



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Romania

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

Romania has created a specific legal framework for children involved in the criminal justice system (whether offenders or victims) that is more permissive than the adult system and adapted to children's needs. The framework falls under the Romanian Criminal Proceedings Code that governs the activity of all judicial authorities involved in criminal procedures, including in pre- and post- trial stages. At the same time, special laws regarding the rights of the child provide for specific measures for young children who have committed criminal acts (but are not, according to the Romanian law, criminally liable), as well as in cases when, even if criminally liable, they receive specific criminal sanctions. Lastly, there are particular rules regarding probation services which are responsible both for the supervision of offenders and the supervision of children, including victims.

The regime of criminal liability is differentiated under Romanian legislation, based on age, between: children under 14 (not criminally liable), children from 14-16 years old (criminally liable only under certain conditions) and children above 16 (criminally liable). Similarly, sanctions are differentiated for the last two categories.

Overview of children's involvement before, during and after judicial proceedings

The involvement of children in the pre-trial stage, as suspect, witness or victim, is regulated by special procedures, provided under the Criminal Proceedings Code. The hearing of children as victims, witnesses or suspects, should be always performed in the presence of one of the parents or guardian, or in the presence of the legal counsel. For young children, a psychologist may be present; however, this practice is very rare. During criminal proceedings, the child suspect/offender must be assisted by a legal counsel, in the absence of whom the criminal proceedings cannot continue. Romanian law also provides for specialised panels and courts (including specialised judges) in cases involving either child defendants or child victims. Such trials are held separately from those of adult offenders and may be closed to the public. After the trial, depending on the age of the offender and her/his applicable legal status, the child can be sentenced to a punishment, or protection or educative measures. With the entry into force of the new Criminal Proceedings Code, no punishments will be applied to children, but protection or educational measures can be ordered.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

Since 2000, serious efforts have been made to promote a child-friendly approach to criminal justice, and for that purpose, important changes to the Romanian Criminal Code and Criminal Proceedings Code have been made, together with the adoption of important laws concerning children's rights. The legal provisions included in the criminal legislation mainly aim to tailor the criminal procedure to the specific needs of children, as they considered as a more vulnerable category of persons. Currently, there are multiple authorities specialised in dealing with children involved in criminal proceedings. The general directorates of social assistance and the protection of the child take care of children below 14 years of age, even if they have committed criminal acts, while the probation services take care of children as offenders, with respect to the execution of educational measures. This contrasts with children sentenced to punishment, where the general directorate of prison facilities within the Ministry of Justice is the responsible authority.

In terms of gaps, a key area of concern identified by stakeholder is the lack of paediatric psychologists and specialised police officers involved in criminal proceedings.



Abbreviations

CA	Competent Authority
CoE	Council of Europe
EC	European Commission
EU	European Union
NGO	Non-Governmental Organisation
UNICEF	United Nations Children's Fund

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

The protection of children is a fundamental human right and an obligation undertaken by the State as reflected at the constitutional level by the provisions of Article 49 par. 1 of the Romanian Constitution. This provides that children enjoy a special regime of protection and assistance for the fulfilment of their rights. There is no definition of the term child. However, it can be deduced from the child-related legislation in Romania that a child is a person below the age of 18 years.

Since 2000, the Romanian government has made justice for children one of its priorities in the criminal field, reflecting the European and international approach of a more child-friendly justice system adapted to the needs of children, with a special focus on the child offender. To this end, a wide range of legislation has been adopted, including the general law regarding the rights of the child¹ followed in 2004 with the adoption of a package of measures on child protection.

Youth Justice System – Child suspects, defendants and offenders

An extensive reform of sanctions or other measures applicable in the case of child offenders has been adopted. According to Romanian criminal law legislation, a child under 14 years cannot be held criminally liable, from 14 to 16 years the child may be held criminally liable if it is proven that she/he acted with discernment (i.e. the child had reached a level of physical and mental development that would enable him or her to understand the consequences of his or her action). Above 16 years, the child can be held criminally liable without this test.

The system of sanctions must, in all cases, be adapted to the particular circumstance of each child. As a result, a special sanctioning scheme for children is established under the Criminal Code which provides for a mixture of educational measures and sanctions.

Authorities

The Public Ministry has specific responsibilities for the protection of children. In juvenile justice, the Prosecutor initiates and coordinates criminal investigations in cases of alleged abuses against children, or applies the specific rules of the Romanian Criminal Proceedings Code in criminal investigations involving a child suspect, victim or witness. At the trial stage, the Prosecutor must be present if the case concerns a child.

The Department for the Protection of the Child² has, as one of its main responsibilities, the supervision of respect of children's rights in Romania³. For such purposes, the Department issued the "National Strategy in the field of protection and promotion of child's rights 2008-2013". According to the National Strategy, among the main priorities of the Department for the Protection of the Child are:

- Abused, neglected and exploited children irrespective of whether it is inflicted by parents, family, guardians or persons exercising a certain influence, power and control over the child. This category includes children who have been trafficked, sexually exploited for commercial purposes, obliged to work, exposed to illegal migration, and unattended children on the national territory.
- The child as an offender or delinquent children more generally.

¹ Law no. 272/2004 regarding the rights of the child, continuing with the inclusion of new provisions in the Romanian Criminal Proceedings Code and the adoption of specialised legislation such as the Government Ordinance no. 92/2000 regarding the probation offices, Law no. 217/2003 regarding the prevention and fight against the domestic violence, or the Law no. 211/2004 regarding the protection of victims of crimes.

² The [Directorate General for Child Protection](#).

³ Law no. 272/2004 regarding the rights of the child, and Government Decision no. 1385/2009.

Local authorities have specific responsibilities in dealing with vulnerable categories of persons, including families at risk and children. Their role is to provide social assistance and child protection through, for example:

- Preventing separation of the child from her/his family;
- Counselling families regarding their legal rights and obligations towards children, as well as with regard to the services available at local level;
- Taking measures to prevent and fight against the use of alcohol and drugs, domestic violence, delinquency;
- Following the development of the child, the way in which parents fulfil their duties with regard to a child who was the subject of a special protection measure and has subsequently been reintegrated into her/his family.

The judiciary has a special role in relation to children involved in criminal proceedings. The Romanian Criminal Proceedings Code includes specific provisions on children as perpetrators and special courts are to be established for cases involving child victims or defendants⁴. At the moment only one Juvenile and Family Court has been established and is functioning in Brasov City⁵. For children cases outside of the Brasov Juvenile and Family Court's jurisdiction, the case will be heard by the criminal sections of each court of law. In practice, within each criminal section, there are some panels of judges which are competent to deal with criminal matters involving children. In larger courts where there is more than one criminal section, one of the sections may be specialised in handling criminal cases involving children. In that event, all criminal cases involving children would go to that section. Thus despite the legislation, the organisation of such sections / panels varies in each court of law. A reform of the judiciary is envisaged, but to date the system has not changed.

