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Access to Justice Commission

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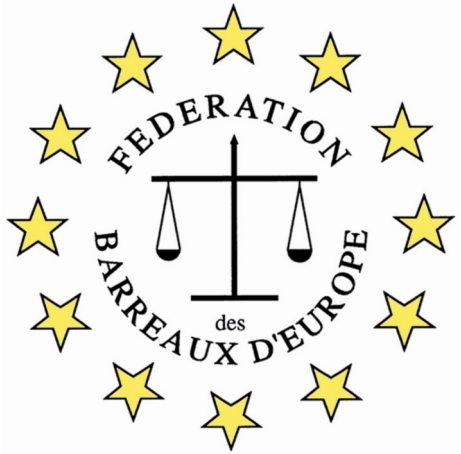

Report about Access to Justice for Minors

May 2025

Structure of the report

1. Access to Justice for minors in civil matters under parental authority;
2. Access to Justice for minors in civil matters under guardianship of a guardian;
3. Access to Justice for minors in civil matters in conflict with parents or guardian;
4. Role of minor children in matrimonial disputes between parents.
5. The protection of Children during the adoption trail;
6. Criminal justice for minors;
7. Special criminal consequences for minors and measures of protection and aid;
8. The position of minors of incarcerated parents.

BULGARIA

General remarks

Upon reaching the age of 18, civil legal capacity is acquired, which means that individuals become fully capable of acting on their own behalf.

Minors aged between 14 and 18 perform legal acts with the consent of their parents or guardians, but they may independently conclude simple minor transactions to satisfy their current needs and dispose of what they have acquired through their own labor.

Legal actions on behalf minors who have not reached the age of 14 are performed by their legal representatives—parents or guardians.

According to labour legislation, the general working age is 16 years.

As a general rule, children have the right to legal assistance and appeal in all proceedings affecting their rights or interests.

1. Access to Justice for minors in civil matters under parental authority

1.1. Minors who have not reached the age of 14

Minors who have not reached the age of 14 are represented by their legal representatives —parents or guardians. All legal actions are undertaken by the parents or guardians.

1.2. Minors who have reached the age of 14

Minors who have reached the age of 14 can perform procedural acts by themselves, but with the consent of their parents or guardians. In disputes concerning labor relations or disputes arising from ordinary small transactions minors may act on their own.

Minors who have reached the age of 14 may bring claims relating to marriage and respond to such claims on their own behalf.

2. Access to Justice for minors in civil matters in conflict with parents or guardian

In the event of a conflict of interest between the interests of the minor and the parents or guardian, the court shall appoint a special representative.

3. Role of minor children in matrimonial disputes between parents

In matrimonial disputes between parents, the court decides ex officio with which parent the children shall live, which parent shall be granted parental rights, determines the measures concerning the exercise of those rights, as well as the arrangements for personal relations between the children and their parents and the maintenance of the children. The court hears the parents as well as the children.

The hearing of minors

The right and procedure of minor children to be heard are governed by the Children Protection Act. Children have the right to be heard obligatory in proceedings in which measures concerning their rights are reviewed if the children have reached the age of 10, unless this would be contrary to his or her interests. If the child has not reached the age of 10, he or she may be heard depending on his or her level of development.

Before hearing the child, the court or administrative body shall:

- provide the child with the necessary information to help her or him form an opinion;
- inform the child of the possible consequences of her or his wishes, of the opinion she or he has expressed, and of any decision taken by the judicial or administrative body.

The judicial and administrative authorities shall ensure an appropriate environment for the hearing of children, taking into account their age. A social worker from the Social Assistance Directorate shall be present at the hearing and consultation of the child, and, if necessary, another appropriate specialist.

The court or administrative body shall order that the hearing be held in the presence of a parent, guardian, custodian, other person caring for the child, or another close person known to the child, except where this is not in the best interests of the child.

The child shall have the right to legal assistance and appeal in all proceedings affecting his or her rights or interests.

4. The protection of children during the adoption trial

Adoption is permitted if it is in the best interests of the adoptee. The decision is taken by the district court in an open hearing behind closed doors. The court shall request a report from the Social Assistance Directorate and shall collect evidence in accordance with the Civil Procedure Code. The court shall hear the prosecutor's opinion and shall deliver a reasoned decision.

The consent of the following persons is required for the adoption to take place: the adoptee, if he or she has reached the age of fourteen. The adoptee shall give his or her consent in person before the court. If the adoptee has not reached the age of fourteen, he or she shall be heard by the court.

For three years after the adoption is finalized, the Social Assistance Directorate at the adoptive parent's current address monitors the child's upbringing and makes sure their rights and legal interests are respected.

5. Criminal justice for minors

According to the Criminal Code minors under 14 years of age are categorically not criminally responsible. With regard to minors who have committed socially dangerous acts, appropriate educational measures may be applied. As far as juveniles are concerned - minors who have reached the age of 14, the Criminal Code utilises a differentiated approach, based on the peculiarities of their age: a minor who is 14 years old but not yet 18—is criminally responsible if they could understand the nature and significance of their actions and control their behaviour. That is, depending on their individual development, minors are criminally responsible in some cases and not responsible in others.

The punishment of minors is imposed primarily with the aim of re-educating them and preparing them for socially useful work.

Minors who have not reached the age of majority shall serve their sentence of imprisonment in a reformatory.

Only the following penalties may be imposed on minors: deprivation of liberty; probation; public censure; deprivation of the right to exercise a particular profession or activity.

The following educational measures shall be imposed on minors who have committed anti-social acts and minors who have committed crimes but have been exempted from criminal liability: warning; obligation to apologise to the victim; obligation to participate in counselling, training, and programs to overcome behavioural deviations; placement under the educational supervision of parents or persons replacing them, with an obligation to provide enhanced care; placing under the educational supervision of a public educator; prohibiting the minor from visiting certain places and establishments; prohibiting the minor from meeting and establishing contact with certain persons; prohibiting the minor from leaving his or her current address; obligation of the minor to repair the damage caused by his own labour, if this is within his means; obligation of the minor to perform certain work for the benefit of the community (the time for performance shall not exceed 40 hours); placement in a social-educational boarding school; warning of placement in a reformatory boarding school for a probationary period of up to 6 months; placement in a reformatory boarding school.

6. Special criminal consequences for minors and measures of protection and aid

The Bulgarian Criminal Procedure Code provides for specific measures of protection and aid for cases when the accused or defendant is a minor.

In cases involving crimes committed by minors, pre-trial proceedings shall be conducted by designated investigating authorities and by prosecutors with special training in children's rights or who have effective access to specialized training.

If the accused is a minor, the investigating authority shall inform him or her of his/her rights in criminal proceedings orally, in a language he or she understands.

The minor accused has the right: 1. to have a parent, guardian, or other person who is legally responsible for them receive full information about their rights in the criminal proceedings; 2. to be accompanied at court hearings by

a parent, guardian, or other person who is legally responsible for them, and when this is in their best interest and will not hinder the criminal proceedings, and in the investigation and other procedural actions involving the minor accused in the pre-trial proceedings; 3. to a medical examination upon arrest; 4. to determining of their personal characteristics; 5. to protection of their right to personal and family life.

After the decision to bring the minor as a defendant has been served, information about their rights in the criminal proceedings shall be provided in writing to a parent, guardian, or other person who is legally responsible for him or her.

The following measures of preventive detention may be taken against minors: 1. supervision by the parents or guardian; 2. supervision by the administration of the educational institution in which the minor is placed; 3. supervision by the inspector of the children's educational room or by a member of the local commission for combating anti-social behaviour of minors; 4. detention. The measure of detention shall be taken in exceptional cases. In cases of detention, minors shall be placed in appropriate premises separate from adults, and their parents, guardians, or other persons legally responsible for their care shall be notified immediately, as well as the principal of the educational institution if the detainee is a student.

With respect to interrogation, special provisions are also at place. Where necessary, a teacher, psychologist, doctor with appropriate qualifications, or other specialist shall be present at the interrogation.

Court hearings in cases against minors shall be held in chambers, unless the minor requests a public hearing.

When cases against minors are heard, their parents, guardians, or other persons who are legally responsible for the minors must be summoned. They have the right to participate in the collection and examination of evidence and to make requests, comments, and objections. The participation of a defence attorney in criminal proceedings is mandatory when the defendant is a minor.

7. The position of minors of incarcerated parents

Bulgarian legislation does not have special regulation on the rights of minors of incarcerated parents. Pursuant to the Law on the Enforcement of Sentences and Detention in Custody children of women deprived of their liberty may remain with their mothers in prison nurseries until they reach the age of one.

ENGLAND AND WALES

1. Children and young people's access to Justice. Education law

Overview

As a headline summary, in the field of education law, children and young people are most likely to require access to justice when encountering the following problems:

- exclusion from school and an interference with their right to education;
- discrimination at school (most typically disability discrimination);
- challenging the support their receive from the Government in respect of their special educational needs and challenging public body decisions more widely such as challenging exam results.

There are rights of appeal/challenge for children and young people for all of the above but these are complex legal processes for a child or young person to navigate alone and all will benefit from the information sharing, advice and representation from a lawyer.

A child or young person is also heavily dependent on a pro-active and responsible parent to advocate of their behalf.

Many of the problems above disproportionately affect vulnerable and disadvantaged children and young people, who do not necessarily have an adult with parental responsibility championing for their rights to be upheld.

A child or young person does have recourse to public funding to access justice to seek remedy for some educational problems. This is limited in scope and means which does prevent a barrier to accessing justice in the field of education law.

Barriers to access to justice for young people are therefore are:

i. A child /young person reliant on a parent or person with parental responsibility championing their rights;
ii. Complex legal processes for a young person and their parents to navigate without the benefit of legal representation;
iii. Public funding for legal representation limited in scope.

The following reports[1] contain a wealth of information on access to justice for young people on the issue of school exclusions which may be helpful.

Key legislation

- Equality Act 2010
- Children Act 1989
- Children and Families Act 2014
- LASPO
- Human Rights Act 1998.

More details expanding on the overview above is below

2. Key issue: Exclusion from School

Permanent exclusions can have serious detrimental consequences for a child's future. The effects of exclusion disproportionately affect disadvantage and vulnerable children and in particular those with special education

1 *JUSTICE: Challenging School Exclusions 11h November 2019*
Timpson report on School exclusions 7th May 2019

needs and disability and minority groups. There is a strong correlation between exclusion and youth crime. There are growing concerns around the prevalence of 'off rolling' or informal exclusions.

Children have a right to ensure that exclusion decisions are lawful, reasonable and fair.

Ways to challenge wrong decisions /seek justice?

Two possible routes for a child/young person's parent to challenge:

i. Independent Review Panel (IRP) whereby the Governing Body of the School reviews the Headteacher's decision;
ii. Appeal to the First Tier Tribunal (Education & Social Care) who have the power to order reinstatement of a child

Funding

There is no available public funding for representation/advice at IRP and a young person/parent has to navigate this process on their own which can be emotionally charged and intimidating.

Limited public funding for appeal to First Tier Tribunal.

Charity advice available such as the School Exclusion Project offering free legal representation.

Commentary

There is no right for a child to challenge an exclusion themselves and the appeal process via an IRP centres

around the parents rather than the child. Concerns that children/young people's views are not taken into account. A barrier to justice is that a successful challenge via an Independent Review Panel is very difficult to achieve and this route is largely ineffective. The majority of IRPs simply 'rubber stamp' a headteacher's decision. In any event, the IRP lacks any power to order a child is re-instated.

An appeal to the First Tier Tribunal is more effective with wider independent case management powers and the power to order a school re-instates a child. This appeal route however is underutilised by parents due to 'appeal fatigue' often having already bought a IRP claim or lack of knowledge understanding of this route. A claim can be brought by a young person themselves if over 16 or parents on their behalf.

3. Key issue: disability discrimination in schools

Typically disability discrimination is in connection with admissions, the provision of education and access to learning and exclusions. Discrimination takes the form of unfavourable treatment or failure to make reasonable adjustments.

Ways to challenge wrong decisions /seek justice?

Claim under the Equality Act 2010 of disability discrimination brought to the First Tier Tribunal (Education & Social Care) or County Court.

The child cannot make a claim even if they are 18 or older. The claim must therefore be brought by a parent or another with parental responsibility which can be a local authority if a Care Order has been made for a child. It can also be a foster carer a child or young person lives with.

Funding

For those on low income or certain welfare benefits, legal aid funding on a means basis is available to a child/young person or their parents.

Charity advice also available.

Commentary

Discrimination claims are often backward looking and unlikely to result in better support being put in place for a child. Important however when a child seeks reinstatement to a school following exclusion or to hold a school to account to prevent discriminatory for other pupils.

The Tribunal cannot award financial compensation in claims or order that a staff member is dismissed and remedies are typically an apology, staff training, change in policies etc.

4. Key issue: Support for educational special needs secured via an Education Health and Care Plan EHCP

Funding

For those on low income or certain welfare benefits, legal aid funding on a means basis is available to a child/young person for ‘legal help’ only. That is to say for the preparation of an appeal. There is no legal aid for representation at the hearing itself. It can be secured in exceptional circumstances.

Charity advice also available.

Commentary

For a child under 16, an appeal is made by a parent or person with parental responsibility on a child's behalf. For a child over 16, an appeal can be made in their own right. The SEND Tribunal is a relatively child friendly Tribunal and children are encouraged to attend to give evidence if appropriate. A child's views have to be considered by law. The whole appeal process is designed to be navigated without representation of a lawyer and many parents appeal without legal representation. The majority of cases settle before a hearing (75%). The evidence is that 89% of cases are decided in a young person/parents' favour over a local authority and so chances of success are high.

The SEND Tribunal therefore provides good access to justice for a child/young person.

The barriers to accessing the justice above for a young person is understanding their right of appeal in the first place and they navigating though this process.

Many local authorities base decisions on a support for a young person's special education needs on their budget rather than what is required meaning that to secure effective support, a young person/parent may have to appeal several times. This is also a lengthy process and prejudicial to a young person in the meantime whose educational needs are not being met.

5. Key issue: challenging decisions of public bodies thought Judicial Review

A child/young person can challenge a public body decision through Judicial Review only if all other means of redress have been exhausted.

Typically used if a local authority is not providing the educational or social care support it should to a young person

Topically JR has been used by three young people to challenge the Qfqual on the standardisation model of awarding A levels. Arguably, it was these legal challenges which formed part of the Government's 'U turn' to award teacher assessed grades rather than grades which had been subjected to an algorithm in an attempt to ensure fairness.

Funding

For a child limited public funding is available for a lawyer to draft a pre-action protocol letter and issue the application. Means assessment is on the child's income not the parents.

In the A level JRs, the young people crowd funded to afford legal advice. Concerns that if unsuccessful a cost award may have been made against them to fund the cost of the Government's legal costs.

Commentary

Young people /children and their parents very much need the benefit of legal representation to bring a JR and will be hampered without legal advice. Changes brought by the Criminal Justice and Courts Act 2015 restrict JR for all parties and it is now more difficult for a child/young person to bring a challenge in this way or for charities and other organisations to do so on their behalf.

