are heard through video-links. Civil Proceedings: Minors under the age of eighteen cannot sue or be sued except through a parent, tutor, curator or guardian. However in court cases dealing with personal separation or divorce, during the proceedings the court shall always consider the best interest of the child. The following are administrative judicial proceedings involving children: child protection, adoptions, fostering, unaccompanied asylum seekers and children in asylum proceedings.

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

The legal and policy measures in place to avoid undue delay in the handling of cases involving children vary according to the circumstances: criminal cases: child as a victim and child as an offender, civil cases in family cases the best interest of the child is taken into consideration. With regards to administrative cases concerning minors when care orders are issued these are brought before the Juvenile Court which is a specialised court.

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

There is no overarching rule in Maltese law which specifies the conditions in which a vulnerable child is to be heard during all the different criminal or administrative proceedings that exist. There are laws found in different status and procedures applied by the judicial or quasi-judicial bodies that make the respective administrative and criminal proceedings in line with Article 12 of the UNCRC. In Malta any child can take the witness stand; it is however essential for the court to be satisfied that the child witness understands that it is wrong to give false testimony.

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

The monitoring and enforcement of decisions in proceedings involving children depends on the type of case, under Maltese Law one finds the following criminal law: sentencing, care orders, probation orders and parole. With regards to civil proceedings decisions involving children as plaintiffs or defendants are enforced in the same way as decisions involving adults as plaintiffs or defendants. With reference to administrative proceedings under Maltese Law, children cannot sue or be sued, except in the person of the parent exercising parental authority, or, in the absence of such parent, of a tutor or a curator. Child protection cases can be started by the legal department of Aġenzija Appogg or by a private lawyer.

### 6. Access to remedies

Under Maltese Law in criminal proceedings there is no specific right for child victims, this right emanates from the law itself and applies to all victims be it child or adult. With regards to civil proceedings/administrative proceedings a child can access any complaint, legal appeal or judicial review mechanism through a parent, tutor, curator or guardian. During contentious proceedings between the parental right holders before the Family Court a children's advocate may be appointed to represent the child's interest.

## 7. Adoption

The procedure of adoption in Malta involves various stages.

**Child-friendly justice in Malta** (366 Kb)[en](#)

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## Rights of minors in court proceedings - Finland

### 1. The child's legal capacity

In Finland the minimum age of criminal responsibility is 15.

In other issues, the minimum age at which a case can be brought to court varies between 12 (health issues, placement in care), 15 (employment, asylum, migration issues, education issues, administrative sanctions) and 18 (family issues).

### 2. Access to adapted proceedings

Investigations targeting children are as far as possible assigned to police officers with training or experience in this task. Larger police departments have units or police officers specializing in investigating crimes against children. As a rule, investigation of crimes against children is in all police departments channeled to investigators who have professional skill and particular competence in investigating this type of crimes.

The Prosecution Service has a system of special prosecutors to ensure expertise in an area of specialization and to maintain and develop the professional skills of prosecutors. There is a group of special prosecutors who are specialized in violence against children and women. They train other prosecutors in their field of expertise.

Investigations targeting children are as far as possible assigned to officers with training or experience in this task.

The Ombudsman for Children promotes the interest of children and implementation of children's rights on a general level but does not handle individual cases.

### 3. Child-specific support mechanisms and procedures

Since the beginning of 2016, also a video-recording of a 15-17 year old victim can be used as evidence in court in cases where the victim is in need of special protection.

According to the Criminal Investigations Act, the criminal investigation authority shall, when necessary, consult with a physician or other expert on whether investigation measures may be directed at a person under the age of 18 years.

As a rule, interviews with child victims and witnesses are conducted by police officers with training or experience in this task. The interview may also be conducted by a health care professional.

In connection with the University Hospitals of major cities, there are dedicated centers of expertise that specialize in hearing minor victims of a crime. The police work in a close-knit cooperation with these centers.

### 4. Training of professionals

The Ministry of Justice regularly organizes advanced training for judges, court staff and legal aid officers in child psychology, legal psychology, rights of victims, human rights and special needs of victims who have been sexually abused. Also prosecutors may take part in the training.

The Office of the Prosecutor General organizes training for prosecutors that deal with cases of sexual and physical abuse of children. The topics include child development, child psychology and how to conduct an interview with a child.

Training of police officers includes training on child psychology, communication skills and how to conduct an interview with a child. A special qualification as an expert is given to those professionals who have conducted special training carried out by the National Police Board.

### 5. Access to remedies

A complaint about the prosecutor's decision not to prosecute can be submitted to the Prosecutor General, who has the right to initiate a new consideration of charges.

### 6. Family life

The first stage in the adoption process is adoption counselling provided by municipal social welfare organs and Save the Children Finland. Adoption counselling is free of charge for customers. For the purpose of submission of an application for adoption permission and petition for the granting of an adoption, the provider of adoption counselling shall provide a written report on the provision of adoption counselling. The report shall provide the necessary information about those concerned and their circumstances.

Based on the report the Adoption Board makes the decision on granting permission for adoption. The adoption of a minor child requires a permission granted by the Adoption Board in domestic as well as in intercountry adoptions. Permission is valid for two years. The applicants may apply extending the validity of the permission.

There is only one type of adoption. Once an adoption has been granted, the adoptee shall be deemed the child of the adoptive parents and not of the former parents.