Within the courts, probation offices supervise the enforcement of sanctions and other measures taken by the courts. In relation to children involved in judicial proceedings, the probation offices:

- Supervise the execution of the obligations imposed on children by the courts;
- Cooperate with the public institutions in order to ensure the child performs non-remunerated activities imposed on him/her;
- Initiate measures and programmes for children who have committed crimes;
- Perform, upon request, group or individual counselling of offenders concerning their social behaviour;
- Initiate and perform, upon request, special programmes for the protection, social and legal assistance of children who have committed crimes;
- In case of victims of crime, ensure psychological counselling and provide support for granting financial compensation.

Child victims and child protection systems

Measures adopted with respect to child victims are less developed than in the case of child offenders. General provisions regarding the rights of the child do apply, however, to child victims⁶. Specific measures focused on children have been included in the law concerning the protection of victims of crimes no. 211/2004. Each court of law provides victim protection services and social reintegration services for offenders. NGOs may also initiate parallel programmes of psychological counselling and assistance, and benefit from State funding to run such services.

⁴ Law no. 304/2004 regarding the judicial organization, Article 40.

⁵ The [Juvenile and Family Court of Brasov City](#) (*Tribunalul pentru Minori și Familie Braşov*).

⁶ Law no. 272/2004 regarding the rights of the child

Principle of evolving capacities

The principle of evolving capacities of the child is not explicitly mentioned in Criminal legislation and in any case there are only a limited number of legal provisions relevant for its practical application (e.g. psychological assistance of the child during the criminal proceedings). During criminal proceedings, the child must be heard by the authorities, irrespective of his/her age, in the presence of a specialist trained to assess the degree of maturity of the child. According to the law regarding the rights of the child, any child from the age of 10 must be heard, while the child below the age of 10 is heard only if the competent authority (including judicial authorities) estimates that the deposition of the child is necessary to solve the case.

Non-discrimination

The principle of non-discrimination is established under general legislation in the field⁷ with no special focus on children involved in criminal proceedings. The law regarding the rights of the child provides that children must not be discriminated against for any reason whatsoever. Government Ordinance no. 137/2000 created a specialised authority in the field of discrimination – the National Council for Combating Discrimination. This body has not only administrative functions, but also a jurisdictional oversight of the infringement of the non-discrimination principle, including in the case of children. The National Council for Combating Discrimination may be informed about a discrimination case by any natural or legal person, or *ex officio*. It has the power to investigate the alleged cases of discrimination, hear the parties involved and issue a decision on the case which can be appealed before the administrative courts ("*contentieux administratif*"). If not appealed, the decisions of CNCD are enforceable.

Besides the special powers of the National Council for Combating Discrimination, a case of discrimination can be submitted before a court of law.

Multi-disciplinary approach

Inter-institutional cooperation exists principally between criminal investigators/ prosecutors and the judiciary, on the one side, and the specialised departments for the protection of the children on the other. This cooperation consists mainly of drafting reports regarding the status of children accused of crimes. Such reports are compulsory during the criminal proceedings.

Training

To date, while there are punctual training programmes for police officers, prosecutors and judges, specifically relating to children in criminal proceedings, a systematic, institutionalised and coordinated approach on the issue was not identified.

Vetting

Even though there are some specific training programmes on issues concerning children involved in criminal proceedings, neither the national legislation nor subsequent regulations provide for vetting to ensure the suitability of professionals working with children.

⁷ Government Ordinance no. 137/2000

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

Under Romanian Criminal law, the child has always been considered a “vulnerable person” and deserving special protection and treatment whether as victim or perpetrator, or as a person who is left without protection when the parents/legal guardians are victims or perpetrators. Recently, the criminal law has been substantially reviewed in Romania to provide for increased prison terms when an offender commits a violent offence against a family member⁸. In addition, sex offences against children have more severe punishments and generally all specific legislation in criminal matters make special references in cases where the victim was a child, for example in the case of human trafficking, child pornography, child exploitation, cybercrimes, etc.

2.1.1 Reporting a crime

There are no specific provisions on a child’s ability to report a crime.

According to the provisions of the Romanian Criminal Proceedings Code, a crime can be reported either by a complaint made by the victim of a crime, or by a person who has information about the commission of a crime. Also, the office of the Prosecutor may investigate a crime *ex officio*, if he/she finds out about the commission of a crime. In addition, the prosecution of some crimes (e.g. threat, harassment), can only be started following a preliminary complaint by the victim or, in the case of children, by their legal representatives.

In general, a child could report a crime to the police by calling the national emergency number (112) or by going to the police station in person, but a parent or guardian could also do this on behalf of the child. Once a crime is reported, the police are legally obliged to verify their competence to act and to subsequently start an investigation.

The Association ‘Child’s Telephone’ is a non-governmental organisation, established in 2006, whose purpose is to protect children from any form of abuse against their rights. To this end, it has established a dedicated phone number for child victims of crime.

As a measure of protection, children under the age of 18 years do not have a legal obligation to inform the competent authorities about the commission of a crime⁹.

Any act of violence against children is prohibited and any person who gains knowledge of such an act must immediately inform the competent authorities¹⁰. Public officers have a specific legal obligation to inform at once the general department for social assistance and protection of the child if they learn of the commission of a crime where a child is victim¹¹. In the case of child abuse, the parents of the victim or, as the case may be, her/his legal guardian, or the authorities must take all measures in order to provide the necessary psychological support and to facilitate the social reintegration of the child (see below, [Section 2.1.3.](#)).

2.1.2 Provision of information

Judges (in case of crimes that have to be reported directly to the courts), prosecutors, officers and police agents have the obligation to inform the victim of a crime, adult or child, about¹²:

- The services and the organisations that provide psychological counselling or any other forms of assistance for victims, in accordance with her/his needs;

⁸ Law no. 197/2000.

⁹ Law no. 211/2004 regarding the protection of the victims of a crime.

¹⁰ Law no. 272/2004 regarding the rights of the child.

¹¹ Law no. 272/2004 regarding the rights of the child, Article 85.

¹² Law no. 211/2004 regarding the protection of the victims of a crime.

- The authority competent to carry out the criminal investigation and where they can file the complaint;
- Their right to legal assistance and the institution where they can lodge a request for such assistance and in case of compulsory legal assistance, about the right to have appointed a legal counsel *ex officio*;
- The conditions and the procedures necessary to obtain legal assistance free of charge;
- The rights of the victim within criminal proceedings, including the trial stage;
- The conditions and the procedure necessary to acquire the status of protected witness;
- The conditions and the procedure necessary to obtain financial compensation from the State.

The new Criminal Proceedings Code requires judicial authorities or the court to also inform the victim about the following rights and obligations:

- the right to use a mediator, in the cases provided for by the law;
- the right to submit evidence, to raise objections and to make final statements;
- the right to be informed about the procedures, the right to lodge a complaint, and the right to become a civil party;
- the obligation to be present when required by the judicial authorities;
- the obligation to inform the authorities about all changes of address;
- the obligation to tell the truth.