6. Access to justice for minors

Family - Public law – child protection

Children are automatically parties to some applications, e.g. where there is an application to take them into care.

In some cases they get legal aid automatically and in others it is means and merits tested but most children would get legal aid due to their circumstances. There are slightly different rules for 16-17 year olds but again most would fall into the eligibility bracket.

There are some public law cases where the child would not be an automatic party but an application could be made to be joined to the case.

In public law cases, this would mean the child would have a solicitor and a guardian to represent their interests, unless the child is older and a guardian not needed. If the child is competent, the solicitor takes instructions direct from the child even if there is a guardian.

Children can approach their own solicitor who would have to decide if they are able to instruct directly, otherwise they would have to have a next friend or guardian ad litem to lead the litigation

A child would need leave of the court to make an application in their own right as an applicant

In public law cases, children are well represented and their voice heard in my view

Private law - children

The situation for children in private law cases e.g. disputes between parents, is very different. Children are not usually parties to the proceedings, although an application can be made to join the child but that is unusual. If the child is joined, they will usually be eligible for legal aid on a means basis and would have a solicitor and

guardian to represent them

If a child is not a party, the only way the child "participates" is when the court decides that a welfare report is needed and the welfare officer (either from the local children's service if the child is known to the Local Authority) or from CAFCASS (Children And Family Court Advisory and Support Service) interviews the children to ascertain their wishes and feelings and reports on their welfare. Otherwise it's left to the parents to state the child's views. Difficulties arise in these cases where the parents argue that the child is saying one thing to one, and one thing to another which is not surprising.

This has long been a source of concern with some thinking that children should be parties to private law cases, so that children's views are heard neutrally, whilst others express concern that this involves them in the dispute too much which can be harmful.

It is suggested that in private law cases where children do not have a welfare report, that we are not compliant with article 12 of the UNCRC

UN Convention of the Rights of the Child, article 12 (respect for the views of the child): Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.

In both public and private cases, judges are usually willing to see children now if the child wants to see the judge, this is in private but the discussions are disclosed to the parties, and confidentiality is not possible. The meeting is not for the purpose of evidence gathering

Children would usually be represented by Children Panel Solicitors, approved by the Law Society to ensure the experience and ability of the solicitor

Private law – finance

Occasionally a child is joined to a family finance case e.g. where the child has some sort of financial interest in the

outcome of the division of the assets on separation/divorce. This is unusual. The child would be represented by the Official Solicitor unless there is someone in the family/friends network who would be a suitable next friend/guardian

There are some cases where a child's legal costs would be paid by a parent in a private law case but that raises potential problems regarding neutrality

There are other applications, e.g. adoption, parental orders, abduction and in all these, the court can join a child to those proceedings if it meets the criteria and the child will then be represented, subject to means testing

Legal aid remains available therefore for children cases. Access for parents to legal aid for private law cases has reduced and a parent needs gateway evidence to be able to apply for legal aid. This has caused great concern about access to justice and protecting children's welfare in private law cases. The rates of remuneration have been heavily reduced over the years. This means that representation of vulnerable children is at risk due to the fact that it is not very profitable to undertake this work, particularly for more senior lawyers.

7. Public Funding for children related matters in the family arena

Overview

Since 1 April 2013, as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012), public funding is available for the following areas[2] of family law:

1. Public family law matters

a) concerning the care, protection and supervision of children; and

2 Part 1, Schedule 1, LASPO 2012

b) any application for a Special Guardianship Order or Child Arrangements Order made in relation to care proceedings.

2. Children matters falling under the inherent jurisdiction of the High Court

a) ie wardship proceedings.

3. Private family law matters

a) where there is evidence that there has been or there is a risk of domestic violence;

b) where there is evidence of child abuse; and

c) where the child is the client.

4. Cross-border child abduction matters

5. Mediation

a) Legal advice ("Legal Help" which is the lowest level available from Legal Aid Agency) provided for mediation of family disputes.

6. Domestic violence cases

7. Forced marriage protection order cases

8. EU and international agreements concerning children

Means and merits test in proceedings

Means =assessment by the Legal Aid Agency (LAA) of financial eligibility based on income and capital.

Merits = LAA examines strengths and weaknesses of case: proportionality, chances of success, reasonableness.

Public proceedings

Type of proceedings	Means/merits criteria
Secure Accommodation Order under S 25 of Children Act 1989 (CA 1989)	Non means/merits tested for the child who is the subject of the order
Care Orders Supervision Orders Child Assessment Orders Emergency Protection Orders (including orders in relation to the duration of EPOs) all under Parts 4 and 5 CA 1989	Non means/merits for the child who is the subject of the order and parents of/parties with parental responsibility for the subject child
Contact with/end contact with a child in care Discharge/Variation of a Care/Supervision Order Removal and accommodation of children by police in cases of emergency Appeals in public law cases (including appeals against final orders made in Special Children Act Proceedings All under Parts 4 and 5 CA 1989	Means and merit tested for all parties
Placement Orders Recovery Orders Adoption Chapter 3 of Part 1 of Adoption and Children Act 2002	Means and merit tested for all parties
Wardship	Means and merit tested for all parties

Other types of proceedings/ cases

Proceedings	Means/merits criteria
Where the child is the client in private law children proceedings for the following: Child arrangement orders, Prohibited steps order and Specific issue orders	No, child does not have to satisfy means test.
Other private family matters (ie the majority)	Those with parental responsibility must satisfy the eligibility test
International child abduction cases	Those with parental responsibility must satisfy the eligibility test

FRANCE

1. Access to justice for minors in civil matters under parental authority in France

A - Legal framework of parental authority

Parental authority is defined by Title IX of Book 1[er]of the FrenchcCivil Code, entitled *"De l'autorité parentale*", which contains the legal provisions defining and framing the rights and duties of parents with regard to their minor children. Here are the main points covered by this title:

Chapter I : Parental authority over the child (Articles 371 to 375-9-2)

Definition and general principles (Articles 371 to 372-1) : Parental authority is a set of rights and duties designed to protect the interests of the child. It is vested in the father and mother until the child reaches the age of majority or is emancipated, in order to protect the child's safety, health and morality, ensure his or her education and enable his or her development, with due respect for his or her person. Parents involve their children in decisions that concern them, according to their age and degree of maturity. Children owe honor and respect to their father and mother at all ages.

- **Exercise of parental authority (Articles 372 to 373-5)** :
    - **Joint exercise**: In principle, parents exercise parental authority jointly. Together, they make important decisions concerning the child's life (education, health, religious orientation, etc.).

- **Exercise by a single parent** : In certain situations (death of the other parent, incapacity, best interests of the child), parental authority can be exercised by a single parent.
- **Separation of parents** : Parental separation has no impact on the rules governing the exercise of parental authority. The family affairs judge (JAF) organizes the exercise of parental authority (child's residence, visiting and accommodation rights, contribution to maintenance and education).

- **Intervention by the family judge (Articles 373-2-6 to 373-2-13)** : This judge is competent to rule on the modalities of the exercise of parental authority in the event of disagreement between the parents or when the interests of the child so require.

- **Third-party intervention (Articles 373-3 to 374-9)** : In certain situations, the exercise of parental authority can be entrusted to a third party (family member, child welfare service).

- **Measures concerning educational assistance (Articles 375 to 375-9-2)** : This section provides for judicial protection measures for unemancipated minors whose health, safety or morals are in danger, or whose conditions of education or development are seriously compromised.

- **Total or partial withdrawal of parental authority (Articles 378 to 381-2)** : In serious cases where parents endanger the safety, health or morality of their child, the judge may order the total or partial withdrawal of parental authority.

Chapter II : Parental authority over the child's property (Articles 382 to 387-6)

This chapter deals with the legal administration of a minor's property by his or her parents, and the rules governing the legal enjoyment of income from this property. It distinguishes between acts of administration and acts of disposal, which require judicial authorisation.

In short, Title IX of the civil Code establishes the legal framework for parental authority, defining the rights and responsibilities of parents towards their children, setting out how this authority is to be exercised in the event of separation, and framing the situations in which judicial intervention may be necessary to protect the child's best interests.

B - Competent courts and their roles

Family judge *(“Juge aux affaires familiales” JAF)*

It has jurisdiction over disputes relating to the exercise of parental authority (residence, visiting rights, etc.) in the event of parental separation, in accordance with the provisions of articles 373-2 et seq. of the French civil Code. It rules on how parental authority is to be exercised.

Juvenile Judge *(“Juge pour enfants” JE)*

Under articles 375 et seq. of the French civil Code, it is responsible for providing educational assistance to minors in danger. It takes protective measures (including placement) if the minor's health, safety or morals are in danger.

Juvenile guardianship judge (“Juge des tutelles des mineurs”)

It is responsible for guardianship, when parents are unable to exercise parental authority, under articles 390 et seq. of the Civil Code, which set out the conditions for opening guardianship for minors deprived of parental authority.

C - Children's rights

Minors capable of discernment have the right to be heard in any proceedings concerning them or, when their interests so require, by the person designated by the judge for this purpose. The minor is entitled to be heard if he or she so requests. If the minor refuses to be heard, the judge assesses the merits of this refusal. The minor may be assisted by a lawyer (Article 388-1 of the civil Code).

Minors have the right to be assisted by a lawyer. In France, lawyers undergo special training to work with minors. Legal aid is provided by law.

2. Access to justice for minors in civil matters under guardianship in France

A - Legal framework for guardianship of minors

Guardianship is a legal protection mechanism set up when a minor is no longer under parental authority (death of parents, incapacity, etc.). Guardianship is designed to protect the minor's person and property, and is governed by articles 390 et seq. of the French civil Code.

Article 390 establishes the principle of guardianship. It is opened when a minor no longer has parents exercising parental authority, or when they are prevented from exercising it.

Article 391 specifies that if guardianship is opened, the judge convenes the family council, which either appoints the legal administrator as guardian, or appoints the guardian.

- The family council is a collegial body made up of several members of the minor's family and/or other interested parties. It is responsible for supervising and controlling the management of the guardianship and for making important decisions concerning the minor. Appointing the guardian is one of its initial and crucial functions.
- The guardian is the natural or legal person appointed by the family council to represent the minor in civil acts and to administer his or her property. He or she is responsible for the day-to-day management of the guardianship, under the supervision of the family council and the guardianship judge.

Article 392 specifies that if a child is ecognised by one of his or her parents after guardianship has been opened, the guardianship judge may, at the request of that parent, decide to substitute legal administration for guardianship.

Article 393 states that guardianship ends when the minor becomes emancipated or reaches the age of majority. It is also terminated in the event of a final judgment or in the event of the death of the person concerned.

B - Competent court : the juvenile guardianship judge *("juge des tutelles des mineurs")*

The juvenile guardianship judge is the competent magistrate for all matters relating to guardianship (Articles 1211 to 1261-1 of the French Code of civil procedure).

He supervises the organisation and operation of the guardianship, appoints the guardian and sub-guardian, and oversees their management.

C - Rights of minors under guardianship

Right to be heard
Article 388-1 of the civil Code : a minor capable of discernment may be heard by the judge.

Article 1220-1 of the Code of civil procedure specifies the conditions of the hearing.

Right to counsel
Minors have the right to be assisted by a lawyer, and legal aid is provided by law.

Right to information
Minors have the right to be informed of decisions that concern them.

3. Access to justice for minors in conflict with their parents or guardians

A - Identifying conflict situations

Conflicts relating to the exercise of parental authority

Conflicts relating to the exercise of parental authority may concern disagreements over the child's residence, visiting rights, education, etc., or situations where the child's interests are compromised by the parents' decisions.

Situations of danger or abuse

These are cases in which minors are victims of physical, psychological or sexual violence, or of neglect, lack of care or education, or when they are exposed to dangerous situations.

Guardianship disputes

This may involve mismanagement of the minor's assets by the guardian, or abuse of power or conflict of interest.

B - Role of courts and players

Family judge (JAF)

As already indicated, it has jurisdiction over disputes relating to the exercise of parental authority. Disputes may be referred to it by (Articles 373-2 et seq. of the French civil Code, Articles 1070 et seq. of the French Code of civil procedure).

Juvenile Judge (JE)

It is responsible for educational assistance measures. The matter may be referred to it by the parents, the child, the social services, the public prosecutor, or any person reporting a situation of danger (Articles 375 et seq. of the French civil Code, Articles 1181 et seq. of the French Code of civil procedure).

Guardianship judge *(“Juge des tutelles”)*

It supervises the guardianship and controls the guardian's management. The matter may be referred to it by family members, the subrogated guardian or the public prosecutor (Articles 390 et seq. of the civil Code).

Ad hoc administrator

He may be appointed by the guardianship judge, the juvenile judge, the public prosecutor or the examining magistrate to represent the minor when his interests conflict with those of his legal representatives (Article 388-2 of the French civil Code).

Child's lawyer

Minors have the right to be assisted by a lawyer, particularly in proceedings before the juvenile court.

French law stipulates a "discernment" criterion for a child to benefit from the services of a lawyer, without the need for an ad hoc administrator. However, discernment is not defined, either legally or by jurisprudence, and is therefore set at between 5 and 13 years of age in France.

C - Access procedures

Anyone aware of a situation of danger can report it to the public prosecutor.

Referral to the guardianship judge is made by petition, filed with the competent court, or by writ of summons.

Minors capable of discernment have the right to be heard by the judge (Article 388-1 of the Civil Code and Article 1220-1 of the Code of Civil Procedure). The assessment of discernment is essential to determine the minor's capacity to express his or her opinion (in general, children are not heard before the age of 8 or 9). Discernment is assessed generally .more widely by the JE

The juvenile judge can order placement, educational follow-up or other protective measures. It is crucial that minors have access to clear and appropriate information on their rights and legal procedures.

D - Additional legal sources

The French Code de l'action sociale et des familles governs the actions of social services in the field of child protection. The International Convention on the Rights of the Child is the reference text for minors' rights.

4. The role of minor children in matrimonial disputes between parents

A - The role of the family judge (JAF)

The JAF is competent to rule on the exercise of parental authority, the residence of the children, visiting rights and

other arrangements in the event of parental separation (Articles 373-2 et seq. of the French civil Code).

B - Procedures for hearing the child

The guiding principle in all decisions concerning minors is their best interests.

Minors who are able to be heard have the right to express their opinion (Article 12 of the International Convention on the Rights of the Child), but this is not an obligation. The minor is entitled to be heard if he or she so requests (Article 388-1 of the French Civil Code). The judge is not bound by the child's opinion, but must consider it carefully. The aim is to inform the judge of the child's wishes, not to make him or her take the decisions. There is no legal minimum age; the assessment is made on a case-by-case basis.

The hearing may take place at the judge's chambers or at a suitable location. The child may be heard alone or accompanied by a lawyer. The judge may appoint a qualified person to conduct the hearing.

C - Limits and child protection

The child is not a party to the matrimonial dispute, and does not take part in the hearing when the parties are heard. They cannot contest decisions relating to divorce or separation.