The adoption permission is not needed if the adoptee is the child of the prospective adopter's spouse or a child who has otherwise already been cared for and brought up by the prospective adopter in an established manner.

As a rule, those adopting from abroad must, in addition to receiving adoption counselling, always apply for intercountry adoption services. Such services are provided by the City of Helsinki Social Services Department, Save the Children Finland and Interpedia.

At the end of the process the adoption shall be granted by judicial decision.

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## Rights of minors in court proceedings - Sweden

### 1. Minimum age at which a plaintiff can bring a case to court in their own right

In Sweden the minimum age of criminal responsibility is 15. A case can be brought to court by persons who are at least 18 for family, employment, migration and asylum matters as well as administrative sanctions. For education matters the age is 16 and for health matters (only if this concerns compulsory psychiatric detention/treatment) and placement into care, 15 (although children will usually be defendants and not plaintiffs).

### 2. Specialised institutions and competent authorities

Sweden does not have special courts for young offenders. Children under the age of 15 cannot be prosecuted and instead fall under the care of Social Services, while those who are between 15 and 18 years of age are tried in general courts. Sweden has general courts and administrative courts. They work in parallel. The administrative court system deals with challenges to administrative decisions.

Civil law cases and cases regarding custody, residence and contact are handled by general courts. There are no specialist institutions dealing with children in civil judicial proceedings in Sweden. Most family law disputes fall under the jurisdiction of the general courts.

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

When a child is suspected of a crime, the parents or another person responsible for the care of the child should as soon as possible be notified about the crime and the interview with the child. The parents should be present during the interview. If the crime is serious, the social services should also be notified as soon as possible about the crime and be present during the interview. The investigation and court proceedings are adapted to young suspects. Legal proceedings should be completed within reasonable time. There is also a general rule stating that relevant decisions and the commencement of proceedings shall take place without undue delay when children are involved in cases concerning custody, residence and contact.

### **4. Child-specific support mechanisms and procedures and ways of ensuring the voice of the child is heard**

Children and adults alike may be parties in judicial proceedings. Thus, children who are victims of crime have the same right to be heard and to participate in the proceedings as adults. In cases where the child's account of the events is of particular importance (which is the case when the child is a victim) an expert in child psychology or interrogation psychology should be present during the interview or should comment on the value of the child's account. There is no right to be heard with regard to witnesses, regardless of whether the witness is a child or an adult. Witnesses are not parties in the trial and have no part in criminal proceedings other than providing their account of what happened if needed.

### **5. Multidisciplinary approach**

Different actors, such as the police, the prosecution, health services, and social services are required to cooperate. When a child is a victim of violence, the principal responsibility for cooperation falls on social services. Most municipalities have so-called consultation groups with representatives from social services, the prosecution, the police, child healthcare services, and child and youth psychiatry services, deciding on the coordination of efforts and planning and decide in which order the different actors should act once a report on a crime against a child has been made. If a child is victim of a crime or is suspected of having committed a crime, police and prosecutors always need to cooperate. Cooperation is also initiated with social services and other relevant actors.

### **6. Measures in place to ensure that the child's best interests are a primary or paramount consideration**

Swedish law stipulates that the best interests of the child shall be of primary consideration of general courts, which means that the court is required to consider the best interests of each child. In cases concerning custody, residence and contact, the court decides on the best interest of the child. However, there is no general principle under Swedish administrative law that authorities or administrative courts must have regard to the best interests of the child, or that particular weight must be given to the child's best interests. Administrative law therefore differs in this respect from civil law. However, sector-specific legislation has introduced the principle that regard must be had, to varying degrees, to the child's best interests, into some specific administrative areas.

### **7. Monitoring and enforcement of decisions in proceedings involving children**

Children under 15 years of age cannot be held criminally liable for crimes they committed. The fundamental principle is that young offenders should first be subjected to measures under the Social Services rather than be transferred to the Prison and Probation Service. There are special sanctions which only apply to young offenders aged between 15 and 21. Child offenders aged between 18 and 21 are often be sentenced to the same sanctions as adults. If the offender committed the crime before the age of 21, his or her youth should be given special consideration when determining the punishment. The provisions on the enforcement of civil courts judgments are the same for children and adults. If a counter party does not fulfill his or her obligations according to a judgement or decision, the party may request for the enforcement of the judgement or decision, by the Swedish Enforcement Agency. The Children and Parents Code contains provisions on the enforcement of judgement or decisions on custody, residence and contact, as well as other decisions under the Code. The best interests of the child should be of primary consideration when enforcing such judgments or decisions.

### **8. Access to remedies**

There is a general right, i.e. not exclusive for child victims, to request a review of a decision not to prosecute. However, only concerned parties can make such a request. Child victims, as well as adult victims, can seek compensation from the offender (damages). When it comes to civil law, as children in general do not have procedural capacity, they can only access complaint, legal appeal or judicial review mechanisms through their legal representative.

### **9. General rules on adoption (of a child or an adult)**

Decisions on adoption are made by the court. Application is made by the person/persons who wish to adopt. The court shall examine whether the adoption may suitably take place. Permission for adoption of a child must not be given unless the adoption is found to be to the benefit of the child.

[Child-friendly justice in Sweden](#) (255 Kb)<sup>en</sup>

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