This information has to be provided in writing or orally, in a language that the victim understands, by the authority (judge, prosecutor, police officer) in front of whom the victim appears in order to submit their complaint about the commission of the crime. The fulfilment of this obligation must be immediate and must be registered in the official record of the respective institution. The information must also be published on the web pages of the Ministry of Justice and the Ministry of Administration and Internal Affairs. The courts, the prosecutors' offices and the police units may also publish such information. However, in the case of children, there is no explicit legal provision that such information must be given in a child friendly manner. The parents or guardians have the right to assist the child when she/he is informed about her/his rights.

Crime victims, including children, have the right to be constantly informed during all proceedings in their case¹³. The assistance offered by an attorney is mandatory if the victim is a child¹⁴. The primary role of the attorney is to ensure clients are promptly and completely informed with regard to all data on file, all proceedings undertaken, and have a clear and precise view of all their rights and case status.

2.1.3 Protection from harm and protection of private and family life

There are several measures established under Romanian legislation to protect child victims from harm or to protect their private and family life:

Psychological assistance

With respect to violent crimes (e.g. murder, sexual crimes, maltreatment of children, human trafficking), services must grant free of charge psychological counselling for the protection of victims and for the social reintegration of offenders¹⁵. In the case of child victims, psychological counselling must be offered, free of charge, for a maximum 6 months. As mentioned in [Section 1](#), services for the protection of victims and for the social reintegration

¹³ Article 81 of the Criminal Code.

¹⁴ Article 93(4) of the Criminal Code.

¹⁵ Law no. 211/2004 regarding the protection of the victims of a crime.

of offenders are provided by each court of law. However NGOs can also play a role in this field.

The new Criminal Proceedings Code provides more detailed regulations regarding the possibility to protect the identity of the victim and to testify via video. These are general provisions applicable to all victims, not only to children. In addition, as mentioned below, criminal proceedings (including the hearing in court) involving children are not public.

Protection from domestic violence

Victims of domestic violence, including children, can be received, free of charge, in shelters¹⁶. The location of such shelters is kept secret and such shelters also provide medical care and psychiatric assistance. Victims of domestic violence can also be hosted in residential social assistance units that ensure legal and psychological assistance to help victims of domestic violence re-adapt to an active social life.

Protection of the child's image and dignity

Regarding the protection of child victims in audio-visual presentations, the Romanian National Audio-visual Council has set out specific regulations¹⁷ which vary according to the child's age and type of crime.

Thus, the identity of a child younger than 14 years of age who was a victim of sexual abuse must be protected under all circumstances. If, however, the child was a victim of other types of crimes, including physical or emotional abuse, images or declarations may be publicly shown but only with the consent of the child and their parents or legal guardian.

A child victim aged from 14 to 15 years can be a part of news programmes, debate shows or interviews with the written consent of the child, their parents or legal guardian. The child may be assisted during the programme or interview by a parent, legal guardian or attorney.

A child victim of 16 years or older must give their express consent in order to appear in a news programme or to be interviewed. The child or their parents or legal guardian may request their identity be protected.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

In order to prevent secondary victimisation, the criminal legislation provides for psychological assistance. However, the assistance is not immediately guaranteed – in principle, the service is provided only once an application has been lodged with the probation service. Also, there are no legal provisions providing for compulsory measures to be taken in order to prepare the child to attend criminal proceedings.

Psychological assistance is free of charge in the case of violent crimes (attempt of murder, acts of physical and psychological violence, sexual crimes). Where the victim is below the age of 18, free psychological assistance must be granted for a maximum period of 6 months. NGOs are also encouraged to provide psychological assistance or other forms of assistance to victims of crimes (including children), for which they may receive State subsidies. However, there is no centralised register of such NGOs and their activities. There are no legal provisions or effective actions to ensure that proceedings involving children are commenced or pursued without undue delay.

In addition to the above, a range of protection measures are available during the interview and testimony of the child. These are detailed in [Section 2.1.5](#) below. Moreover, at the first hearing, the victim must be informed of their right to be told of the release of an offender who was previously deprived of her/his liberty.

With regard to mediation in criminal proceedings, legislation permits its use only in minor cases, where the criminal proceedings start only based on the complaint of the victim.

¹⁶ Law no. 217/2003 regarding the prevention and the fight against the domestic violence.

¹⁷ Romanian National Audiovisual Council Decision no. 220/2011 regarding the Code of audiovisual content regulations.

Subject to this limitation, mediation can represent an alternative to judicial proceedings also in cases involving children. The only condition provided by Law no. 192/2006 regarding mediation, is that the guarantees granted to children in criminal legislation must be observed during the mediation procedure as well.

2.1.5 Protecting the child during interviews and when giving testimony

In 2009, under the auspices of a private association, the National Institute of Magistrates, with the help of UNICEF, published the book “Guide for interviewing children in judicial proceedings”¹⁸. This includes information on the psychological aspects of interviewing children involved in judicial proceedings (both civil and criminal), with a special focus on the case of child-victims. It provides a detailed description of each stage in of the interview process¹⁹. However, this document is not binding on judicial authorities.

Child victims are assisted during proceedings by family members and also by psychologists when giving statements. The child’s statements must be signed by a psychologist. The child may also be assisted by a lawyer (see [section 2.1.7](#)).

As soon as the social assistance directorates gain knowledge of a child’s situation, they react rapidly by drafting an individual protection plan, providing psychological assistance, supervising the child, and monitoring them after giving statements to the judicial authorities. In appropriate cases, children are taken out of a potentially dangerous environment where they live²⁰.

Besides the right to be assisted by a psychologist, child victims also enjoy a number of other protective rights, such as:

- the right to have their identity protected (by means of non-disclosure of their identity and by changing their place of residence);
- to be interviewed remotely (by video or audio means);
- not to be questioned in a public hearing etc.

Vulnerable victims, including children, enjoy special rights²¹ both under legislation on the protection of victims of a crime and where appropriate under the Criminal Proceedings Code with respect to the protection of witnesses. However, in relation to witnesses, the presence of a lawyer is not mandatory.

2.1.6 Right to be heard and to participate in criminal proceedings

As in the case of adult victims, child victims of a crime have the right to be heard during criminal proceedings, both during the criminal investigation and during the trial. The child victim can be part of the proceedings as a civil party (*parti civile*), with the explicit consent of the parents or the legal representative of the child. If the victim chooses not to become a civil party, her/his statement must be considered only as a deposition of a witness. However, the victim cannot be obliged to make a deposition, nor can the judge require an unwilling victim to make a statement. If the victim chooses to make a statement and to get involved in the proceedings, than the judge must hear her/him.

Victims have a number of rights including:

- the right to submit evidence, to raise objections and to make final statements;
- the right to be informed of relevant procedures;

¹⁸ Coordinators: Pivniceru M.-M., Luca C., co-authors: Luca S., Haralambe S., Susanu C.-A., Horodniceanu D.-C., “Ghid de audiere a copilului în proceduri judiciare” (“Guide for interviewing the children in judicial proceedings”), Hamangiu Editions 2009. Nevertheless, the Guide has no binding legal force, therefore it is not compulsory for the judiciary. There is no information available regarding its circulation among judicial authorities.