The judge must ensure that the minor is protected from parental conflict and that the child is not manipulated by one of the parents.

5. Child protection in adoption procedures

A - General provisions on adoption in France

The civil Code lists 4 categories of adoptable persons (Article 344 of the civil Code) :

- Children for whom the father and mother or the family council have validly consented to the adoption ;
- Wards of the state ;
- Children declared abandoned under the conditions set out in articles 381-1 and 381-2 ;
- Adults, in simple or plenary form, in the cases provided for in article 345.

There are two types of adoption in France: simple adoption and full adoption. The main difference between these two types of adoption is whether or not the original parent-child relationship is maintained:

- In the case of simple adoption, the adopted child retains all ties with his or her family of origin. Parental authority is exclusively and fully attributed to the adoptive parent, except in the case of the adoption of a child of a spouse, PACS partner or cohabitee. In the latter case, the adoptive parent may exercise parental authority only if he or she and the other member of the couple make a joint declaration before the registrar of the judicial court;
- Plenary adoption gives the adopted child a filiation that replaces his or her original filiation: the adopted child ceases to belong to his or her original family. Parental authority is exclusively and fully attributed to the adoptive parent. If the child is adopted by a spouse, PACS partner or cohabitee, parental authority is exercised jointly by both members of the couple.

B - Provisions to protect minors in adoption proceedings

Approval (Article 353 of the civil Code)

Approval is an official authorisation issued by the president of the departmental council. It is issued when an adopter is able to meet the basic physical, intellectual, social and emotional needs of a child eligible for adoption.

In principle, any person or couple wishing to adopt a ward of the state or a foreign child must obtain approval from the president of the departmental council in their place of residence.

A thorough social and psychological investigation is carried out to assess the family situation, the educational capacities, the motivation and the adoption project of the candidates.

Approval is valid for 5 years nationwide. Renewal is possible.

This rigorous process is designed to screen out applicants who do not offer the necessary guarantees for the well-being and protection of the child to be adopted.

The child's consent (Articles 348-3 of the French civil Code)

If the child is over 13, he or she must personally consent to the adoption, whether full or simple. This consent is obtained by the judge or a notary

The minor must be fully informed of the consequences of the adoption, and may be accompanied by an ad hoc administrator if he or she is unable to express clear consent.

This right to consent guarantees that the child is a player in his or her own family development, and that his or her opinion is taken into account.

Placement with a view to adoption (Articles 351 to 352-2 of the French civil Code)

During the placement period, the adopters can perform the usual acts of parental authority.

Important : the placement of a child for full adoption prevents the child from being returned to his or her family of origin. The biological parent who has not ecognised the child can no longer recognize him or her.

For a full adoption, the child is entrusted by the authority responsible for the child (e.g. Aide Sociale à l'Enfance) to the home of the prospective adoptive parents for a period of at least 6 months before the adoption petition is filed with the court.

This period is used to establish emotional ties and assess the compatibility of the adoptive family with the child. This procedure has been extended to the simple adoption of wards of the state and children judicially declared abandoned. During this placement period, the prospective adoptive parents exercise the usual acts of parental authority.

The judge's role

The judge verifies that all legal requirements have been met (consent, accreditation, etc.) and ensures that the adoption is in the child's best interests.

The judge can order social investigations and hear the child (if capable of discernment), the future adopters, the biological parents (in the case of simple adoption) and any other person he or she deems useful. The judge's intervention guarantees an informed and impartial decision, focused on the child's well-being.

The judge pronounces the adoption judgment (Article 355 of the civil Code) if he considers that all the conditions have been met and that adoption is in the child's best interests. No reasons are given for the adoption decision.

Full adoption is irrevocable. It definitively breaks the child's filial ties with his or her family of origin (with certain exceptions concerning the child of a spouse, partner or cohabitee). This irrevocability is designed to provide the child with lasting family and legal stability, placing him or her on an equal footing with children born within the adoptive family.

Conclusion

In conclusion, the French legal system accords paramount importance to child protection in adoption procedures. However, the practice of hearing the child and calling in a lawyer is still not widespread, as the judge refers to the position of the child welfare authority.

The development of the intervention of the children's lawyer is a key area for improvement in the procedure. From the rigorous assessment of prospective adoptive parents to the consent of children over 13 years of age, from the judge's control to the principles of full adoption and international conventions, everything is done to ensure that adoption is a genuine opportunity for the child to grow up in a loving and secure family environment, in accordance with his or her best interests.

6. Juvenile criminal justice

Juvenile criminal justice in France has undergone significant evolution, marked by constant adaptation to social and legal issues. Here is a more detailed report, including the evolution of legal sources.

A - Historical development and legal foundations

The Ordinance of February 2, 1945 is the founding text of juvenile criminal justice in France. It established the principles of specialization, education and individualization, marking a break with the treatment of minors as adults. Several laws have modified this ordinance.

On June 30, 2021, the Juvenile Criminal Justice Code (CJPM) came into force. It incorporates the main principles of the 1945 Ordinance, and promotes effective care through an overhaul of criminal procedure. All provisions specific to minors are now grouped together in a single legal framework.

B - Guiding principles of juvenile criminal justice

The Ordinance of February 2, 1945 laid down the main principles of juvenile criminal justice in France:

- Reducing the criminal liability of minors according to their age, or excuse for minority;
- The primacy of education over repression;
- Specialization of jurisdictions and procedures.

The text was supplemented by a lesser-known ordinance of September 1945, which created the Department of Supervised Education, which became the Department of Judicial Youth Protection (Direction de la Protection Judiciaire de la Jeuense or DPJJ) in 1990.

The new Juvenile Criminal Justice Code is fully in line with the principles of the 1945 Ordinance and, according to the Code's preliminary article, aims to reinforce them:

> *"The present code governs the conditions under which the criminal responsibility of minors is implemented, taking into account, in their best interests, the attenuation of this responsibility according to their age and the need to seek their educational and moral recovery through measures adapted to their age and personality, pronounced by a specialized court or according to appropriate procedures."*

On the presumption of discernment

The text introduces a presumption of non-discernment for minors under the age of 13 (Article L11-1). This presumption has effects at all stages of the procedure, but is not legally irrefutable. The same article adds that *"a minor is capable of discernment if he or she has understood and intended his or her act, and is capable of understanding the meaning of*

the criminal proceedings to which he or she is subject". Capacity for discernment must therefore be assessed on a case-by-case basis.

The presumption of non-discernment below the age of 13 brings France into line with article 40.3 of the International Convention on the Rights of the Child, which requires States parties to *"establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law"*.

On the principle of mitigation

In the case of minors, quantum of the sentence is halved, unless a specially-reasoned decision is taken. Around 20-30 decisions a year in France set aside the principle of sentence mitigation.

On the primacy of education

The modalities of educational care have been strengthened. The new code creates a single educational measure that can be modulated and adapted over time. It enables to take into account the personality and development of the minor. The judicial educational measure can thus include modules (integration, reparation, health, placement, prohibition to appear in places or to come into contact with the victim or co-perpetrators). The conditions for using security measures (such as pre-trial detention) have been tightened.

On the specialization of jurisdictions and procedures

This principle, which already exists in juvenile criminal justice, has been extended. From now on, in addition to the specialized courts and chambers, certain liberty and detention judges will have special responsibility for cases

involving minors. The continuity of the minor's lawyer's involvement throughout the proceedings is enshrined in the new code. The specialization of procedures means that minors must be notified of their rights in simple, accessible terms.

C - A 3-stage criminal procedure

Speed and timeliness of proceedings are at the heart of the rewriting of a coherent juvenile criminal justice system. The legislator wanted to take into account the rapid evolution of minors. Previously, the procedure did not include any time limits. According to a statement issued by the Ministry of Justice on June 28, 2021, the average time taken to reach a guilty verdict was 18 months.

In correctional matters, the investigative procedure before the juvenile court judge has been abolished, as a source of delays incompatible with the rapid development of minors. The new code thus complies with the decision of the French Constitutional Council of July 8, 2011 and the decision of the French Constitutional Council of March 26, 2021, which reiterate the requirement for impartial courts: the juvenile court judge cannot both investigate and judge a case.

There are three stages in the criminal procedure for minors. Judgment is given in two stages (hearings on the juvenile's guilt and then on punishment), interspersed with a period of probation:

- Guilty verdict hearing (between 10 days and 3 months after) ;
- Period of educational probation (between the guilt hearing and the sanction hearing) ;
- Penalty hearing (6 to 9 months after the guilty verdict hearing).

The new Code introduces the possibility for the juvenile judge to rule in a single hearing. This hearing is only possible under certain conditions:

- The sentence incurred must be greater than or equal to five years' imprisonment for a minor under 16 years of age and greater than or equal to three years' imprisonment for a minor of at least 16 years of age;

- The minor is already known to the court (personality report less than a year old).

The aim of the law is to rapidly rule on guilt in order to promote educational measures as quickly as possible. The text is intended to reduce the use of pre-trial detention by tightening up the conditions for its use.

7. Special penal consequences for minors and protection and assistance measures

Juvenile criminal justice in France is characterized by an approach that favors education over repression, adapted to the vulnerability and reintegration potential of young people.

A - Educational, investigative and security measures

With the entry into force of the new Code juvenile criminal justice (CJPM), there are now only two educational measures that can be pronounced against a minor:

- Judicial warning: this measure combines admonition, reprimand and formal warning. It can be pronounced by any court ruling against a minor. The declaration of educational success is pronounced when a minor has complied with the obligations imposed, and his or her recovery is assured.
- Judicial educational measures: these combine all the pre- and post-sentence educational follow-up measures provided for under the 1945 Ordinance. This measure can be ordered as a provisional measure prior to sentencing, or as a sanction.
- Survey measures have been reinforced by :

- Generalized collection of socio-educational information : this report contains useful information on the minor's personality (exchanges with parents, school, employer, and any person close to the child) and an educational proposal or any social integration measure. It is mandatory in the event of prosecution or pre-trial detention. It is drawn up by the PJJ.
- Increased use of judicial educational investigation measures.
  This measure is now systematically used during an investigation. It involves an in-depth, interdisciplinary assessment of the minor's personality, which may include a medical component. It also includes an educational proposal or measures to promote social integration.

In order to respect the primacy of education, the scope of security measures has been modified. These measures are :

- Judicial supervision: the conditions for placing a minor under judicial supervision remain unchanged (except in certain cases, when another procedure has given rise to a report that is less than a year old). The list of obligations set out in the Code of Criminal Procedure, in addition to those set out in the 1945 Ordinance, no longer applies to minors. The CJPM now includes these obligations.
- Assignment to residence with electronic surveillance (ARSE): In order to distinguish the rules applicable to minors from those applicable to adults, the threshold for placing a minor of at least 16 years of age under ARSE has been raised from two to three years' imprisonment.
- Pre-trial detention: only used as a last resort. Its duration is limited. It is only possible for a minor under the age of 16 if he or she is facing a criminal sentence or, in the case of a correctional sentence, if he or she seriously or repeatedly fails to comply with the obligation to respect the conditions of placement in a closed educational center imposed as part of a judicial supervision order. It can be ordered for a minor aged 16 or over if he or she is facing a criminal sentence, a prison term of three years or more, or has voluntarily evaded the obligations of a judicial supervision order or house arrest with electronic surveillance.

B - Penalties incurred

The CJPM does not radically alter the sentences that can be handed down to minors. It does, however, introduce a few new features:

- The juvenile court judge, sitting in chambers (in the judge's chambers or in a small courtroom without an audience), can impose certain penalties on a minor aged 16 or over (confiscation of the object used to commit the offence, work experience and, for minors aged 16 or over, community service);
- The police court may impose additional penalties (probationary period, confiscation of the object used to commit the offence, prohibition from driving certain vehicles);
- The postponement procedure (i.e. deferring the pronouncement of a sentence to a later date) has been abolished as a result of the introduction of educational probation;
- Prison sentences handed down by the juvenile court or the juvenile assize court must be specially reasoned;
- The PJJ has a greater role to play in the individualization of sentences (assessment of the minor's personal, social, material and family situation).

The incarceration regime for minors has changed little:

- The existence of special units for underage girls is confirmed;
- The principle of individual cell confinement for convicted minors has been generalized (night-time isolation was previously reserved for pre-trial detainees);
- The incarceration commissions provided for in the circular of May 24, 2013 are endorsed;
- The role of the PJJ in managing detention is reaffirmed. As part of the disciplinary system, the PJJ can make educational proposals or implement reparation measures. The opinion of the PJJ is mandatory in orientation and assignment procedures.

8. The situation of minors whose parents are incarcerated

A - Maintaining family ties

The right to maintain family relationships is protected by French and international law. However, the exercise of this right is often hampered by the geographical remoteness of prisons, security constraints and internal regulations. Associations such as Relais Enfants-Parents facilitate these visits.

Incarceration does not automatically entail the loss of parental authority. The Family Court can adapt the way parental authority is exercised, taking into account the child's best interests. In certain cases, he may also delegate or withdraw parental authority.

Family living units are furnished apartments that can be made available to prisoners. They are located on the prison premises, but outside the detention area. They enable family ties to be maintained in a more normalized setting. Access is strictly controlled and reserved for certain situations.

B - Child protection: the top priority

The best interests of the child remain the fundamental principle of the International Convention on the Rights of the Child and the Civil Code. All decisions must be based on the child's needs and well-being.

When one of the parents is incarcerated, the Juge des Enfants can order placement measures if the child is in danger (article 375 of the French civil Code). Child welfare services (Aide sociale à l'enfance - ASE) play a crucial role in monitoring and supporting children.

ITALIA

1. Access to Justice for minors in civil matters under parental authority

The capacity to act

The general principle is that one becomes capable of performing acts with relevant legal effects relevant legal effects when you turn eighteen years of age.

Special laws which which establish a lower age for the capacity to work. to perform their work. In such case, the minor shall be qualified to the exercise of the rights and actions that depend on the contract of employment."

Therefore, complete maturity is acquired at the completion of the eighteenth year, which coincides with the age of majority.

From that moment the so-called capacity to act is acquired in general. It is, inin simple words, the possibility to express one's own will with acts that can modify one's own juridical situation inasmuch as the law recognizes the effects. For example, opening a bank account

For example, opening a bank account, appealing against the decision of an authority, renting a room, etc. rent a room, etc.

The representative of the minor in the process

In general, girls and boys up to the age of eighteen years may not claim their case alone in a trial, even through an attorney.

There must be **a parent or other adult who legally represents** them. This can be a parent or, if if not, a guardian.

This person acts on behalf of the minor and may appoint an attorney for them.

The law provides for the cases in which the parent must be authorized by the tutelary judge, who in extraordinary cases evaluates the interests of the child. The same thing happens when there are no parents, but a guardian is appointed.

Cases in which minors can act for themselves

The law provides that a minor person may act for himself or herself and may stand in court. For example: the emancipated minor, i.e. the minor authorized by the Court to marry under art. 84 of the Civil Code “can stand in court both as a plaintiff and as a defendant” pursuant to Article 394 of the Civil Code.

