



Access to justice for children

Country fact sheet: **Romania**¹

Overview

Country size: 238 397 km²

General Population: 19,4 million (2019)

Number of Children: 3,04 million resident children aged up to 14 years (as at 01.01.2019)

Date of ratification of the Convention on the Rights of the Child:

28 September 1990 (i.e., date of entry into force of Law no. 18/1990 ratifying the Convention)

Date of abolition of the death penalty: 8 January 1990

Minimum ages

Minimum age of criminal responsibility ("MACR"): 14 years

Age of imprisonment: 18 years

Age until juvenile justice legislation is applied: 18 years

Type of legal system

The Romanian legal system is based on a civil law system.

Specialisation of the system

Romania provides for several specialised institutions and professionals including:

- Child prosecutor's office
- Child court
- Child social work service / child social workers
- General Department of Social Assistance and Child Protection (**DGASPC**)
- Guardianship Authority (subordinate to the County and Local Councils)

Child-specific legislation

- [The Constitution of Romania](#) – outlines the rights of children including the rights to protection, education, participation, and equality for children born out of wedlock. [English version.](#)
- [Law no. 286/2009 regarding the Criminal Code](#) – governs the criminal responsibility of a child and offers sentencing measures.
- [Law no. 135/2010 regarding the Criminal Procedure Code](#) – outlines certain rights available to children in contact with the law.
- [Law no. 254/2013 on the Enforcement of Sentences and Custodial Measures Ordered by the Court During the Criminal Trial](#) – contains provisions and rights for children in custody.
- [Law no. 272/2004 on the Promotion and Protection of the Rights of the Child](#) – regulates the legal framework for respecting, promoting, and guaranteeing the rights of the child and has as a principle the best interests of the child (individuals under 18 years of age). [English version.](#)
- Government Decision no. 1018/2002 – approving the Regulation regarding the obligations of the public services specialized in the protection of the rights of the child with a view to ensure the observance of the right to privacy of the child under placement or custody.
- Other relevant legislation includes Government Decision no. 49/2011.

The [Convention on the Rights of the Child](#) is directly applicable in Romania's justice system.

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in April 2020.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The Romanian Official Journal no. 1201 of 9 December 2020 published the *Law for the amendment and completion of Law no. 135/2010 on the Criminal Procedure Code*, adopted by the Parliament of Romania (Senate and Chamber of Deputies). In the explanatory note to the law, it is mentioned that these amendments aim to transpose **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings.

Cross-cutting safeguards

- While the minimum age of criminal responsibility (MACR) is 14 years, children between the ages of 14 and 16 can be criminally responsible only if it is proven that the child acted with discernment. Therefore, there is a rebuttable presumption that a child under the age of 16 does not act with discernment. Children 16 and older at the time of the offence, are fully responsible for criminal acts. See *Criminal Code, Article 113*.
- It is mandatory for child suspects and defendants to be assisted by a lawyer during all stages of criminal proceedings. If the child does not have or cannot afford a lawyer, the judicial bodies will take measures to appoint a lawyer through the legal aid system. See *Criminal Procedure Code*.
- During the criminal investigation and trial phase, a child's parents or legal guardian should be summoned by the appropriate authorities. If the child is under the age of 16, and the presence of these legally summoned persons (parents or legal guardians) might exercise a negative influence on the child, the court can temporarily remove the parents or legal guardians from the courtroom. See *Criminal Procedure Code*.
- Generally, a child in conflict with the law has the right to participate at all stages of the proceedings. However, when the accused child is under the age of 16, the court has the right to temporarily remove the child from the courtroom if the presentation of certain evidence might have a negative impact on the child.
- A trial involving a child defendant is not public. Subject to the court's consent, persons other than those who are mandatorily summoned *as per* the law (parents or legal

guardians) may attend the trial session. See *Criminal Procedure Code*.