¹⁹ Information obtained through consultation with stakeholders (NGO).

²⁰ Information obtained through consultation with stakeholders (judicial authorities).

²¹ Law n. 211/2004 regarding the protection of victims of a crime.

- the right to lodge a complaint; and
- the right to become a civil party.

In addition, victims must attend hearings when required by the judicial authorities and must tell the truth²².

During the criminal investigation, the victim's hearing or interview can be audio-visually recorded when the judicial authorities consider it necessary or when the victim explicitly requests it and such a recording is possible. Audio-visual recordings are admissible as evidence in court if they have been approved by the judge. Audio-visual recordings which are made by the judicial authorities during the criminal investigation in order to have a deposition are automatically admissible as evidence.

2.1.7 Right to legal counsel, legal assistance and representation

Crime victims, including children, have the right to legal counsel, legal assistance and representation²³. Free legal assistance is granted, upon request, to victims (adults or children) of the following categories of crimes: attempted murder, crimes of violence, sexual crimes, as well as against the children of the victim of such crimes (if the victim was deceased and had children). Free legal assistance is only granted if the authorities have been informed about the crime within 60 days from its commission or from the acknowledgment of such a crime.

In the case of other crimes, free legal assistance can be provided to child victims following an application submitted by the parents / guardian or carer of the child. Two judges, who are members of the commission for granting financial compensation to victims of crimes, assess the request within 15 days and will take into account the economic situation of the child's parents / guardian or carer.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

A victim of a crime (child or adult) can become a party to the criminal proceedings (civil party), and submit a claim for compensation within the procedural framework of the criminal trial. Where children are victims, civil proceedings may be initiated *ex officio*, by the prosecutor²⁴.

A system of financial compensation covers certain categories of damages resulting from a violent crime²⁵:

- expenses related to the medical care;
- material damages resulting from destruction of the victim's assets;
- funeral expenses;
- lack of financial support due to the crime.

The maximum financial compensation, including that awarded to the victim as a civil party to the criminal proceedings, is ten times the gross minimum salary for the year at the time the victim lodged the request for legal assistance. Such compensation is paid through the budget of the Ministry of Justice.

In the case of children, the application for the financial compensation must be lodged by the legal representative of the child.

Both the current and the future Criminal Proceedings Code provide for the possibility of any interested party in a criminal trial (including the victim) to complain about any act performed during the criminal investigation by criminal investigators (officers within police units) or

²² The New Criminal Code.

²³ Law no. 211/2004 regarding the protection of the victims of a crime.

²⁴ Article 17 of the Criminal Proceedings Code.

²⁵ Law no. 211/2004 regarding the protection of the victims of a crime, transposing Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

prosecutors. The application can be lodged with the prosecutor or chief prosecutor, as appropriate; in case of a negative answer, the complaint may be appealed to the court. The application can also relate to the decision of the prosecutor not to start the criminal trial against the alleged offender. If the court considers the appeal grounded, it can either annul the decision and send the case back to the prosecutor in order to start the prosecution, resume the criminal investigation, or retain the case in order to judge it and issue the sentence.

2.2 The child as a witness

In general, the provisions applicable to victims of crime are also applicable to witnesses. The legal situation of witnesses (including child witnesses) is mostly regulated by the Romanian Criminal Proceedings Code, which has due regard to the age of the witness and the specificities of the psychological development of children. However, some aspects relating to the position of the child as a witness are not regulated in detail (such as ensuring a child friendly environment, protection from harm and private/family life), even if advances have been made to include child specific legislative provisions.

2.2.1 Reporting a crime

The same rules apply as detailed in [Section 2.1.1](#) above.

2.2.2 Provision of information

Before testifying, a witness must be informed about key aspects of the case and reminded of the information he/she has already provided. She/ he is requested to tell everything she/he knows about such case/circumstances²⁶. A child witness must also be informed about these facts, but in a specific language, adjusted to her/his level of understanding.

The witness must also be informed about:

- the right to benefit from protection measures and to reimbursement of expenses for her/his participation in the proceedings, when provided by law;
- the obligation to appear before the judicial authorities;
- the obligation to inform relevant authorities about any change of her/his address;
- the obligation to provide true information, under penalty of the criminal law for false statements.

A child witness under the age of 14 years is also allowed to testify, but he/she is not informed about the criminal consequences of false statements, being only asked to tell the truth.

2.2.3 Protection from harm and protection of private and family life

See [section 2.1.3](#) above.

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

See [section 2.1.5](#) above.

2.2.5 Protecting the child during interviews and when giving testimony

The Romanian Criminal Proceedings Code provides for special rules regarding the hearing of children as witnesses in criminal cases. Firstly, the hearing must not prejudice the psychological health of the child. In addition, until the age of 14, the hearing of the child must be performed in the presence of one of his/her parents or of the tutor or of the carer to whom the child is assigned for upbringing and education, or if necessary a representative of the child protection agency, or another relative, as determined by the judicial authority. In cases

²⁶ Article 86 of the Criminal Proceedings Code.

of investigations relating to violent crimes, the judge may order that a witness under 16 years not be heard in court. The interview or testimony may be audio-visually recorded prior to the hearing in court, with the recording being heard in the court²⁷.

According to stakeholders, sometimes the presence of a family member or carer may influence the child's testimony and result in the child withholding information. If necessary and upon request or *ex officio*, the judge or the investigating authority may require the presence of a psychologist at the hearing of the child witness.

The prosecutor or the judge may grant a child the status of "vulnerable witness", for which a range of protection measures are available including²⁸:

- guarding and ensuring the protection of the witness and her/his family members;
- hearing the witness by audio-visual means, with a distorted voice and image, when other protective measures are not enough;
- guarding and ensuring the protection of the witness and her/his family members during travel to/from the court or the investigating authorities;
- secret hearings in front of the court for the hearing/testimony of the witness;
- protecting the identification data of the witness and granting a nickname under which she/he testifies.

2.2.6 Right to be heard and to participate in criminal proceedings

Children have the right to be heard in all administrative or judicial proceedings which concern them, including during criminal proceedings²⁹. It is mandatory to listen to the opinion of a child from the age of 10 years, while a child younger than 10 years old may be heard, if the competent authority considers it necessary to solve the case. The right to be heard includes the possibility of the child to request and receive any pertinent information, to be consulted, to express her/his opinion and to be informed of any possible consequences her/his opinion. The child should also be informed of the consequences of any decision relating to her/him³⁰.

Unlike other witnesses, a child under the age of 14 years does not swear an oath, but is instead asked to tell the truth. For witnesses from the age of 14 years, the oath is compulsory, but its content depends on whether the witness is religious or not.