With regard to the issue raised about the possibility for the minor to challenge administrative acts, it will be necessary to assess whether the legislation applicable to the right of provides for the minor to be able to independently assert his right in court.. If the law does not provide for it, the minor may be represented in court only by a parent or guardian.

2. Access to Justice for minors in civil matters under guardianship of a guardian (Tutore)

What if there is no a parent or guardian?

In summary

A request must be made to the judge to appoint a guardian.

Before proceeding with the appointment, the judge must also hear the minor if they are at least twelve years old (second-to-last paragraph of Article 348 of the Civil Code, "Choice of the guardian").

Alternatively, the judge may appoint a temporary representative for the proceedings (special curator).

In detail

When events occur that require the initiation of guardianship, certain individuals are obliged to promptly inform the guardianship judge. Specifically, the civil registrar must report within ten days the death of a person with minor children or the birth of a child to unknown parents. The same obligation applies to a notary who publishes a will containing the designation of a guardian or co-guardian. The court clerk, on the other hand, has fifteen days to report any judicial decisions that result in the initiation of guardianship.

Relatives up to the third degree and the person designated as guardian or co-guardian are also required to report the event to the judge within ten days of becoming aware of it.

As soon as the guardianship judge receives notice that guardianship must be initiated, they proceed with the appointment of the guardian and co-guardian. If there are multiple siblings, a single guardian is preferably appointed, unless special circumstances require more than one. In the event of a conflict of interest between

minors, a special curator is appointed.

When choosing the guardian, the judge gives priority to the person designated by the parent who most recently exercised parental responsibility, provided that the designation was made by will, public deed, or authenticated private writing. In the absence of such a designation, or if it is deemed inappropriate, the judge preferably appoints a grandparent or close relative, after hearing them when appropriate.

Finally, the judge safeguards the minor's best interest by ordering a direct hearing, if the minor is at least twelve years old, or even younger if capable of discernment. In any case, the guardian must be a morally upright person, suitable for the role, and capable of ensuring the child's education and upbringing in accordance with the principles set out in Article 147 of the Civil Code.

Limits to the power of the child's representative (parents or guardian)

The minor cannot normally act autonomously.

The law considers him/her as a weak subject to be protected until the age of eighteen.

The adult who takes the place of the minor and represents him/her has special obligations and limits to protect the minor.

For first, the adult who represents the minor, even the parent, has the power to perform only acts of *ordinary administration*. These are all acts other than those specified by the law as acts of extraordinary administration. The latter can be carried out only with the prior authorisation of the tutelary judge, if both parents request it (article 320 of the Civil Code).

The acts of extraordinary administration carried out without the authorisation *acts of extraordinary administration* performed without authorisation may be annulled and cannot be remedied even by means of subsequent authorisation.

The prior authorisation of the judge, since this represents a real and proper constitutive element of the legal act,

rather than a mere condition of its condition of effectiveness of the same.

3. Access to Justice for minors in civil matters in conflict with parents or guardian

In case of conflict: the curator

In the case in which a conflict of interest arises between several children subject to the same parental authority, or between the child and the parent (or guardian), or even in all cases where the parent (or guardian) is unwilling or unable to carry out one or more acts in the interest of the child, the tutelary judge may appoint a curator also at the request of the minor, or of his or her close relatives or anyone else having an interest therein.

The curator may perform in the interest of the child a single determined legal act and has powers and functions identical to those.

The curator can carry out in the interest of the minor a single, determined legal act and has powers and functions identical to those due to parents, albeit limited to the transaction for which it is appointed. For this reason the special curator in this case is also called "curator ad acta".

For example, to accept an inheritance.

The question is whether the curator appointed to carry out a single act also has the power to represent the minor in the the judgement that may arise from the act for which he/she was appointed.

In the various hypotheses in which in the interest of the minor a case must be filed in the interest of the child, or if the child is sued in relation to acts exceeding the ordinary administration, or or if the child is summoned to court for acts exceeding the ordinary administration, or the promotion or management of a lawsuit, a special curator, also called “curator ad litem”, shall be appointed.

Often and willingly there is coincidence between the lawyer and special curator ad processum, but this practice does not legitimise to identify the curator with the lawyer, as the former does not always have to be issued the power of attorney to the dispute (the mandate).

Other hypotheses of special curatorship concern actions of disavowal of paternity (art. 235 of the Civil Code), or in appeals against the recognition of the father by the recognised child (art. 263, 264 of the Civil Code, where the appointment of a special curator is envisaged, at the request of the request of the Public Prosecutor, who acts as the minor's representative) or the child) or in the judgments of opposition to adoptability (articles 16 and 17 of Law 184/1983, as amended by Law 149/2001). 149/2001).

The Special Guardian of the Minor in Light of the Cartabia Reform

Articles 473-bis.7 and 473-bis.8 of the Italian Code of Civil Procedure

The figure of the special guardian (curatore speciale) of the minor, as introduced by the Cartabia Reform (Legislative Decree No. 149 of 10 October 2022), is part of a deeply renewed legal framework aimed at more effectively safeguarding the fundamental rights of minors involved in judicial proceedings. In particular, Articles 473-bis.7 and 473-bis.8 of the Code of Civil Procedure govern the appointment and functions of the special guardian, ensuring genuine and autonomous protection of the minor, especially in cases of conflict or inadequate representation by the parents.

1. Nature and Role of the Special Guardian

The special guardian is a neutral and impartial third party, appointed by the judge to provide the minor with independent and qualified representation in proceedings affecting their fundamental rights, whenever those holding parental responsibility are temporarily or permanently unable to represent them appropriately.

While the role is primarily procedural, the guardian may also be granted substantive powers of representation if specifically authorised by the court. The appointment may be made ex officio and is mandatory—under penalty

of nullity of the acts—in the cases expressly outlined in Article 473-bis.8.

2. Mandatory Appointment Cases (Art. 473-bis.8 CPC)

The reform sets out specific circumstances in which the judge must appoint a special guardian:

Parental conflict or mutual incapacity: When the public prosecutor seeks the revocation of parental responsibility from both parents, or one parent seeks the revocation from the other, the minor is left without adequate representation in the proceedings (letter a).

Urgent protective measures: As in cases under Article 403 of the Civil Code or foster care arrangements under Law No. 184/1983, where the child is in a vulnerable situation (letter b).

Inadequate representation: If facts revealed during proceedings show a situation of harm to the minor that compromises the ability of the parents to represent them effectively (letter c).

Request by the minor: A minor aged fourteen or older may directly request the appointment of a special guardian (letter d).

Additionally, the judge may also appoint a special guardian when the parents, although not formally removed, are deemed temporarily unable to represent the child due to serious reasons.

3. Duties and Powers of the Special Guardian

The court order appointing the guardian must be briefly reasoned and may assign specific powers of substantive representation, depending on the needs of the case.

The guardian's core duties include:

- **Hearing the mino**r, as provided under Article 315-bis, paragraph 3, of the Civil Code, in accordance with the procedures set out in Article 473-bis.4 CPC;
- **Legal represent**ation of the minor in all phases of the trial, ensuring adversarial fairness and the best interest of the child;

- **Exercising decision-making authorit**y, if substantively granted by the court, particularly where there is a representational gap.

4. Revocation of the Special Guardian

The reform also introduces mechanisms for oversight of the guardian's actions. A minor over the age of fourteen, the parents, the legal guardian, or the public prosecutor may request the removal of the special guardian for serious misconduct or if the conditions for their appointment cease to exist.

The decision is made by the president of the court or the judge handling the case by means of a non-appealable decree.

5. Relationship with the "Ordinary" Guardian (Art. 473-bis.7 CPC)

It is important to distinguish the special guardian from the "ordinary" guardian mentioned in Article 473-bis.7, who is appointed when the court imposes restrictions on parental responsibility at the conclusion of proceedings.

The ordinary guardian has ongoing management and oversight responsibilities and must report periodically to the guardianship judge. The special guardian, on the other hand, serves a predominantly procedural and temporary function, although their powers may be extended to include substantive authority when necessary.

6. Adoption Proceedings

In adoption cases, the law requires a particularly high level of protection for the minor, given the profound and irreversible effects adoption has on the child's personal, family, and legal status.

This requirement means that even in proceedings concerning adoptability—such as pre-adoptive placement or emergency suspension of parental authority—the minor must be assisted by a special guardian who ensures impartial and independent representation, particularly when the parents are absent, have been removed, or are in conflict with the child's best interests.

In such proceedings, the presence of the special guardian is essential in order to:

- Independently represent the minor's interests, distinct from those of the natural parents, foster carers, or prospective adoptive parents;
- Ensure that the child is heard, depending on age and discernment capacity;
- Monitor the coherence of the adoption plan with the child's best interests.

7. Conflict of Interest with Parents

Another key scenario in which the law requires the appointment of a special guardian is where a conflict of interest arises between the child and their parents.

According to Article 473-bis.8, letter c), the judge must appoint a special guardian:

> *"if, based on the facts that emerge during proceedings, the child is found to be in a situation of harm that prevents proper legal representation by both parents."*

This provision applies when a substantial divergence emerges between the child's best interest and the stance taken by the parents—for example, when the parents act in a hostile or negligent manner or pursue objectives contrary to the child's wellbeing.

Conflicts of interest may arise in various contexts:

- Litigation between parents, which indirectly involves the child and their emotional bonds (e.g., a parent seeks removal of the other's parental authority);
- Financial claims, such as compensation or inheritance proceedings, where the parents' economic interests conflict with those of the child;
- Disputes over medical, educational, or housing decisions, where parental choices prove harmful or biased.

8. Proceedings for Denial of Paternity

In cases involving the denial of paternity, the appointment of a special guardian may be necessary—or even mandatory—where a conflict arises between the minor and the parent initiating (or defending against) the claim.

Although Article 473-bis.8 CPC does not explicitly list denial of paternity proceedings among the cases requiring mandatory appointment, these may clearly fall under letter c):

> *"where the facts that emerge during proceedings show harm to the child that prevents proper representation by both parents."*

Alternatively, the final part of the first paragraph also gives the court discretionary power:

> *"In any case, the judge may appoint a special guardian if the parents are, for serious reasons, temporarily unable to represent the minor's interests."*

Why a Special Guardian Matters

In paternity denial proceedings, the minor is a necessary party, and the case directly affects their personal, legal, and emotional identity.

Specifically:

- Denial of paternity may alter the child's legal status as a legitimate or natural child, with far-reaching implications for family relationships, financial rights, and legal identity;
- It may lead to the loss of the legal bond with the presumed father, with consequences regarding maintenance, inheritance, emotional ties, and social standing;
- The parents involved in the case (mother, legal father, or presumed biological father) may have conflicting interests with the child, who may wish to preserve or sever the existing bond.

In this context, parental representation of the child may be inadequate or compromised, making the appointment of a special guardian both appropriate and, at times, necessary to ensure impartial and child-focused

representation.

Case Law and Judicial Practice

Case law has long recognised that in proceedings affecting a minor's personal status, and especially where conflicts or potential harm arise, the court must ensure effective child participation—including through the appointment of a special guardian.

In many judicial practices, courts already appointed special guardians in denial of paternity cases even before the Cartabia Reform, particularly where the minor was of an age to be heard or where there were serious conflicts between the mother and the presumed father.

The reform has strengthened this interpretive approach by providing a clear legal framework and explicit tools for judicial intervention.

Listening to the Minor

Where the child is twelve years or older—or younger but capable of discernment—the special guardian must hear the child under Article 315-bis, paragraph 3, of the Civil Code and Article 473-bis.4 CPC, gathering the child's views, wishes, and concerns regarding the possible change in legal parentage.

This is a crucial step, ensuring that the child is treated not as a passive object in the process, but as a rights-holder with their own interests and voice.

Conclusion

The Cartabia Reform represents a significant advancement in the protection of minors in civil proceedings, reinforcing the principle of the best interest of the child and ensuring independent representation in situations of conflict or harm.

The appointment of a special guardian—now structurally regulated and mandatory in several situations—is an essential mechanism to guarantee that the child has an active and meaningful role in proceedings that concern their life, relationships, and fundamental rights.

The appointment is mandatory in both adoption proceedings (preadoptive phase, foster care, or Article 403 measures) and in cases of conflict of interest with the parents. In both instances, the legal system acknowledges that the child's interest cannot be properly represented by those who, in theory, would hold legal authority.

The special guardian thus serves to fill that protection gap, giving the child an autonomous voice in the proceedings, in line with the principle of the child's best interest and the right to be heard.

4. Role of minor children in matrimonial disputes between parents

The hearing of the minors

The right of minors to be heard in proceedings where measures concerning them must be adopted is currently regulated, within the Italian civil law system, by the articles of the Civil Code introduced by Law 219/2012 and Legislative Decree 154/2013; at the international level, it is provided for by Article 12 of the New York Convention and Article 6 of the Strasbourg Convention, as well as by the new regulation Law No. 206/2021 (see below).

Article 12 of the New York Convention requires States to ensure that the minor — endowed with the capacity for discernment — has the right to freely express their opinion on any matter affecting them and that such opinion is duly taken into account, considering their age and degree of maturity; to this end, the minor has the opportunity to be heard in any judicial or administrative proceeding involving them, either directly or through a representative or an appropriate body, according to the procedural rules of national law.

The Strasbourg Convention (Article 6) requires the judicial authority, before making any decision in proceedings concerning minors, to assess whether it has sufficient information to decide in the best interest of the minor and, if necessary, to acquire additional information, particularly from those holding parental responsibility.

When the minor has sufficient capacity for discernment, the judge must ensure that the minor has received all relevant information and, if the case requires, consult them personally, including in private, directly or through other persons or bodies, in a manner appropriate to their maturity, unless this is clearly contrary to their best interests, so as to allow them to express their point of view and have it duly considered.

In cases of irreconcilable conflict between the interests of minor children and the claims of the parents, the judge may appoint a special guardian to represent the children and also an independent lawyer.

In practice, this is a situation that is rarely adopted.

It is hoped that greater attention will be paid to the interests of minor children in marital disputes, in line with the decisions of the Courts and the Supreme Court, which focus on the protection of the interests and responsibilities of minors.

The Child's Right to Be Heard in Light of the Cartabia Reform

A New Central Role for the Child in Civil Proceedings

With the reform of civil procedure introduced by Law no. 206/2021 – widely known as the Cartabia Reform – the protection of children's rights has been significantly strengthened. The reform marks a decisive shift in perspective: the child is no longer seen merely as a passive object of protection but as a holder of enforceable rights, capable of actively participating in legal proceedings that concern them.

The child's best interest – a principle recognised internationally – now plays a central role in guiding legislative and judicial action. The European Court of Human Rights has affirmed its primacy, linking it to the right to respect for private and family life as enshrined in Article 8 of the ECHR.