- Children have the right to be listened to in any judicial or administrative proceeding that involves them. Authorities have an obligation to hear a child who has turned ten, and if younger than that, a child's opinion can still be listened to if the competent authority considers that to be useful. Any child can ask to be listened to and can submit a complaint regarding the violation of their rights. See *Law no. 272/2004*.
- The State has an obligation to provide additional information to the suspected or accused child, besides the usual notification about his/her rights and obligations. The supplementary explanations refer to the main stages of criminal proceedings, the right to the protection of privacy, the right to be accompanied in court by parents or legal representatives, the rights to medical evaluation and assistance in case of a preventive measure of deprivation of liberty, and the right to appeal, etc. See *Law no. 135/2010*.
- Equal treatment and the protection from discrimination is guaranteed by the *Romanian Constitution*.

Specific procedural measures

- An evaluation report of child suspects/defendants who may be held criminally liable may be ordered at the criminal investigation phase or trial phase. The evaluation report is issued by the Probation Service and, in it, the Probation Service can make reasoned recommendations in relation to the educational measures that can be applied to the child.
- There is an approved national strategy for the social reintegration of persons deprived of liberty. General guidelines are to be observed by the public authorities and institutions for facilitating the social reinsertion of children who are released from post-trial detention.

Diversion and alternatives to detention

- The principle of detention as a last resort for the shortest period of time is applied in Romania. The philosophy behind the current provisions regarding the criminal liability of children is one of education and resocialization. Generally, children are subject to sanctions that do not entail deprivation of liberty. Custodial measures are typically reserved for children who have committed severe offences or who are repeat offenders. Children sentenced to custodial

educational measures serve time in specialized centres, which are not prisons, and therefore, are separated from adults.

- As a general rule, a child - who at the time of committing the offence is between 14 and 18 – should be subject to a non-custodial educational measure, including civic training, supervision and curfew at the weekend. See *Criminal Code*.

- Criminally responsible children may benefit from diversion at the prosecution level for offences punishable a fine or up to seven years of imprisonment. The prosecutor may defer the prosecution and apply one or more obligations to the child, including compensating or restoring the goods of the victim, apologizing in public to the victim, performing community service for 30-60 days, or participating in a counselling program. See *Criminal Procedure Code, Article 318*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

Romania transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, through the amendment and completion of *Law no. 211/2004, On Certain Measures to Ensure the Protection of Victims of Crimes*.

Cross-cutting safeguards

- Romania has adopted *Government Decision no. 49/2011* which approves a framework methodology on prevention and intervention in cases of violence against children and domestic violence. The *Government Decision* also approves

the methodology of multidisciplinary and interinstitutional intervention regarding children exploited and at risk of exploitation through work, children who are victims of human trafficking, and children who are victims of other forms of violence. Legal assistance and counselling are available to victims who are Romanian and legal inhabitants of Romania.

- Other safeguards available to child victims and witnesses under Romanian law include the right to be granted the status of threatened person and benefit from protection measures, the right to reparation and to claim compensation from the offender, and the right to use a mediator, when permitted by law.

Focus on status offences

Romania does not address behaviour which is typically deemed as status offence through the criminal justice sector. This includes offences such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco. Instead, such behaviour may be addressed through the social welfare or child protection sectors or within the community.

The behaviour of the child is not criminalized, but adults may be held responsible for certain actions. For example, parents are legally responsible to ensure their children attend school and adults who sell alcohol or tobacco to a child may be charged under the law. Additionally, the exploitation of children and using children for begging is a criminal offence.

Other relevant information

There is one pilot Children's Court in Romania. The Brasov Tribunal for Children and Family Matters hears cases related to offences committed by children or against children. Prior to the establishment of this specialised institution, such cases were heard by the Brasov Tribunal. As of 2019, a network of specialized prosecutors dealing with victims who are minors was put in place in Romania.

In addition to this, DGASPC offers services for both children who have committed criminal acts but are not criminally responsible and for child victims. With respect to child offenders, DGASPC assesses children individually to determine the background to their antisocial behaviour, offers legal and psychological counselling and social assistance, and takes steps to establish special protection for child offenders. DGASPC also performs assessments of and offers counselling for child victims of abuse, trafficking, and exploitation.