The Romanian Criminal Proceedings Code also provides for the institution of "assistant-witnesses", where the performance of a procedural act requires the presence of a third "neutral" person not belonging to the judicial authorities and not a representative of the offender. As a measure of protection, children under 14 years of age cannot be "assistant-witnesses"³¹.

2.2.7 Right to legal counsel, legal assistance and representation

Nothing prevents a witness being assisted by a legal counsel; however, there is no compulsory provision in this respect, not even for children.

2.2.8 Remedies or compensation for violation of rights and failure to act

See [Section 2.1.8](#). The child witness has no right to remedies or compensation for violation of rights or failure to act.

²⁷ Article 86 of the Criminal Proceedings Code.

²⁸ Article 130 of the Criminal Proceedings Code.

²⁹ Article 24(2) of Law no. 272/2004 regarding the rights of the child.

³⁰ Article 24(3) of Law no. 272/2004 regarding the rights of the child.

³¹ Article 92 of the Criminal Proceedings Code.

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

Children under the age of 14 years cannot be held criminally responsible³². When children younger than 14 years of age commit 'crimes', only protective measures are applicable (see below in Section [2.3.6](#)). Children aged 14 to 15 years may be held criminally liable only if it is proven that they committed the act with discernment i.e. with knowledge of the consequences of their actions. From 16 years of age, a child may be held criminally responsible in the same manner as adults. However, the sentencing system is different; the sentences being lower than those imposed on adults (see [Section 3.1.2](#)).

As mentioned in [Section 1](#), according to the Criminal Code, children as perpetrators are dealt with by specialised courts³³. However, there is currently only one Juvenile and Family Court which operates in Brasov City³⁴. For children cases outside of this court's jurisdiction, the case will be heard either by a criminal section of the court specialised in children cases or by a specialised panel of judges within the criminal section of the court. In any case, the organisation of such sections / panels varies from one court of law to another. A reform of the judiciary is envisaged but has not been changed to date.

2.3.2 Provision of information

See section [2.3.9](#) below.

2.3.3 Immediate actions following first contact with police or other relevant authority

At any hearing of a child under 16 years of age, the investigating authority may summon the probation service, as well as the parents or the tutor or the carer for the child, if it considers it necessary³⁵. These persons must be present when the investigating materials are presented to the child. In addition, with respect to the investigation of child suspects, the prosecutor may ask the probation service to draft an evaluation of the child which must be ordered by the responsible judge.

2.3.4 Conditions for pre-trial detention/ custody

The Romanian Criminal Proceedings Code contains special provisions regarding pre-trial detention and custody of a child and distinguishes between children aged 14 to 16 years and children over 16 years.

A child between the age of 14 and 16 years can be detained during the pre-trial phase only if crime is subject to a punishment of imprisonment of more than 10 years, and only if the authorities consider that another preventive measure is not sufficient.

During the criminal investigation, in principle the duration of the pre-trial detention of a child between the age of 14 and 16 years cannot exceed 15 days. The extension of such a measure during the criminal investigation or the maintenance of the measure during trial can be ordered only in exceptional cases. The total term of the pre-trial detention of child during criminal investigation cannot exceed a reasonable term and in any case cannot be longer than 60 days. Exceptionally, when the punishment provided by the law for the crime is life imprisonment or imprisonment of 20 years or more, the period of pre-trial detention can be extended up to 180 days. The judge must periodically verify the legality of the measure and at most no later than 30 days after the commencement of the detention.

For children over 16 years, the duration of the pre-trial detention can be for a maximum of 20 days in the first instance. This measure can be extended during the criminal investigation, in increments of 20 days. The total term of the pre-trial detention of a child during the criminal

³² Article 99 of the Criminal Code (Article 113 of the new Criminal Code, in force from 1 February 2014).

³³ Article 40 of Law no. 304/2004 regarding the judicial organization.

³⁴ The [Juvenile and Family Court of Brasov City](#) (*Tribunalul pentru Minori și Familie Braşov*).

³⁵ Article 481 of the Criminal Proceedings Code.

investigation cannot exceed a reasonable term and in any case cannot be longer than 90 days. Exceptionally, when the punishment provided by the law is life imprisonment or imprisonment for 10 years or longer, the pre-trial detention of the child during the criminal investigation can be extended up to 180 days. During the trial, the judge must periodically verify the legality of the pre-trial detention of child over 16 years of age, but no later than 40 days after the start of the detention.

The duration of the custody of a child suspect cannot be longer than 3 days.

During pre-trial detention/custody, children are imprisoned separately from adults³⁶. Special measures must be taken during the pre-trial detention, in accordance with the specifics of their age.

Under the new Criminal Proceedings Code, pre-trial detention can be applied to children only in exceptional cases, and only if the effects of such measures will not interfere with their development and personality, and are not disproportionate vis-à-vis the objective to be achieved. The age of the accused must be taken into account in any decision to apply or extend custody, and her/his legal representative or guardian must be informed about such measures. In case of arrest, the probation service must also be informed.

2.3.5 Protection of private and family life

No information regarding the commission of a crime by a child under 14 years of age, including the information regarding the child, may be made public³⁷. Criminal cases where a child is a defendant must be judged separately to adult cases and the hearings may not be held in public. The hearings must be held only in the presence of the representatives of the probation service, legal counsels, the child's parents or the guardian of the child. If the child defendant is below 16 years of age, the judge may, after hearing the child, order him/her to leave the court, if the subsequent hearings may have a negative impact on the child. In addition, the right to be presumed innocent is guaranteed at all stages of the criminal proceedings and is a Constitutional right as well as a right contained in all criminal law provisions related to the field of juvenile crime.

There are also specific regulations with respect to the use of audio-visual media for the protection of children in criminal proceedings. For more details on this, see section [2.1.3](#) above, as the provisions also apply to child offender.

2.3.6 Alternatives to judicial proceedings

In such cases, mediation is allowed only if the offender is known and has been identified, and the victim agrees to participate in a meeting aimed at informing the victim of the advantages of mediation. This meeting can take place either with the offender or separately. Notably, the law regarding mediation explicitly states that, during the mediation proceedings, the child must enjoy the same procedural guarantees as afforded during formal criminal proceedings.

With respect to children below 14 years of age, they may not be held criminally liable³⁸. However, they may be either placed under the protection of a family/person other than their family of origin or under the protection of a specialised person/institution; or they may be placed under specialised supervision. These are temporary protection measures, aiming to take the child out of the original social environment. Such measures may be taken especially if a child under 14 years of age has committed a 'crime' involving a high degree of social danger (such as violent crimes). The measure may be ordered either by the Commission for the Protection of the Child where the parents agree, or by the court where the parents do not agree.

³⁶ Article 142 of the Criminal Proceedings Code.

³⁷ Article 83 of Law no. 272/2004 regarding the protection and promoting the rights of the child.

³⁸ Law no. 272/2004 regarding the protection and promoting the rights of the child.