The Right of the Child to Be Heard

Recognising the child's best interest necessarily entails acknowledging their right to be heard in all proceedings that affect them directly. This right ensures that the child is not merely a passive observer but can actively participate in decisions that will shape their developmental path, both emotionally and psychologically.

This right is firmly grounded in several international instruments: the 1989 UN Convention on the Rights of the Child (ratified in Italy by Law no. 176/1991), the 1970 Hague Convention, the 1980 Luxembourg Convention, and the 1996 Strasbourg Convention (ratified in Italy by Law no. 77/2003). Together, these conventions form a strong international framework for protecting the child's right to be heard.

New Provisions in the Code of Civil Procedure

The Cartabia Reform introduced a more detailed and binding framework for the hearing of minors, via Articles 473-bis.4, 473-bis.5, and 473-bis.6 of the Code of Civil Procedure, within the newly unified procedure for matters concerning persons, minors, and families.

Article 473-bis.4 c.p.c. stipulates that a child aged 12 or older – and also a younger child, if capable of forming views – must be heard by the judge before any decision is taken that directly concerns them, such as in matters of custody, placement, or contact with either parent and their extended families.

The child's views must be duly considered in accordance with their age and maturity. The hearing may be omitted only for justified and specific reasons: where it would be contrary to the child's best interests, manifestly superfluous or technically impossible, or when the child explicitly refuses to be heard.

Article 473-bis.5 c.p.c. governs how the hearing is to be conducted: it must be carried out by the judge, who may be assisted by an expert – ideally a child psychologist or child psychiatrist – or other support professionals. Honorary judges may assist but not replace the presiding judge.

Where multiple children are to be heard in the same proceeding, they must be interviewed separately to preserve the spontaneity and authenticity of their responses, avoiding mutual influence. The hearing should be scheduled at a time that does not interfere with school hours and, when possible, held in child-friendly environments outside the formal setting of the courtroom.

The judge must also inform the child, in a manner appropriate to their age and maturity, about the nature of the proceedings and the possible effects of their participation, ensuring the process respects their dignity, privacy, and emotional wellbeing.

A notable addition introduced by Article 473-bis.8 c.p.c. is the child's right, from the age of 14, to request the appointment of a special guardian. The judge is required to inform the child of this right during the hearing.

As a rule, the hearing should be video recorded. If technical issues prevent this, a detailed written record must be made, describing the child's demeanour throughout the session.

Hearing the Child in Cases of Parental Rejection

A significant innovation brought by Article 473-bis.6 c.p.c. concerns urgent hearings in cases where a child refuses contact with one or both parents. In such instances, the judge must proceed without delay, gather preliminary information about the reasons for the refusal, and may shorten procedural deadlines to ensure timely intervention.

The causes of rejection typically fall into two main categories:

Rejection due to abusive or neglectful behaviour by one parent: here, the child's refusal signals a clear distress. Prompt judicial intervention is essential to prevent further harm, whether physical or psychological.

Rejection induced by parental conflict: in highly contentious separations, one parent may manipulate the child against the other. This phenomenon, sometimes referred to as parental alienation, poses a serious developmental risk, affecting the child's capacity to maintain healthy emotional relationships.

In both scenarios, swift and sensitive judicial action is crucial to safeguard the child's right to maintain a balanced and continuous relationship with both parents, as enshrined in Article 337-ter of the Civil Code.

5. The protection of Children during the adoption trail

The institution of adoption creates a relationship of legal filiation between persons not related by blood.

The types of adoption

Italian law currently provides for three types of adoption:

1) adoption of the child, which gives the adoptee the position of child of the adopters, creating a bond similar to that of biological filiation and places him/her in a new family;
2) adoption in special cases, which occurs when full adoption of the child is not possible, resulting in a legal filiation bond overlapping the filiation by blood. This type of adoption does not interrupt the relationship with the biological family, but parental responsibility falls to the adoptive parents;
3) the adoption of an adult who acquires a legal filiation bond in addition to the filiation by blood.

Adopters and adoptee

The adopting party must meet certain requirements: (1) to be married; (2) to have the fitness to perform the parental function; (3) age.

Adopters must have been married for at least three years and must be suitable and capable of bringing up, educating and maintaining a child (emotional suitability). Finally, the age required of adopters must be at least eighteen years older than that of the adoptee and not more than forty-five years old.

The Italian Constitution recognises the right of the child to be brought up within his or her own family and it is

therefore up to the judge to establish adoption only as a last choise when there are no other possible ways.

The State and local authorities have the tasks to ensure means of support to help a needy family to prevent the child from being removed from them.

With this in mind, the legislature initially envisaged the institution of child custody, whereby a child who is in a situation of temporary abandonment may be temporarily entrusted to another person until the family of origin overcomes the difficulties that prevent it from providing adequately for the child.

On the basis of these rules and principles, the judge may choose between different measures of increasing detachment from the family of origin, such as the adoption of family support measures, termination of parental responsibility, family fostering, non legitimate adoption and legitimate adoption, depending on the concrete situation, in order to safeguard, as far as possible, the child's right to grow up in the family of origin. Only legitimated adoption entails the total separation of the child from his or her family of origin.

Adoption shall be judicially pronounced when the following conditions are met with respect to the child: 1) the child is deprived of material and moral assistance by parents or relatives who are obliged to provide for him/her (situation of abandonment); 2) the child has been judicially declared in a state of adoptability.

As soon as the proceeding starts, the parents of the child shall be immediately informed and if the child does not have them, relatives up to the fourth degree of kinship who have significant relations with the child shall be notified.

The President of the Juvenile Court shall invite the parents and relatives (up to the fourth degree of kinship) to appoint a lawyer of their choice; if they do not have one, a lawyer shall be appointed by the Court.

Parents or relatives take part in the proceedings assisted by a defence counsel and can take part in all the investigations ordered by the court and submit requests in order to view and request copies of the documents in the court file.

It is necessary to ensure that the Public Prosecutor's Office and all interested parties in the proceedings, as well as the child who has reached the age of 12 years or younger, are heard by the Court in chambers, with the caveat that if he or she is not heard, the proceedings are null and void.

The child is represented by an autonomous person (a guardian or a special curator), who, if he or she is a lawyer,

can take over the child's legal representation or appoint a lawyer.

Local Bars organise the right training course for that lawyers and ensure the necessary professional skills for the special kind of practitioners.

6. Criminal justice for minors

The criminal trial of juvenile offenders is ruled by the law 448/1988 and is inspired by a number of fundamental principles, also referred to in the relevant international conventions, and is therefore "child-friendly".

Among the inspiring principles are the following

1. Principle of adequacy

Art. 1, par. 1, Law no. 448/1988 provides that the measures are: “applied in a manner appropriate to the personality and educational needs of the minor”.

The judge's decision must take into account the minor's family situation, personal problems and educational background.

2. Principle of minimum offensiveness

The process must avoid that the contact of the juvenile with the penal system may compromise the harmonious development of his/her personality and social image with consequent danger of marginalization.

The judge's decision should not interrupt the ongoing educational processes and should avoid as much as possible the entry of the child into the criminal circuit allowing him/her to use alternative means.

Juvenile proceedings must concern serious facts, otherwise they should be avoided.

3. Principle of non-stigmatisation

This principle is an extension of the principle of minimum offence as it concerns the individual and social identity of the minor, which it is intended to protect as far as possible.

For these there are various institutions such as :

- judgement not to proceed due to irrelevance of the fact (Article 27 of Presidential Decree 448/1988)
- judicial pardon (Article 169 of the Criminal Code)
- extinction of the offence due to the positive outcome of the trial (Article 29 of Presidential Decree 448/1988)
- the prohibition to disseminate images and information on the identity of the child (Art. 13 Presidential Decree 448/1988)
- the conduct of the trial in camera (Art. 33 Presidential Decree 448/1998).

4. Principle of residual detention

Prison must be avoided as much as possible for minors.

The penalties are the same as for adults: pecuniary or custodial.

In the event of conviction, the penalty is reduced by up to a third compared to the penalty provided in general for the specific offence (Art. 98 of the Criminal Code).

The whole system is inspired by the so-called educational finality, whereby the trial must not interfere with educational continuity.

7. Special criminal consequences for minors and measures of protection and aid

For the realisation of these principles juvenile justice is organised as follows:

There is a District Juvenile Court (one per region) and its Prosecutor's Office.

In each Juvenile Public Prosecutor's Office there is a Judicial Police Section with specific training.

In each court there is a Court of Appeal and a Supervisory Magistrate.

At every stage and level of the juvenile proceedings, the Judicial Authority avails itself of social and psychological assistance services also at territorial level.

The judging body, pursuant to Article 50 RD 12/1941, provides that the Ordinary Juvenile Court is composed of two judges and two experts, a man and a woman, experts in psycho-social matters, with the task of supporting the decision-making phase, which is the exclusive competence of the magistrate, with advice and technical opinions.

Legal Aid

Minors who do not have their own lawyers are assisted by public defenders registered in a special list with a specific preparation.

The minor is admitted ex officio to the "*Patrocinio a spese dello Stato"* (Legal Aid).

Art. 118 of Presidential Decree no. 115/2002 grants favourable treatment to minors: the minor's public defender is

exempted from the need to initiate the procedure for admission to legal aid at the State's expense, and from the need to prove that he/she has unsuccessfully exhausted the procedures for the recovery of professional credits, provided for by art. 116 for the public defender of a person of age. The rationale of the discipline has been identified by case-law as the special protection due to the minor's patrimonial capacity, which is presumed by law to be non-existent or in any case lower than that of the defendant who is of age (Criminal Court of Cassation, section IV, 3 April 2008, no. 34985).

8. The position of minors of incarcerated parents

The Italian Ministry of Justice and the The National Ombudsman for Childhood and Adolescence signed a Memorandum of Understanding regardng the position of minors of incarcerated parents.

Those are the inspiring principels.

- Favoring the maintenance of contacts between imprisoned parents and their children, always safeguarding the minor’s superior interest;
- Highlighting the peculiarity of imprisoned parents’ children, so that regulatory interventions and measures are promoted, which allow for this social group’s need for parental and emotional relationships without, however, producing further stigma and discrimination against them;
- Protecting children’s right to an emotional and continuing bond with their imprisoned parent, who has a duty and a right to play his/her parental role;
- Supporting family and parental relationship during and beyond detention, assisting the family and, in particular, supporting the minors who are emotionally, socially and economically damaged, with frequent negative repercussions on their health and effects also on their dropping out of school;
- Overcoming barriers connected to prejudice and discrimination with a view to a process of social integration and deep cultural change, which is necessary for the project of a supportive and inclusive society.

- Considering the articles, undersigned in this Memorandum of Understanding, as reference in making decisions and in establishing the modus operandi as to what concerns all parents, even minor ones, who are subject to measures entailing restrictions of liberty;
- Ensuring that is offered to mothers and fathers in prison the support along assisted paths to parenthood.

Basically, The Ministry of Justice, with the collaboration of the Guarantor Authority for Childhood and Adolescence and the Association Bambinisenzasbarre ONLUS, commits to implementing all necessary actions so that:

1. the choice of the detention place for a parent with minor children takes into account the need to guarantee the possibility of direct contact between child and parent during his/her stay in prison;
2. a minor can visit the imprisoned parent within a week from the arrest and, on a regular basis, from then on;
3. in all waiting rooms a children's space is equipped, where minors can feel welcome and ecognised. In these spaces, operators will welcome and supply family members with what is needed for a decent wait (like a bottle warmer or a changing table) and young children with resources such as toys or drawing tables, in order to prepare them to the meeting with their imprisoned parent;
4. every visiting room, even small ones, provides a "children's space" that is reserved to playing. Where the building allows it, to equip a separate space intended as a playroom. This plan will be gradually implemented, becoming fully at least in Institutions for the execution of prison sentences (establishments where longer sentences are served);
5. buildings are accessible to disabled minors or to those with special access needs;
6. visits are organized over six days a week, allowing at least for two afternoons so as not to prevent minors from attending school. Visits are to be scheduled also on Sundays and public holidays;
7. minors are given information appropriate for their age about visiting procedures and rules, as well as information on what can be taken to visits and on how security checking procedures are handled on their arrival in the prison. This information must be provided in various languages and various formats (for example through large size posters, video and audio versions that are easily understood even by smaller children);
8. security checks are adequate and in proportion to minors' rights and conditions, considering, in particular,

their right to privacy, to physical and psychological integrity, to safety;

9. children are offered the possibility to visit their parents also with special attention to privacy, when it is necessary and in particular circumstances;
10. minors are allowed to acquire knowledge of their parents' life under detention and, where the facilities allow it and if it is seen as appropriate in the minors' superior interest, to visit some of the spaces which their imprisoned parents frequent (for example, the canteen or recreation rooms or workshops or places of worship);
11. alternative accompaniment for minors from 0 to 12 years of age is provided, in case the other parent or a reference adult is not available. This aim can be achieved with the help of qualified social workers, or permission can also be given to members of non-governmental organizations (NGO) or associations that are active in this field ;
12. in detention centers, wherever possible, "groups of experts in support of minors" are organized, with special attention to younger children, in order to assess regularly how they experience prison visits, in order to favor contact with parents also through different means and in order to provide advice about possible improvements to facilities and procedures.

POLAND

1. Introduction

Access to justice is synonymous with the right to an effective remedy before a court, meaning the right to a fair trial.

According to the Charter of Fundamental Rights of the European Union, “Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone has the opportunity to obtain legal advice and to be assisted by a defence lawyer or representative.”.

2. Legal conditions for access to justice

2.1. Access to court

The right of access to a court (based on the right to a fair hearing) should be effective for all people, irrespective of their financial resources. This requires the state to take steps to ensure equal access to proceedings, for example by establishing appropriate legal aid systems. Legal aid can also contribute to the administration of justice as unrepresented parties to proceedings are often unaware of the procedural rules and require significant assistance from the courts, which may delay proceedings.

Court costs can help the effective administration of justice (for example, by discouraging abusive litigation or

reducing administrative costs), but they can also limit access to justice. Excessive court costs can deprive individuals of their right of access to a court.

The right of access to court means access to competent courts, interpretation, access to information and the availability of court judgments. It may also relate to geographic remoteness from court if its location prevents applicants from effectively participating in the proceedings.

To qualify as a court, an authority must:

i. be constituted by law;
ii. be permanent;
iii. be independent and impartial;
iv. include an adversarial procedure;
v. have compulsory jurisdiction;
vi. comply with the law.

2.2. Process guarantees

2.2.1. Independent and impartial court

The requirement of independence obliges the court to act as a decision-making body, independent of the administrative bodies and the parties to the dispute.

Impartiality has two components:

i. a subjective element of the judge's personal bias or bias;
ii. an objective element relating to issues such as the impression of bias.

2.2.2. Fair and public hearing of the case

One of the basic requirements of the right to a fair hearing is the principle of "equality of arms" between the

parties. Equality of arms involves ensuring that each party is given a reasonable opportunity to present its case under conditions which are not less favourable to either party to the opposing party.

Another essential element of the right to a fair hearing is the right to adversarial proceedings. In practice, the right to an adversarial procedure covers:

i. the right to know all evidence submitted to a court in order to influence its decision and to comment on it;
ii. the right to sufficient time to examine the evidence before the court;
iii. the right to present evidence.

It is for the courts to consider whether the applied procedure as a whole complies with the requirements relating to the right to an adversarial procedure.

The right to reason a judgment is another key aspect of the right to a fair hearing. The grounds of the judgment indicate that the case has been examined properly and enables the parties to bring an appropriate and effective appeal. Courts are not required to provide detailed answers to each argument, and the duty to state reasons varies according to the nature of the decision and the circumstances of the case. In civil proceedings, courts are required to justify their judgments sufficiently to enable individuals to lodge an effective appeal (right to appeal).

Access to justice also includes the right to a public hearing. This helps promote trust in the courts through visible and transparent justice. The right to a public hearing of the case implicitly includes the right to an oral hearing.

Professional confidentiality may also justify restrictions. Children are clearly protected and a whole category of proceedings can be excluded because of the need to guarantee their protection.

2.2.3. Reasonable timing

The requirement to terminate the proceedings within a reasonable time applies to all parties to the court proceedings and its purpose is to protect the parties concerned against excessive procedural delays. Excessive delays can violate the rule of law and deprive you of access to a court. Delays in obtaining and executing judgments can constitute a procedural barrier to access to justice. States must organize the legal order in such a way that the courts comply with their obligation to deal with cases within a reasonable time.

States should guarantee access to special legal paths to pursue claims arising from unreasonably long proceedings.

Four criteria are used to assess the reasonable duration in proceedings:

i. the complexity of the case;
ii. the behavior of the applicant;
iii. the behavior of the competent authorities;
iv. the importance of the case for the complainant

However, a balance must be struck between the swift procedure and the proper administration of justice. For example, the urgency of resolving a case may not result in the defendant being deprived of his rights to defense.

States must organize the legal order in such a way that the courts can respect the guarantees of obtaining a final judgment within a reasonable time. However, the responsibility for the preparation of the case and the speedy conduct of the trial rests with the court.

2.3. Access to legal / procedural representation

2.3.1. Obtaining legal advice

The right to obtain legal advice, to use the assistance of a defense lawyer and attorney-in-fact is to ensure that individuals have the right to a fair trial and to exercise their rights. The right to a fair trial includes the right of access to a court. Individuals may require - and therefore the state may be required to provide - services of representation or legal aid to ensure they have access to a court and a fair trial.

2.3.2 Assistance by a defence attorney and representative

Legal aid may, for example, include free legal representation or representation by a solicitor or exemption from

legal costs, including court costs. These types of arrangements can run alongside other complementary support systems, such as pro bono defence, legal aid centres and legal protection insurance - which may be state-funded, organised by the private sector or managed by an NGO.

2.4. Legal remedies (appeals)

Legal remedies are sufficient to guarantee effective judicial protection of rights. This commitment is based on the principles of effectiveness and equivalence. The principle of effectiveness requires that national regulations neither prevent nor excessively hinder the exercise of rights. The principle of equivalence requires that the conditions relating to claims arising from EU law should not be less favourable than those relating to similar domestic cases.

3. Application of the law to minors (children)

3.1. Introduction

The principles of applying the law to children are based on the guarantees of procedural rights generally applicable in the legal system, which are enjoyed by every person facing the administration of justice.

The child should be empowered to participate in procedures and decisions by: [...] being able to express his views in any judicial and administrative proceedings relating to the child, either directly or through a representative or appropriate body, in accordance with the procedural rules of domestic law (Article 12 of the "Convention on the rights of the child ").

In the Polish legal system, it has been assumed that a minor, i.e. a child, is anyone who is under 18 years of age, and anyone who has entered into marriage before the age of 18 obtains the age of majority (Article 10 of the Civil Code).

3.2. Liability

Civil liability depends on the concept of legal capacity and the age of the child. A minor who is under the age of 13, as a rule, is not responsible for the damage caused as a legally incapacitated person (Article 426). The legislator assumed that persons under 13 years of age cannot be blamed due to the insufficient level of intellectual development (maturity). However, someone should compensate and repair the damage. In such cases, the "Civil Code" introduces the principle of liability for other people's acts, adopting the principle of presuming the supervising person's guilt.

A minor who has reached the age of 13 and under the age of 18, due to limited legal capacity, may or may not be liable for the damage caused. This is determined each time by the court's assessment whether, due to the minor's age, he or she has reached sufficient maturity to be fully guilty - the condition is that the minor recognises his own action and its consequences, and is aware of the reprehensibility of his behavior.

3.3. Responsibility in supervision

The person most frequently supervising a child is the parent (legal guardian). In the case of a child entrusted with supervision (care) in a kindergarten, school, sports club, hospital or other institution, it may also be: a teacher, tutor, trainer, instructor, doctor, etc. improperly exercised. The supervisor can discharge himself from responsibility when he proves that the supervision was properly exercised. The responsibility for the child entrusted to supervision is connected with representing the child during the day-to-day care of it, for the time of the care entrusted to it. In emergency situations, when it is not possible to notify the parent, requiring the child to provide direct help or calling the appropriate assistance services (e.g. emergency room) or intervention (e.g. the police), such actions are taken by the person who has direct supervision over the child or their superior.

3.4. Criminal responsibility

Any minor who commits a prohibited act after the age of 13 but not older than 17 shall be liable under the provisions of the "Act on Proceedings in Juvenile Matters". In the case of minors, punishable acts are prohibited acts defined by law as: crimes, fiscal offences or petty offences (defined in the Code of Petty Offences). These include: disturbing public order, bullying animals, damaging signs or devices to prevent

danger, theft or misappropriation of property, fencing, destroying or damaging property, obstructing the use of devices intended for public use, and many others. Persons under the age of 18, as minors, are subject to the provisions of the "Act on Proceedings in Juvenile Matters" in matters relating to the prevention and combating of demoralisation. The situations where minors are at risk of demoralisation are: alcoholism, intoxication, prostitution, avoidance of compulsory education, compulsory education, vagrancy (truancy), participation in criminal groups, violation of the rules of social coexistence (prohibited acts).

3.5. Process guarantees

The guarantees of the child's procedural rights reflect well the principles of respecting the rights and dignity of the child in court proceedings, as set out in the Convention on the Rights of the Child. These are:

i. Presumption of innocence until proved guilty according to law;
ii. informing about the charges against him;
iii. providing legal and other assistance in preparing and presenting your defense;
iv. the case is dealt with without undue delay by a judicial authority in a fair and lawful process;
v. ensuring the presence of parents or a legal guardian;
vi. not to use coercion when giving evidence and in admitting guilt;
vii. having the right to appeal the decision and other related remedies to a superior, competent, independent and impartial authority or judicial body;
viii. respect for matters related to personal life at all procedural stages.

The above guarantees are manifested in additional, special treatment of children, according to which:

ix. children in criminal proceedings have the right to be treated fairly and in a friendly manner;
x. court proceedings should be appropriate to the needs of children to ensure their effective participation;
xi. children have the right of access to a lawyer from the early stages of criminal proceedings and from the first questioning by the police;
xii. children may only be deprived of liberty as a last resort and for the shortest possible time;
xiii. children deprived of their liberty must be treated according to their age and with respect for their dignity;
xiv. children should not be kept together with adults;

xv. Child victims and witnesses have the right to protection from further victimisation, to rehabilitation and reintegration, and to effective participation in criminal and alternative proceedings.

3.6. Legal representation of a child

A child cannot defend his rights on his own. Before the court, she is represented by a legal representative, who may be the mother, father or legal guardian. Representing the best interests of the child, they may apply for the status of: aggrieved party, auxiliary prosecutor or civil plaintiff. These are very important rights of the people representing the child. The knowledge and use of these institutions allows you to take advantage of a number of rights that are favourable to the child in court proceedings. A parent may not, acting as a legal representative, exercise the rights of a minor as an aggrieved party in criminal proceedings, if the accused is the other parent.

In such a situation, a guardian is appointed at the beginning of the proceedings, who will represent the interests of the child in the proceedings.

3.7. Child - a witness in court proceedings

Polish law, both in the civil and criminal procedure, does not impose any formal restrictions on the age of a person who may be called as a witness. The provisions of the "Code of Civil Procedure" are an exception, stipulating that in matrimonial matters (for divorce, annulment of marriage, establishing the existence or non-existence of a marriage), minors under the age of 13 and descendants of the parties (children) may not be examined as witnesses, who are under the age of 17 (Art. 430). Another, but obvious limitation to the use of children's testimonies in proceedings is the material condition of the ability to perceive and communicate one's observations provided for in the Code of Civil Procedure (Art. 290). People who do not have this ability (e.g. small children) cannot be witnesses.

The second issue is the minor's personal participation in matters relating to him. A provision was introduced in the "Family and Guardianship Code", imposing an obligation on the court to hear a child under 13 years of age, if he or she can understand the meaning of adoption - a 13-year-old child is obligatorily heard (Art. 118 § 2). , younger children, e.g. 5-year-olds, may be asked for consent or opinion. The child may also comment on the change of surname and first name. in the part concerning the current birth certificate (Articles 48 and 49).

The final decision as to the minor's participation in the proceedings is made by the court, taking into account educational considerations.

3.8. Child - victim of violence

Child - the victim may take part in the criminal trial. It acquires the status of an aggrieved party. The rights of his legal representative or the person under whose care the victim remains (Art. 51 § 2).

Helping children - victims of violence also protection of the interests of the judicial initiator through, among others:

i. requesting the setting aside of the hearing in public, when the case concerns an offence related to the environment, morality, family and care;
ii. arranging for the victim to be interviewed before the second stage;
iii. an allowance to the interviewing of an injured person in the procedural services, if for evidence that the allowance may be an embarrassing act;
iv. A court to resolve issues that have problems with the personal case or to strive for the victim's common sense, and not to resolve the merits of the case.

3.9. Right to remain silent

A child has the right to refuse to testify. The child may also refuse to answer certain questions. Under Art. 185 of

the Code of Criminal Procedure, a child may exercise the right to refuse to testify if they concern a person closest to him. The body conducting the interview must be sure that the child has understood the instruction given to him and made a conscious decision based on it. This issue should also be solved with the participation and assistance of an expert.

3.10. Hearing "one time"

According to the solution adopted in Art. 185a of the "Code of Criminal Procedure" in cases of offences against sexual freedom and decency of the aggrieved, who at the time of the act was under 15 years of age, should be interviewed only once, unless important circumstances come to light, the clarification of which requires re-examination, or the accused requests it who did not have a defence attorney during the first questioning of the aggrieved party. The hearing is conducted by the court at a session with the participation of an expert psychologist. The following persons have the right to participate in the hearing: the prosecutor, the defence attorney and the representative of the accused. The accused may also be present at the questioning, as it does not limit the freedom of expression of the questioned person. The report of such a hearing shall be read at the main hearing. It can also be an audio recording of the interview. The above procedure is also applied in the case of the hearing of a witness who, at the time of the hearing, is under 15 years of age, and the case concerns a violent crime, an unlawful threat or a sexual offence. The hearing takes place if the testimony of such a person may be of importance for the conducted proceedings.

Evidence in the form of the child's testimony is full-fledged evidence. The child's testimony, even if it concerns only the description of events, without analysing their significance, may significantly affect the course of the proceedings. These statements must, however, be accompanied by an expert opinion - a psychologist, who should answer the question whether the child was able to perceive the situation correctly and recreate it correctly, whether he is prone to lie or confabulation. Evidence from the child questioning carried out in this way meets the procedural requirements. It also solves the issue of educating the child about criminal liability for making false statements; such instruction is received by an expert (and to a much greater extent) - he is the one who authenticates these testimonies with his professional knowledge. The credibility of the testimony is

confirmed by the expert in the opinion issued on the order of the court.

3.11. Effective participation in the procedure

Examples of requirements for effective participation in proceedings include: presence of a child at hearings, holding hearings in closed doors, limited publicity, ensuring that the child understands what is going on and reducing the formality of court hearings.

3.12. Access to legal aid

Where a child is deprived of liberty, the person with parental responsibility shall be informed of the deprivation of liberty and the reasons for the deprivation of liberty, unless this would be contrary to the best interests of the child, in which case another appropriate adult shall be notified. In addition, the right of suspects / accused to access a lawyer includes the right to meet in private and communicate with the lawyer representing them, including prior to the first questioning, the right to have a lawyer present and participate effectively during questioning, and the right to have a lawyer present during investigations or evidence.

3.13. Establish specialised courts or judges for children

There are "specialised" courts in the form of family and juvenile divisions.

3.14. Use of child-friendly facilities for questioning

There are specially designed or adapted rooms for interviewing children, the so-called "Blue rooms" equipped with venetian mirrors and enabling judges and other people to observe the course of the interrogations.

4. Barriers to access to justice

4.1. Court costs

Excessive court costs can deprive individuals of their right of access to a court.

4.2. Excessive formalism

Excessive formalism (restrictive interpretation of procedural rules) could deprive applicants of their right of access to a court. This may be manifested in a restrictive interpretation of limitation periods, procedural rules and evidence proceedings.

4.3. Evidence thresholds

In order for individuals to obtain adequate compensation in court, they must submit sufficient evidence in the case. If the evidence thresholds are too high, actions brought to the courts may be doomed to failure and individual

rights may be unenforceable.

4.4. Limitation periods

Limitation periods define the time limits for a party to the proceedings to submit a claim or notify the other party of the claim. The imposition of reasonable time limits and procedural conditions on the lodging of claims can contribute to the promotion of sound administration of justice by providing legal certainty and finality, and protecting potential defendants / accused persons from past claims that would be difficult to oppose due to the passage of time.

4.5. Immunities

Immunities are a very special kind of procedural obstacle. States may also introduce immunities as a safeguard against claims. Substantive immunity is an exemption, in whole or in part, from a legal process - for example, a legal obligation, sanction or prosecution. Some immunities serve to fulfil obligations under public international law - for example, state or diplomatic immunity; others, in turn, may be awarded at national level - for example to protect public officials from accountability for decisions made in the performance of their duties or to protect the freedom of expression of members of parliament.

4.6. Failure to execute judgments

Failure to execute court judgments limits access to justice. This can undermine the protection of fundamental rights and deprive the individual of effective judicial protection. Thus, non-execution of court judgments is also tantamount to a breach of the rule of law.

4.7. Resources

The allocated human and financial resources are insufficient. Judges and social workers are overloaded with work and the staff shortage is acutely felt. Given the workload and the needs of children involved in the procedures, insufficient resources are available.

ROMANIA

According to art. 38 of the Romanian Civil Code the minor is the person who has not reached the age of 18 and who does not have the capacity to conclude single civil legal acts. The minor can acquire this capacity before adulthood only through marriage (art. 39 of the Civil Code) or when this capacity is recognised by the court of guardianship provided that he reaches the age of 16. The minor who has reached the age of 14 has a restricted capacity to exercise (art. 41 paragraph (1) of the Civil Code).