Specialised supervision measures consist of keeping the child within her/his family, under condition that the family observes a number of obligations, such as:

- The child continues to attend school;
- The child attends daily services for her/his care;
- The child follows medical treatment, counselling or psychotherapy;
- The child is prohibited from going to certain places or having contact with certain persons.

If keeping the child in her/his family of origin is not possible, or if the family does not fulfil the obligations provided under the specialised supervision measure, the Commission for the Protection of the Child or the court may order the placement of the child, as detailed above.

During the period when such measures must be applied, the authorities must ensure the child has access to specialised services in order to facilitate her/his reintegration into society.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

See [section 2.1.5](#) above.

During the trial phase, the probation service and the parents, representatives or the guardian of the child may be present in court. In all cases, hearings in court cannot be public when the child is under 16 years of age. The court may order the removal of the child where it considers that the presentation of evidence may negatively influence the child.

According to the Romanian Criminal Proceedings Code, all cases with children as defendants must be resolved as a priority and without undue delay³⁹. This is considered and applied by courts when setting the date for the hearings and creating the list of when cases are to be heard in each court session.

There are no provisions related to creating a child-friendly environment within the premises or places where children are involved in criminal proceedings.

2.3.8 Protecting the child during interviews and when giving testimony

With regard to interviews and testimonies, the same protection measures apply, *mutatis mutandis*, as in case of child witnesses, see [section 2.2.5](#) above. While some rules of protection are applicable to both adults and children (protection of family life, protection of personal data), others apply only to children e.g. compulsory participation of a legal counsel and a psychologist, as appropriate, participation of the parent or guardian.

2.3.9 Right to be heard and to participate in criminal proceedings

The testimony of the suspect/defendant is essential for any criminal investigation, including when the alleged offender is a child.

During the trial, the defendant is heard by the judge immediately after the charges are read out. The defendant is first given an opportunity to explain everything she/he knows about the accusation. She/ he will then be questioned by the president of the court, the other judges, and then by the prosecutor, the victim, the civil parties, the co-defendants and finally by her/his own legal counsel.

Whilst adult defendants may be re-examined at any time if deemed necessary by the judge, under the Criminal Proceedings Code, child suspects should only be heard once; hearing the child twice may take place only in exceptional circumstances. If the defendant cannot remember certain facts or events, or in case there are contradictions between the statements of the defendant given in front of the court and those previously made, the president of the court may require additional explanations. In doing he/she may read out, in

³⁹ Article 509 of the Romanian Criminal Proceedings Code.

whole or in part, the previous statements of the defendant. The court may also do this where the defendant refuses to provide explanations.

The new Criminal Proceedings Code provides the same general rule regarding the hearing of the suspect. However, greater emphasis is laid on informing the defendant about her/his fundamental rights and obligations during the investigation, namely:

- The right to remain silent during the criminal investigation, underlining that the silence shall not be held against her/him and, if she/he makes a statement, it can be used against her/him;
- The right to access the case file;
- The right to legal counsel, requested or *ex officio*, when the representation by legal counsel is compulsory, according to the law;
- The right to provide evidence, to raise exceptions and to make final statements;
- The right to lodge any application and make any claims related to the criminal case, as well as the civil case related to the criminal one;
- If necessary, the right to a translator;
- The right to use the services of a mediator, whenever allowed by law;
- The obligation to inform the authorities about any change of address.

During the criminal investigation, the suspect must be informed about all these rights and obligations at his/her first hearing.

2.3.10 Right to legal counsel, legal assistance and representation

Provision of legal assistance to a child is compulsory when the child is a suspect or charged with an offence⁴⁰. If the suspect or defendant has not retained a lawyer, then the investigative authority or the court takes measures to have a lawyer appointed.

During the criminal investigation, the legal counsel has the right to be present at the performance of any investigatory act, and may lodge petitions and applications. While the presence of the legal counsel is not compulsory, the judicial authorities must inform the counsel when and where the act of investigation will be performed. The legal counsel also has the right to lodge any complaint against the investigative authorities.

During the trial, the legal counsel has the right to assist the suspect/defendant, to exercise her/his rights and, if the suspect is arrested, the legal counsel has the right to get in contact with her/him. The law also allows for the suspect/defendant's representative to be present, even when the presence in person of the suspect/defendant is not compulsory.

2.3.11 Remedies or compensation for violation of rights and failure to act

The provisions governing remedies and compensation in cases of judicial error apply without distinction between children and adults⁴¹. A person who has been illegally deprived of liberty during the criminal proceedings or a person who was definitively sentenced and subsequently acquitted following a re-trial, has the right to monetary compensation. The amount awarded depends on the duration of the deprivation of liberty or of the sentence. Other forms of reparation are: awarding an allowance until her/his death or, where appropriate, placing the person within a medical or social care-unit. In all cases, the compensation is paid from the state budget, through the Ministry of Finance.

Any person may also lodge a complaint against measures and acts performed during the criminal investigation. The complaint should be lodged with the prosecutor supervising the criminal investigation or with a higher ranked prosecutor (in case a prosecutor is already carrying out the criminal investigation). The complaint must be resolved within 20 days and,

⁴⁰ Article 171 of the Criminal Proceedings Code.

⁴¹ Articles 504-507 of the Criminal Proceedings Code.

in all cases, the decision may be appealed to a court of law. If the measure or the act is held to be illegal, then it must be nullified. However, as this procedure concerns the stage of criminal investigation, no compensation is granted.

The new Criminal Proceedings Code also provides remedies for the violation of rights, in case of proven judicial errors. Under the provisions of the new Criminal Proceedings Code, the illegal deprivation of liberty may be ascertained in the initial stages of the proceedings (e.g. criminal investigation) in order to be more expeditiously resolved.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

Following judicial proceedings, the child offender is regulated mostly by the sentences or other measures section of the Criminal Proceedings Code. Current criminal procedural legislation does not include specific provisions relevant to child victims after judicial proceedings finish.

3.1.1 Provision of information

The Criminal Proceedings Code provides that in all cases, the child offender, and his/her parents or guardian must be informed about the sentence or the educational measure taken against the child, in order to ensure they are carried out.

In the case of educational measures which do not involve deprivation of liberty, the court establishes a time when the child and a representative of the probation service are to appear before the court, to allow the probation service to start its supervision.

3.1.2 Sentencing

When children younger than 14 years of age commit 'crimes', only protective measures are applicable. Those measures are described under [section 2.3.6.](#) above.

Educational measures or a punishment can be ordered against a child who is criminally responsible based on a range of factors including:

- the level of social threat of the crime committed,
- the physical and intellectual development of the child
- the moral status of the child,
- the conditions in which he/she has been raised and under which he/she lived; and
- any other elements that characterise the personality of the child.

Punishment should only be imposed exceptionally when an educational measure is deemed insufficient to correct the child's behaviour of character⁴².

Available educational measures consist of⁴³:

- Reprimand;
- Supervised liberty;
- Confinement in a re-education centre;
- Confinement in a medical-educative institute.