1. Access to Justice for minors in civil matters under parental authority

The access to justice of minors is regulated by art. 57 of the Civil Procedure Code and is allowed only if it is represented, assisted or authorised under the terms of the Civil Code.

I. The minor who has not reached the age of 14.

For minors who have not reached the age of 14, the legal documents are concluded, on their behalf, by their legal representatives, respectively by parents or guardians (art. 43 paragraph (2) of the Civil Code).

II. The minor who has reached the age of 14.

The legal acts of the minor who has reached the age of 14 are concluded by him, with the consent of the parents or, as the case may be, of the guardian, and in the cases provided by law, and with the authorisation of the guardianship court. The approval or authorisation can be given, at the latest, at the moment of concluding the act (art. 41 paragraph (2) of the Civil Code).

Acts made only by minors are annullable, even without proving a prejudice (art. 44 par. (1) of the Civil Code).

2. Access to Justice for minors in civil matters under guardianship of a guardian

The guardian will conclude on behalf of the minor who has not reached the age of 14 all legal acts.

The minor who has reached the age of 14 concludes the legal documents with the written consent of the guardian or, as the case may be, of the curator. If the act that the minor who has reached the age of 14 is to conclude is one of those that the guardian can do only with the authorisation of the guardianship court and with the approval of the family council, both its authorisation and the approval will be necessary of the family council (art. 146 par. (1) and par. (2) of the Civil Code).

3. Access to Justice for minors in civil matters in conflict with parents or guardian

Whenever contrary interests arise between the guardian and the minor, which are not among those that must lead to the replacement of the guardian, the guardianship court will appoint a special curator (art. 150 para. (1) of the Civil Code).

4. Role of minor children in matrimonial disputes between parents

During the divorce process, the child can be placed with one of the parents temporarily or permanently, as the case may be (art. 919 and art. 920 of the Civil Procedure Code).

In certain exceptional cases, the following special protection measures may be taken: placement and emergency placement (art. 59 and art. 60 of Law no. 272/2004 on the protection and promotion of the rights of the child).

The placement of the child constitutes a special protection measure, having a temporary character, which may be ordered, under the conditions of this law, as the case may be, to a person or family, a foster carer or a residential service (art. 62 of Law no. 272 / 2004 on the protection and promotion of the rights of the child)

Emergency placement is a special, temporary protection measure that is established for the child who has been abused, neglected or subjected to any form of violence or for the child.

found or abandoned in health facilities (art. 68 of Law no. 272/2004 on the protection and promotion of children's rights).

5. The protection of Children during the adoption trail

The following principles must be observed throughout the adoption procedure:

- the principle of the best interests of the child
- the principle of raising and educating the child in a family environment;
- the principle of continuity in the education of the child, taking into account his ethnic, cultural and linguistic origin
- the principle of informing the child and taking into account his / her opinion in relation to his / her age and degree of maturity (matching between the child and the adopter / adoptive family)

- the principle of speed in carrying out any acts relating to the adoption procedure;

- the principle of guaranteeing confidentiality with regard to the identification data of the adopter or, as the case may be, of the adoptive family, as well as with regard to the identity of the natural parents (art. 1 of Law no. 273/2004 on the adoption procedure).

Adoption cannot be approved by the court until the child has been entrusted for a period of 90 days to the person or family wishing to adopt him or her, so that the court can reasonably assess the family relations would determine whether the adoption would be approved.

The child's ability to adapt, physically and mentally, to the new family environment will be analysed in relation to the socio-professional, economic, cultural, language, religious conditions and any other such elements characteristic of the place where the child lives during foster care and which could be relevant in assessing its further evolution in the case of approval of adoption (art. 43 of Law no. 273/2004 on the adoption procedure)

The right to represent the child in legal acts or, as the case may be, to approve the acts he concludes, as well as the right to administer the child's property is exercised by the president of the county council or the mayor of the Bucharest municipality in whose territorial area the person resides or the family to which the child has been entrusted for adoption. The right of administration may be delegated, exceptionally, to the person or family to whom the child has been entrusted for the performance of special acts, in the interest of the child, which will be expressly mentioned in the document granting the delegation.

6. Criminal justice for minors

A minor who has not reached the age of 14 is not criminally liable.

A minor between the ages of 14 and 16 is criminally liable only if it is proven that he committed the act with discernment.

A minor who has reached the age of 16 is criminally liable according to the law (art. 113 of the Penal Code)

Detention and pre-trial detention may be ordered against a minor, exceptionally, only if the effects that deprivation of liberty would have on his personality and development are not disproportionate to the purpose pursued by

the measure (art. 243 para.) 2) of the Criminal Procedure Code.)

The special detention regime for minors, in relation to the particularities of age, so that preventive measures taken against them do not harm their physical, mental or moral development, will be established by the law on the execution of sentences and measures ordered by the judiciary during the trial. criminal law (art. 244 of the Criminal Procedure Code)

The prosecution and trial of crimes committed by minors, as well as the execution of judgments concerning them are done according to the usual procedure, with additions and derogations, such as summoning and hearing in the presence of parents or legal representatives (guardian, curator) or separate trial of minors of adults (art. 504 of the Criminal Procedure Code)

In cases with juvenile defendants, the criminal investigation bodies may request, when they deem it necessary, the assessment report to be carried out by the probation service attached to the court in whose territorial district the minor resides, according to the law. Through the evaluation report, the requested probation service can make motivated proposals regarding the educational measures that can be taken against the minor (art. 506 of the Criminal Procedure Code).

7. Special criminal consequences for minors and measures of protection and aid

A non-custodial educational measure is taken against a minor who, at the time of the crime, was between 14 and 18 years old.

As an exception to this minor, an educational measure of deprivation of liberty may be taken in the following cases:

a) if he has committed another crime, for which an educational measure has been applied to him which has been executed or whose execution began before the commission of the crime for which he is tried;

b) when the punishment provided by law for the crime committed is imprisonment of 7 years or more or life imprisonment (art. 114 of the Penal Code).

The educational measures are non-custodial or deprivation of liberty (art. 115 of the Penal Code)

Non-custodial educational measures are:

a) the civic training internship;

b) supervision;

c) lockdown at the weekend;

d) daily assistance.

The educational measures depriving of liberty are:

a) hospitalisation in an educational center;

b) hospitalisation in a detention center.

8. The position of minors of incarcerated parents

The minor whose parents have been incarcerated enjoys special protection until adulthood, upon request or ex officio, based on an individualised protection plan (art. 54 and art. 57 of Law no. 272/2004 on the protection and promotion of children's rights).

These measures are placement and emergency placement and have been explained in point 4 of this document (art. 59 and art. 60 of Law no. 272/2004 on the protection and promotion.

SPAIN

1. Access to justice for children represented by their parents.

Age of majority and capacity to exercise rights

In Spain, all people are eligible to be holders of rights; however, not all people are entitled to engage in legal relationships.

Capacity to act in Spain means having the capacity to exercise the legal rights and duties of a person when he or she reaches the age of majority.

Full capacity to act is obtained at the age of majority, which in Spain is at the age of 18 according to Article 12 of the Spanish Constitution. However, there are actions with legal effects that minors can carry out, such as getting married, making a will, receiving non-monetary donations; but all of them are subject to special requirements.

The need for representation of the child

According to Article 162 of the Civil Code, parents have parental authority over their minor children, unless they are emancipated. This means that Parents can represent them in court decisions affecting their interests, except in cases outlined in Article 162 of the Civil Code.

However, Spanish law provides that minors must be heard in judicial decisions that may influence their lives, provided they are sufficiently mature to understand the issues involved.

This principle aims to safeguard their rights and guarantee that their voices are heard during the process.

Cases where the child can act on his or her own behalf

In Spain, minors can act independently in certain specific cases. From the age of 14, they can make a will, consent to the processing of their personal data, and open accounts on social networks.

At 16, they can work with authorisation and marry if they are emancipated. They can also administer assets acquired through their work, carrying out acts of disposition and administration in a limited way.

According to article 317 of the Spanish Civil Code, minors over 16 years of age can be emancipated, which allows them to govern their life and property, albeit with some legal restrictions.

2. Access to justice for a child represented by a guardian

Grounds for guardianship

In Spain, minors are presumed to be represented by their parents who have parental authority. However, in the event of their death or if they do not fulfill their obligations towards the child and the child is in a situation of neglect, the child must be subject to guardianship.

Appointment of the guardian

Article 211 of the Civil Code provides that all natural people who, in the opinion of the judicial authority, meet the conditions of sufficient aptitude for the proper performance of their function and who do not meet any of the causes of disqualification, may be guardians.

These grounds for disqualification are set out in Article 217 of the Civil Code and are as follows.

1. Those who have been convicted of offences which suggest that they are unfit to hold office. There must be a final

judgment.

2. Maintains a conflict of interest with the person over whom the guardianship is to be exercised.
3. They have been excluded by the parents.
4. Whoever has been an administrator and has been replaced from his functions.
5. The declaration of insolvency is imputable to him or her, unless the guardianship is solely of the person

In Spain, the guardian must be appointed judicially or notarial, preference is given to people designated by the parents in the will and, failing that, to the ascendant or sibling designated by the judicial authority (Article 213 of the Civil Code).

In any case, the judicial authority has full power to alter this order in favour of the best interests of the child.

Can more than one guardian be appointed?

In principle, guardianship is exercised by a single guardian according to Article 218 of the Civil Code. However, it is possible to appoint several guardians in exceptional cases.

One of the main reasons is the need for one guardian personal decisions and another for acts relating to the estate.

Other cases in which the appointment of more than one person to the institution of guardianship is permitted are:

6. The public document or will of the parents in which they designate different guardians and shall have a joint and several character.
7. When the appointment falls on a relative of the minors and the authority deems it appropriate that the guardianship should also be exercised by the guardian's spouse.

3. Access to justice for minors in case of conflict with parents or guardians

Conflict of interest

Article 162 of the Civil Code provides that parents with parental authority have legal representation of their unemancipated minor children, but excludes matters where there is a conflict of interest between the parents and the child.

There are several situations in which a conflict of interest may exist between the holder(s) of parental authority and the child under parental authority.

When the parental authority is shared and the conflict concerns only one of the parents, the other parent represents the child; if the conflict concerns both parents or the sole holder of parental authority, the appointment of a legal guardian is required.

The judicial defender

The judicial defender is a judicial authority, appointed by a judge, who is responsible for protecting the best interests of the child on an occasional basis, i.e. it is a provisional measure. It will perform the specific functions that are necessary in the specific case, for example:

1. Be an office appointed by the judicial authority by a voluntary jurisdiction procedure.
2. To have full autonomy vis-à-vis other institutions for the care of children or people with disabilities.
3. Occasional, as the judicial defender is appointed on an interim basis to cover a specific need for support in the absence of the person who should perform the main administration and assistance tasks.
4. Its function is to protect and represent, in some cases, the minor or incapacitated person at times when they need assistance.

5. To perform such specific functions as may be necessary in each case in the interest of the minor or person with disabilities in order to assist him/her in the administration of his/her property, or in his/her legal representation.

4. The intervention of the child in the process of separation, divorce or annulment of his or her parents.

The right to be heard

The right of the child to be heard is a fundamental principle in the Spanish legal system, ecognised in both the Civil Procedure Act and the Civil Code. This right guarantees that the voice of minors is taken into account in legal proceedings that directly affect them.

Article 770.4 LEC establishes that, in separation, divorce or marriage annulment proceedings, as well as in proceedings concerning the guardianship and custody of minor children, the judge must hear minors who have sufficient judgement when deemed necessary ex officio or at the request of the Public Prosecutor, the parties or members of the Judicial Technical Team.

In Spain, Ley Orgánica 1/1996, 15 January; de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil enshrines this principle in its article 9, which states:

"The minor has the right to be heard and listened to without any discrimination based on age, disability or any other circumstance, both in the family sphere and in any administrative, judicial or mediation procedure in which he/she is affected and which leads to a decision that affects his/her personal, family or social sphere, with due account being taken of his/her opinions, in accordance with his/her age and maturity. To this end, minors should receive the information that will enable them to exercise this right in understandable language, in accessible formats adapted to their circumstances".

Special features of judicial intervention with minors

The hearing in which the child is heard must be conducted in a manner appropriate to the child's situation and development, with the assistance of experts when necessary. In any case, court proceedings are held in camera and the child's personal data is protected to avoid stigmatization.

Article 120.1 of the Spanish Constitution and Article 232.2 of the Ley Orgánica del Poder judicial establish that, exceptionally, for reasons of public order and protection of rights and freedoms, judges may limit the publicity and agree to the secrecy of the proceedings. In the case of minors, their participation will always be secret.

5. Criminal law with minors

Scope of application

Juvenile criminal law in Spain is mainly governed by Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors. This legislation establishes a specific legal framework for dealing with juvenile delinquency, with an approach that priorities the re-education and social reintegration of offenders.

The law applies to minors between 14 and 18 years of age who commit offences under the Penal Code or special criminal laws.

Minors under 14 years of age are not liable to prosecution and are subject to civil and administrative protection measures.

Features

The system is based on a punitive-educational model that seeks to balance criminal responsibility with the best interests of the child.

Emphasis is placed on flexibility in the adoption of measures, taking into account the individual circumstances of the case and the

personal development of the child.

Convictions chargeable

Instead of penalties, measures aimed at re-education are imposed. These include:

1. Closed, semi-open or open regime detention
2. Probation
3. Benefits for the benefit of the community
4. Carrying out socio-educational tasks
5. Warning.

The duration of the measures varies according to the seriousness of the offence, but generally does not exceed two years.

Procedure

Criminal proceedings for minors are conducted in specialised courts, guaranteeing the fundamental rights of minors, such as the right not to testify and the right to be assisted by a lawyer.

Reparation of the damage and conciliation with the victim are promoted as alternative ways of resolution.

Liability

Parents or legal guardians are jointly and severally liable for civil liability arising from offences committed by minors.

The civil liability of parents for damages caused by their minor children is regulated in a dual manner in the Spanish legal system.

1. In the criminal sphere: According to Article 61.3 of Organic Law 5/2000, of 12 January, on the Criminal Responsibility of Minors, moderation of liability allowed.
2. In the civil sphere: According to Article 1903 of the Civil Code, no moderation of liability is allowed and both parents are liable, even if they do not live together.

There are significant differences between the two regulations, in particular with regard to the possibility of moderating liability and the application of liability to both parents in criminal matters, irrespective of their cohabitation.

In conclusion, juvenile criminal law in Spain is characterised by its rehabilitative approach, adapting the justice system to the specific needs of young offenders, with the ultimate aim preventing recidivism and facilitating their reintegration into society.

The procedure and the measures applicable to juvenile offenders are formally criminal in nature, but materially punitive-educational. All the guarantees derived from respect for constitutional rights and the special requirements of the interests of minors are expressly recognised. In addition, different stages are differentiated for procedural and sanctioning purposes within the category of offenders.

Thus, juvenile criminal law in Spain is characterised by flexibility in the adoption and execution of the recommended measures, with special attention to the circumstances of the specific case.