Reprimand consists of rebuking the child, explaining to him/her the social threat of his/her acts, advising him/her to behave in order to demonstrate that he/she has changed, and making him/her aware that if he/she commits another crime, then a more severe measure will be applied.

Supervised liberty consists of strict supervision for one year, performed either by the parents, the guardian or the tutor. Where the supervision is not satisfactory, the court may appoint a trustworthy person, preferably a relative upon his/her request, to perform such supervision, or the court may appoint a probation officer to supervise the child. The court may order the child to fulfil one or more of the following obligations:

- to avoid going to certain places or to contact certain persons;

⁴² Article 100 of the Romanian Criminal Code.

⁴³ Article 101-105 of the Criminal Code.

- to perform between 50 and 200 hours of unpaid activity in an institution of public interest. This must involve no more than 3 hours per day and take place after the daily school programme, at weekends and during holidays.

This measure may be revoked and replaced with detention in a re-education centre in case of bad behaviour or the commission of another crime. When such a crime is a felony i.e. a serious crime, the court must impose either detention or a criminal punishment.

Under the new Criminal Code (in force from 1 February 2014), only educational measures may be imposed on children. An educative measure involving the deprivation of liberty of a child aged between 14 and 18 years may be taken only in two cases⁴⁴:

- when the child has previously committed a felony for which an educational measure not involving deprivation of liberty was applied and that measure was executed or its execution was started before the child committed the felony for which he/she is now judged;
- when the felony is punishable by a term of imprisonment of 7 years or more, or life imprisonment.

There are four educational measures not involving deprivation of liberty⁴⁵:

- a. civil training course;
- b. supervision;
- c. confinement at the weekend;
- d. daily assistance.

The civil training course consists of requiring the child to attend an educational programme of no more than 4 months. The course aims to help the child understand the legal and social consequences of committing crimes and to make him become responsible for his/her future behaviour. The programme is managed and supervised by the probation office and takes into account the child's school and professional schedule.

Supervision is performed by the probation office on a daily basis for a term between two and six months in order to ensure the child's participation in scholarly and professional training, and to limit the child's contact with certain persons that might hinder his/her rehabilitation.

Weekend confinement involves requiring the child to stay at home on Saturdays and Sundays, for a term between four and twelve weeks. The child may participate in certain activities ordered by the court. Compliance is supervised by the probation office.

Daily assistance, lasting between three and six months, consists of a child being required to follow a programme established and supervised by the probation office. The schedule, conditions for the performance of the activities and the restrictions incumbent on the child are the same as those ordered by the court.

During the performance of any of the educational measures not involving deprivation of liberty, the child may be ordered by the court to fulfil certain obligations, like attending school classes or professional training, not crossing the boundaries of the city, county or country, avoiding certain places, sporting or cultural events or public gatherings, not contacting or getting close to the victim or his/her family members, not communicating with the other participants of the crime or with other persons determined by the court, visit the probation office whenever required by it or comply with control, treatment or medical care measures.

Supervision is performed by the probation office, which should notify the court whenever the child breaches his/her obligations or when it considers that the child's obligations should be either amended or ended. When the previous measure was daily assistance for six months, and the child did not follow the requirements, the court may replace this measure with confinement in an educational centre.

There are two educational measures resulting in the deprivation of liberty⁴⁶:

⁴⁴ Article 114(1) of the Criminal Code.

⁴⁵ Article 115(1) of the Criminal Code.

- e. detention in an educational centre;
- f. detention in a detention centre.

Detention in an educational centre may be imposed for a term between one and three years and results in the child being placed in an educational and professional training programme, according to his/her abilities, and also in social re-integration programmes in an institution specialised in rehabilitation of children. If, during the term of the confinement, the child commits a new felony or he/she is judged for a felony previously committed, then the court may maintain the confinement in an educational centre, extending its term, but to no more than the maximum of three years. Alternatively, it may replace this measure with detention in a detention centre.

After at least half of the term of the detention has passed, if the detention measure is successful and the child makes obvious progress in his/her social re-integration, the court may replace the detention measure with a daily assistance measure. This may be for a term equal to the term of the confinement executed, but no longer than six months, if the child has not reached the age of 18. The former child offender may be released from the centre if he/she has reached the age of 18. In both cases the court can order certain obligations be fulfilled until the end of the full term of detention.

If the child, acting in bad-faith, does not comply with the conditions of the daily assistance measure, the court can order her/his detention in an educational centre. All penalties are subject to judicial review.

3.1.3 Deprivation of liberty

Confinement in a re-education centre may be ordered to re-educate the child, giving him/her the possibility to receive the required education and professional training in accordance with his/her abilities. This measure must be taken when other educative measures prove insufficient.

A child may be confined to a medical-educational institute due to his/her physical or psychological status, where he/ she needs special medical treatment or a special regime of education.

Confinement may be ordered for an undetermined term, but cannot last beyond the age of 18 years. Confinement in a medical-educational institute must be stopped once the reason for this measure has ceased to exist. In such a case, the court may order the child to be confined in a re-education centre. When the child turns 18 years old, the court may extend the term of the confinement for up to two years, but only if this extension is necessary for the achievement of the goal of the confinement.

At least one year after the commencement of the detention period, a child may be released before becoming an adult if he/she presents strong evidence of rehabilitation and has worked hard on his/her education and professional training⁴⁷. However, if after release and before reaching the age of 18 years, the child behaves improperly, then the court may revoke the release. If during detention in a re-education centre or in a medical-educational institute or during release before becoming an adult, the child is punished with a penalty of imprisonment for a new offence, the court must revoke the confinement. If such a punishment is not necessary, then the confinement shall be maintained and the release shall be revoked.⁴⁸

A punishment of imprisonment or a fine may be imposed on a child for the commission of a felony (i.e. a serious crime) but the punishment is reduced to half of that applicable to adults. After reduction, the minimum punishment cannot exceed 5 years. When the law provides for life imprisonment of an adult, a child may be sentenced to imprisonment of a term ranging from 5 to 20 years. Complementary punishments applicable in the case of adults e.g.

⁴⁶ Article 115(2) of the Criminal Code.

⁴⁷ Article 107 of the Criminal Code.

⁴⁸ Article 108 of the Criminal Code.

forbidding the exercise of certain rights for up to 10 years, cannot be imposed on child offenders. Convictions during minority do not bring waivers of rights or restrictions⁴⁹.

The enforcement of a punishment against a child may be conditionally suspended. In such a case, the probation period, to be determined by a court, will be equivalent to the term of imprisonment that was due plus a period of between six months and two years. If the punishment consists of a fine, then the probation term is six months⁵⁰. Probation under supervision or control also applies to children. In such a case, the child is supervised by the same person or agency as for the case of supervised liberty. Also, the child may be conditionally released from prison.

Imprisoned children are included in special programmes of counselling and assistance, based on their age and personality⁵¹. Such special programmes are initiated by the specialised education, psychological counselling and social assistance services within each prison facility. They include the participation of counsellors on the protection of victims and social reintegration of the offenders, volunteers, associations and civil society⁵².