6. The protection of minors during the adoption procedure. The fostering of minors

Children in adoption in Spain

Adoption is regulated in the Spanish Civil Code as a child protection measure in Articles 175 to 180.

Once the State approves the status of parent-child relationship in a loyal and perpetual way to couples who fulfil all legal requirements, the adoptee acquires the quality of child of the adopter and, therefore, all the rights of a biological child.

Three different types of adoption can be distinguished:

- Simple adoption -- In simple adoption, the adopted child becomes a legitimate child of the adoptive family, but both his rights and the obligations of the adopters are limited. In other words, the adoptee will not possess the adopter's surnames and will not have the right to inherit from ascendants other than the parents.
- Full adoption -- Full adoption does not differentiate between full adoption and natural filiation. This means that the adopted child or adolescent has the same rights as a natural child. Therefore, they acquire the surname of their adoptive parents and all the requirements and rights of a natural child, including the possibility of receiving inheritance from all their descendants.
- Other options -- Currently there is the possibility of applying for single-parent adoption and also the same-sex couple are able to adopt since 2005.

In adoption, the best interests of the child and respect for his or her rights must be paramount. For this reason, individuals, couples or families wishing to adopt must meet a series of requirements established in article 175 of the Civil Code.

- Be over 25 years of age. In the case of a couple or married couple, it is sufficient for one of them to be 25 years of age.
- The difference in age between the adopter and the adoptee must be a minimum of 17 years and a maximum of 45 years. If the adoptive parents are a couple, it shall be sufficient if at least one of them is not more than 45 years older than the child.
- If the prospective adopters are in a position to adopt sibling groups or children with special needs, the age difference may be more than 45 years.
- As a general rule, only un-emancipated minors may be adopted.

As an exception, an adult or an emancipated minor may be adopted if, just before reaching the age of majority or

emancipation, there has been foster care or stable cohabitation with the prospective adoptive parents for at least one year.

Adoption has a permanent character, because it is governed by the principle of irrevocability laid down in Article 180 of the Civil Code. This is done in order to ensure stability for the adoptee's development and upbringing.

In this way, if there is a change in the determination of filiation, as in the case of a child without parents who is adopted and is subsequently recognized: his or her extra-marital filiation would be determined, but the adoption remains full and effective.

Children in care in Spain

Foster care in Spain is configured as a measure of protection against situations of abandonment, regulated by the Civil Code and developed by complementary legislation such as Organic Law 1/1996. It seeks to safeguard the interests of The child's best interests through integration into an alternative family nucleus, guaranteeing his or her personal and social development.

Foster care can adopt different modalities: simple, of a transitory nature; permanent, for cases in which the return to the biological family is not viable; and pre-adoptive, as a step prior to adoption. Its formalization requires the intervention of the public administration, which acts as guarantor of the measure. The procedure contemplates, among others, the consent of the parents or their judicial substitution in cases of opposition, and always the participation of the Public Prosecutor's Office.

Unlike adoption, foster care does not extinguish legal ties with the biological family, except in pre-adoptive placements that result in adoption. Monitoring by the public entity is mandatory, and decisions must always be oriented towards the emotional and social stability of the child, in accordance with the guiding principles of the child protection system.

7. What happens to children whose parents are in prison?

Parental rights of the imprisoned father

First of all, it is important to clarify that the entry into prison of one of the parents does not automatically mean the loss of parental rights. The rights and duties of parents are fundamental to the well-being of their children and can only be limited or suspended in very serious and exceptional cases, such as abuse or neglect. Therefore, deprivation of liberty does not imply deprivation of parental rights.

However, this situation can have consequences for the way in which parental authority is exercised. Firstly, during his stay in prison, the father will not be able to be present to make important decisions in the life of his children. In this case, it will be necessary to look for alternatives so that decisions are made responsibly and in the best interests of the children.

In this, it is important to remember that parental authority is exercised jointly by both parents, so that in the absence of one parent, the other parent will assume responsibility for making important decisions in the life of the children. In case of disagreement between the parents, it will be necessary to go to a family court judge to decide the best option for the welfare of the children.

The protection of children with parents in prison

In the Spanish legal framework, the protection of children of imprisoned parents is based on a number of essential principles, aimed at safeguarding the best interests of the child and his or her fundamental rights. Five key principles for the protection of children whose parents are in prison are highlighted below:

1. Right to maintain family ties: The law protects the child's right to maintain a relationship with the imprisoned parent, provided that this is compatible with the child's physical and emotional well-being. To this end, visits and communications are facilitated in conditions that minimise the negative impact of the prison environment.

2. Principle of non-discrimination: Minors should not suffer discrimination or stigmatisation arising from the criminal status of their parents. Their social and educational integration is promoted on equal terms, protecting their dignity and personal rights.
3. Right to psychosocial care: The child is guaranteed access to psychosocial support services, in order to provide adequate assistance in coping with the emotional and social impact of parental imprisonment.
4. Right to adequate information: According to his or her level of understanding, the child has the right to receive information about the situation of his or her incarcerated parent. This right seeks to mitigate the anxiety and uncertainty that may be generated by the separation, promoting transparency and respect for the child.
5. Principle of comprehensive protection and support for the family environment: The social and judicial protection system should ensure that the child is provided with a safe and stable environment. Especially in cases where the imprisoned parent is solely responsible for the child, measures should be implemented to ensure the care, stability and development of the child, with the necessary accompaniment by protection and family support institutions.

TURKEY

CHILDREN'S ACCESS TO JUSTICE IN THE TURKISH CRIMINAL LAW SYSTEM

OVERVIEW

In legal systems, which are usually regulated for adults, some problems can lead to more desperate situations for children. Especially in the criminal law system, where the intervention of the state on rights and freedoms can be observed concretely on the individual, even if there are exceptional regulations regarding children, problems arising from the system and some procedural habits of the judicial subjects may lead to disappearance of children within the system. This article is written to shed light on the current problems experienced by children in the Turkish criminal law system.

Definition of the "CHILDREN" in the Turkish Criminal Law System

According to the Turkish Criminal Code, a child defines an individual who has not turn the age of 18. In this system, every individual who has not turn the age of 18 yet, is considered a child and all the exceptional regulations regarding the children are valid for them. Children who are prosecuted with the allegation of the act of a crime, are referred to as ''children driven to crime''.

Within the Turkish criminal justice system, the term of children driven to crime is used to emphasize the idea that

the main purpose is to improve the child, not to punish and the factors affecting children to the act of crime are mostly external factors. This term is used instead of the term ‘’juvenile delinquent’’ because the concept of juvenile delinquency will remove children rather than reintegrate children to the society.

According to the Turkish Criminal Code

- Children who are under the age of 12 at the time of committing the act of crime do not have any criminal liability. Only security measures which are regulated specifically for children can be applied to them.
- Children who are under the age of 15 at the time of committing the act of crime do not have any criminal liability if they cannot perceive the legal meaning and consequences of the act or if their ability to direct their behavior is not sufficiently developed. However, if they have those abilities, a reduced prison sentence is applicable.
- For individuals who are under the age of 18 at the time of committing the act of crime, a reduced prison sentence is applicable.
- No life sentence or aggravated life sentence can be applied for any children who has driven to crime.

SOME REGULATIONS SPECIFICALLY REGULATED FOR CHILDREN AND CURRENT PROBLEMS REGARDING THESE REGULATIONS

ARREST

In order to implement the arresting process, regulations have been made in accordance with the age of the children basis which is mentioned above. In that basis, children under the age of 12 can only be arrested with the intentions of obtaining information to arrest other suspects or taking necessary precautions. It is a clause designed to ensure that children of this age do not have any interact with the law enforcement authorities under no circumstances.

Children who are at the age of 12 to 18 can be arrested. This clause, which regulates that children of this age can be arrested under the same circumstances with adults, may lead to the aggrievement of children within the adult-regulated system.

From the moment of arresting, a defence lawyer is appointed from the relevant bar association to the child. The child's consent or request is not required in this regard. When the child is arrested, his/her family, relatives or the person responsible for the child is informed about the reasons for this arrest and where the child is being held. Until a relative of this child arrives, the detention process cannot be continued. However the relatives who are suspected of inciting the child to commit a crime or abusing the child should not be informed.

During the investigation, the only action the law enforcement authorities can take on children driven to crime is the arresting process, they are not authorised to take any action other than that. After informing the defence lawyer and the relatives, the child should be immediately directed to the office of the chief public prosecutor. The investigation regarding the children should be carried out by the prosecutors. Thus, it could be said that it is a system that aims to minimise the communication and interaction of the child with the law enforcement authorities. However, in practice, we see that the prosecutors refuse to carry out all the investigations regarding the children driven to crime for various reasons, and they leave other procedures to the law enforcement authorities, such as interrogating the children.

CUSTODY

Considering the difference between children driven to crime and adults in terms of custody procedures, it is seen that there are no exceptional regulations. The fact that they are subject to the same maximum detention periods as adults, especially in terms of duration, reveals that children are unfortunately ignored within the system.

Since children under the age of 12 cannot be arrested, custody cannot be applied to them either.

As the investigation procedures regarding children are carried out by the prosecutor himself, the arrested child will be immediately directed to the prosecutor's office. Until then, the child will be held in the unit which is

specifically arranged for the children. Although it is stated in the provisions of the relevant legislation that the places where children are held must be separate from adults, it is observed that this rule is occasionally violated due to the carelessness of the officers, insufficient resources and impossibilities of the unit. Indeed, keeping the child in the same place with adults comes to the fore with the excuses such as the fact that the place reserved for custody is not very large. However, this situation completely contradicts the purpose of the regulation and the benefit of the child.

DETENTION

Detention is not applicable for children under the age of 12. For children under the age of 15, detention will not be applied if an investigation is being carried out for a crime which has an upper limit of 5 years of prison. There is no exceptional regulation for other children under the age of 18, and the detention provisions for adults will also be applied to children of this age. However, this situation is against the principle of restricting people from their freedom is the last resort, especially for children. As a matter of fact, the aim of this principle is to ensure the continuation of education for the children under the age of 18, to protect them from the negative effects of the prison and to prevent the deterioration of their communication with the society.

In terms of the maximum duration of detention, children under the age of 15 will be applied half the time stipulated for adults, and three-quarters to children under the age of 18. However, the lack of a regulation in the same direction regarding maximum custody periods is rightly criticised. Protection measures, which are a practice that violates the right to personal freedom and security, should be developed considering the characteristics of children.

If the sentence stated for the crime requires a prison time of less than 1 year, allegedly committed by a child who is under the age of 18, detention will not be issued for this child.

It has been regulated that the children taken to the detention centre will not be allowed to contact with adults, except for the cases listed in the law. Unfortunately, in places where there is no detention centre for children, it is not possible to prevent children from contracting with adults, and this causes them to be abused, to acquire bad habits and to learn new ways of committing crimes. As long as detention centres and prisons specifically designed for children are not established, even if they are, their conditions are not improved; these institutions

continue to have the opposite effect instead of improving children. While applying for detention measures for them, it is necessary to think about the conditions of these institutions and the bad habits that children will acquire.

JUDICIAL CONTROL

Judicial control is used as a middle way between completely restricting the freedom and the complete release of the suspect, which is brought as an alternative to detention by law. In cases where it is not possible to detention children, judicial control decision may be made.

Detention may be applied for suspects who do not voluntarily fulfil the provisions of judicial control. However, in this case, priority should be given to the regulation that no detention can be applied for children who are not the age of 15 due to a crime which upper limit does not exceed 5 years. This is the way that complies with the principle of the best interests of the child.

The maximum periods regulated by law regarding the implementation of judicial control are applied at half rate for children.

PROTECTIVE AND SUPPORTIVE MEASURES

With the Code of Child Protection, some measures to be taken in the fields of counselling, education, care, health and shelter are included in order to ensure that the child is protected primarily in his own family environment. These measures are implemented only when it is determined that the child driven to crime needs protection while the trial is still ongoing. These measures are not considered as a sanction. However, it was left to the discretion of the judge to hold a hearing in the court and the child was not obliged to be heard. Although a non-sanction decision is made here, the child's statements and opinions regarding the decision to be taken as an individual should be taken.

INTERROGATION

In accordance with the principle of the best interests of the child, judicial meeting rooms have been established

with the aim of operating child-friendly procedures, interviewing children who involved in the judicial process in an appropriate environment and methods, determining their protection needs and directing them to the necessary services. Currently, as of June 2021, there are 105 judicial meeting rooms in 100 courthouses in 78 cities. However, only 293 of the 32,111 interviews held in judicial interview rooms since April 2017 were with children driven to crime. The use of judicial interview rooms for children driven to crime being low shows that these rooms are not used in the process of interrogating children.

Children under the age of 12 cannot be interrogated due to the alleged crime; only identification of the suspect can be made. The prosecutor will personally carry out the interrogation of the children driven to crime, the law enforcement authorities will not be able to do it. The child who is arrested by the law enforcement officers, is immediately directed to the prosecutor's office after notifying his relatives and requesting a lawyer from the bar association. It is not necessary to obtain the opinion or consent of the child for the presence of a lawyer during the interrogation. Parents or guardians may be present in the interrogation process, unless it is found to be contrary to child’s best interests or there is no legal obstacle.

Although the system of appointing mandatory lawyers for children driven to crime in the judicial process is a very positive method, it is observed that children cannot benefit from adequate legal assistance in the judicial process due to the lack of adequate training of these lawyers. Despite the fact that it is against the legislation, problems such as interrogating the children by the law enforcement authorities upon the order of the prosecutor have not been overcome. While the duty falls to the defence lawyers in such cases, we see that in most cases the defendants remain silent or do not oppose due to lack of knowledge.

JUVENILE COURTS

Juvenile courts are not just trying children driven to crime, they are also try to identify the reasons that push children to commit crime and take the necessary measures for their recovery in the next process. It is organised as juvenile courts and juvenile high criminal courts, making a distinction according to the type of crime which is prosecuted.

As of 2021, there are a total of 101 juvenile courts in Turkey, 85 of which are juvenile courts and 16 of which are juvenile high criminal courts. Unfortunately, juvenile courts have not yet been established in every jurisdiction.

For this reason, in jurisdictions where there are no juvenile courts, the competent courts for the trial of children driven to crime are criminal courts which are also authorised to try adults.

Considering the scarcity of specialised courts, many children have limited access to specialised judicial subjects and judicial units. Especially since there are no juvenile courts in many provinces in the countryside, the facilities provided by these courts cannot reach all children. In such cases, when it is necessary to combine the cases regarding children with adults and when it is considered that this combination is made in the general courts, it is understood that the children are often tried in the general criminal courts.

According to the latest judicial statistics published, 50.1% of the cases brought against children driven to crime are heard in criminal courts with general jurisdiction. This situation results in moving away from courts and subjects who are experts on measures specifically for children and all arrangements made in line with the protection of the best interests of the child. In addition, it causes children to be subject to judicial processes that are completely contrary to their age and mood.