Children are detained in facilities separated from adult prisons or are detained in special sections integrated in adult facilities. Children stay in separate rooms, based on their gender.

Each child has an 'individualised plan of education and educative and therapeutic intervention', based on which she/he participates in educational activities, psycho-social assistance, and recreational activities outside her/his detention room. These programmes aimed at facilitating contact with society and especially with the family, so that after release, child offenders will not be disadvantaged from an educational or professional point of view. The individualised plan includes information on the child's original social environment, criminal record, level of education or professional training, the child's psychological state and profile. Various forms of education are organised – general schools, professional and art schools etc. according to the legislation governing public schools⁵³.

3.1.4 Criminal records

When an educational measure is imposed on a child, or where a child is arrested, the criminal record service of the place of residence of the child is sent a notification together with the records of the child's fingerprints⁵⁴. The record of the fingerprints is also sent to the General Inspectorate of the Romanian Police, or to the local Police Departments. The criminal records of a child are not deleted when he/she turns 18 years old. However, the criminal record certificate, which can be issued by the criminal record services, must not include information about the criminal sanctions ordered for acts committed by a child between the age of 14 and 18 years old. The child must not suffer prejudice from the fact that such information is kept in her/ his criminal record because the offences committed during minority do not generate any limitations or restrictions of rights.⁵⁵

⁴⁹ Article 109 of the Criminal Code in force,

⁵⁰ Article 110 of the Criminal Code in force.

⁵¹ Law no. 275/2006 regarding the execution of sentences and of the measures ordered by the judicial authorities during the criminal proceedings.

⁵² The Law no. 275/2006 regarding the execution of sentences and of the measures ordered by the judicial authorities during the criminal proceedings ("*Legea nr. 275/2006 privind executarea pedepselor și a măsurilor dispuse de organele judiciare în cursul procesului penal*"), published in the Official Gazette of Romania, Part I, no. 627 from 20.07.2006.

⁵³ Methodological Norms for the application of Law no. 275/2006.

⁵⁴ Article 14 of Law no. 290/2004.

⁵⁵ Article 18 of Law no. 290/2004.

4 Strengths and potential gaps

Starting in 2000, Romanian legislation has been substantially improved to provide special regulations regarding the situation of children involved in criminal proceedings. More recently, the Criminal Proceedings Code (entry into force on 1 February 2014) has introduced a range of child specific amendments. This includes provisions to specifically regulate cases of arrest and custody of a child, to establish different procedures at the trial stage and a special sanctions regime for child offenders. The sanctions regime will exclude criminal punishments in the case of children. Other new measures include the protection of a child's private life (included for the first time in criminal procedural rules), specific protection measures for vulnerable categories of witnesses such as children and the possibility to be cross-examined through audio-visual means.

In addition to regulations provided in the Criminal Proceedings Code, a number of laws on the legal status of the child have been adopted, such as the law on the protection of the child.

Another positive aspect of the Romanian system is that there are a number of bodies dealing with children involved in criminal proceedings, whether the child is a suspect/ defendant/ offender or victim.

However, there is still room for improvement with regard to ensuring a more child-friendly environment. According to stakeholders (judicial practitioners involved in proceedings with children), there is a need for rules and regulations for ensuring a child friendly environment in cases where children have to be heard as witnesses.

In the case of child victims, judicial authorities interviewed stated that the system in force is more efficient than in the case of child suspects / defendants, since child victims can be assisted not only by family members, but also by psychologists when giving statements. The general directorates of social assistance and protection of the child also react rapidly for the protection of children and continue to monitor them even after they have given their statements. In appropriate cases, children may also be taken out of the potentially dangerous environment where they live⁵⁶.

However, despite these developments, a number of gaps or areas for improvement are evident. For example, although legislation provides for the possibility of long-distance hearings, where children must be present at the judicial authorities' offices (either at police stations, prosecutors' offices or in court), there are no special rooms adjusted to a child's needs. Importantly, whilst the importance of the psychological welfare of children is recognised, except for the case of child victims, there are no clear regulations regarding the presence of paediatric psychologists specialised in working with children involved in criminal proceedings. Also, despite the existence of a legal framework, in practice, the number of paediatric psychologists is very low and they cannot cover all cases where children are involved in criminal proceedings. Stakeholders from the judicial authorities also indicated the need for other specialised persons to be involved in such procedures, such as specialised police officers.

Finally whilst it is a positive development that a legal framework regarding probation services has been created, their work is undermined by the fact that they are responsible for both offenders and victims. Having to cater to the needs of these two groups is liable to put competing pressures on the services and can result in a conflict of interests.

⁵⁶ Information obtained through consultation with stakeholders (judicial authorities).

Conclusions

Over several years, Romania has regularly addressed the situation of children in criminal proceedings, in the context of the reform of its criminal legislation. In particular it has focussed on promoting a more child-friendly approach to criminal justice that considers the special needs of children.

At the same time, efforts have been made to put in place a State network of authorities responsible for dealing with children during criminal proceedings. These authorities include the general directorates for social assistance and the protection of the child, the probation services, local police departments and prosecutors' offices.

While in certain respects, there has been clear progress e.g. rules regarding the custody and arrest of children, specific punishments for children and their criminal liability, in other areas the rhythm of reform has been slower e.g. rules protecting child witnesses.

Given the high number of children involved in criminal proceedings in Romania, their situation requires a regular review of legislation and practice. Particular attention is needed in Romania with respect to the psychological needs of children in criminal proceedings. In certain cases, recent legislative amendments have taken this need directly into account, especially in the case of child victims. In the case of child suspects, defendants and offenders this need has been more vaguely regulated and in the case of child witnesses has not been explicitly provided for at all. For all children involved in criminal proceedings, a particular problem is that no judicial authority buildings are equipped to ensure a child-friendly environment. Having buildings equipped in such a manner can greatly help all children in the proceedings.

New amendments to the Criminal Proceedings Code will come into effect from 1 February 2014. In particular, these amendments will abolish the criminal punishments (e.g. imprisonment) system for children with only educative measures applying from then on. This represents a major change of vision with regard to the status of children involved in criminal proceedings.

Annex – Legislation reviewed during the writing of this report

- Law no. 135/2010 regarding the Penal Proceedings Code (the new Penal Proceedings Code) published in the Official Gazette of Romania, Part I, no. 486/15.07.2010
- Law no. 286/2009 regarding the Penal Code (the new Penal Code) – published in the Official Gazette of Romania, Part I, no. 510/24.07.2009
- Government Decision no. 1385/2009 regarding the creation, organisation and functioning of the National Authority for the Protection of the Family and the Rights of the Child - published in the Official Gazette of Romania, Part I, no. 807/26.11.2009
- Law no. 275/2006 regarding the execution of the sentences and the measures ordered by the judicial authorities during the criminal proceedings - published in the Official Gazette of Romania, Part I, no. 627/20.07.2006
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