

Child-Friendly Justice – Romanian Perspective

Zsolt FEGYVERESI

ABSTRACT

Given that children can also be involved in various civil, administrative and criminal proceedings, it is very important that there are legal instruments in place in each state to guarantee their rights in such situations. Children's right to participation is a fundamental principle that gives them the opportunity to express their views and have a say in their lives. They must have the opportunity to receive the information necessary and relevant to them in order to form and express their views. In addition to the child's right to take part in decisions, the right to participation also includes the right to involvement, action or information. This right is closely linked to the child's development and maturation process. Romanian legislation in line with the Convention on the Rights of the Child ensures that children who are capable of discernment have the right to freely express their opinion on any issue that concerns them not only in their daily life, but also in moments that are less comfortable for them, such as administrative or judicial proceedings.

KEYWORDS

child-friendly justice, the right to participate, special protection measure, juvenile justice, hearing of the minor

It is crucial to have legal instruments at the level of each state that guarantee children's rights to development, protection, and participation. Children, after all, have the same rights as everyone else; however, these rights must be adapted to their special needs. Under Article 49 para. 1 of the Romanian Constitution, children and young people enjoy special protection and assistance in the pursuit of their rights. These constitutional provisions, as we shall see, are found in several national laws, in line with European and international legislation in this field.

Children may be involved in various civil, administrative, and criminal proceedings, thus becoming participants in these proceedings that are often too complicated not only for them but also for their parents or legal representatives. Among the civil procedures, we can mention, as an example, the adjudication of claims placed by the Civil Code under the jurisdiction of the guardianship court, claims related to registrations in civil status registers, or claims in matters of inheritance, divorce, or adoption. According to some estimates, almost 200,000 children are involved in civil

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proceedings each year, either directly or through their legal representative, seeking remedies for violations of their rights. Another 100,000 children are involved in civil family law cases. In the sphere of administrative procedures, the establishment of measures for the protection of minors, the granting of social assistance services, or benefits and asylum applications are notable.¹ In criminal proceedings, children may appear in court either as persons in conflict with the criminal law, as injured parties (victims), or as witnesses.

The right of children to participate is a fundamental principle laid down in the Convention on the Rights of the Child (hereinafter Convention) adopted by the General Assembly of the United Nations on 20th November 1989. The Convention has been assumed and ratified by Romania through the adoption of Law No. 18/1990. The right of participation allows children to have a say in their lives and in decisions that affect them. They must have the opportunity to receive the information necessary and relevant to them to form and express their views. The Romanian Constitution on participatory rights guarantees everyone, children and adults, freedom of expression (Article 30), i.e. the right to seek, receive, and impart information and ideas. In addition to the child's right to take part in decisions, the right to participate also includes their right to be involved, to act, or to be informed. This right is closely linked to the child's development and maturation process.²

The child's right to freedom of expression under the Constitution is also guaranteed by other national legislation. The articles of Law No. 272/2004 on the protection and promotion of children's rights (hereinafter Law 272/2004) explicitly allow children to have a say after a certain age. This right, however, also has certain limits, such as the child's capability to be able to form his/her own opinions. The law states that in determining the best interests of the child, the child's opinion is also taken into account, depending on his/her age and maturity.

According to Article 28, the child has the right to freedom of expression, i.e. the freedom to seek, receive, and impart information of any kind, including online, designed to promote his/her social, spiritual, and moral well-being and physical and mental health, in any form and by any means of his/her choice. This freedom is considered an inviolable right. Parents or, where appropriate, the child's legal representatives, foster carers, and persons who, by virtue of their office, promote and ensure respect for children's rights are required by law to provide them with information, explanations, and advice in accordance with their age and level of understanding and to allow them to express their views, ideas, and opinions. Parents may not restrict the right of a minor child to freedom of expression except in cases expressly provided for by law.³

1 Strategia națională pentru protecția și promovarea drepturilor copilului "Copii protejați, România sigură" 2023-2027 p. 40 [Online]. Available at: <https://www.juridice.ro/wp-content/uploads/2023/10/0942Bis.pdf> (Accessed: 15 December 2023).

2 Pivniceru and Luca, 2016, p. 11.

3 Moloman, 2016, p. 58.

The child's right to participate also includes the right to be heard in judicial or administrative proceedings. This right gives the child the opportunity to receive information, to be consulted, to express his/her opinion, and to be informed of the consequences of having his/her opinion respected. In line with the Convention on the Rights of the Child, Article 29 para. 1 of Law 272/2004 provides that a child capable of forming his/her own views has the right to express those views freely on any matter affecting him/her. Further, Article 29 para. 2 of Law No. 272/2004 and Article 264 para. 1 of the Civil Code stipulates that in administrative or judicial proceedings concerning him/her, it is compulsory for a child who has reached the age of 10 to be heard. As stated in para. 4 of the same article, the views of the child heard shall be taken into account in relation to his/her age and degree of maturity.⁴ According to one opinion, the inclusion in the Civil Code, but also Law No. 272/2004, of age thresholds for establishing the obligation to hear the child reflects the way the legislator intended to provide a suitable procedural framework for the child's hearing to become an effective right that can be freely exercised by the child.⁵

However, a child under the age of 10 may also be heard if the competent authority considers this necessary for the resolution of the case. Moreover, every child has the right to ask to be heard.⁶ This right implies the possibility for the child to ask for and receive any information appropriate to his/her age, to express his/her opinion, and to be informed of the consequences this may have, as well as of the consequences of any decision concerning him/her. The hearing of the child in these situations may be ordered by the competent court or requested by the child, provided that the hearing is considered necessary. Reasons must be given by the court for refusing to hear a child under 10 years of age.

In addition to the right of the child to be heard, the Romanian legislator has also regulated the child's right to express his/her consent. Article 463 para. 1 point b) of the Civil Code on adoption provides that, in order for adoption to be granted, the consent of the adoptee who has reached the age of 10 years must be expressed. This article was also reproduced in Article 15 of Law No. 273/2004 on adoption procedure. According to these legal texts, adoption cannot be carried out without the freely expressed consent of the child concerned. As expressed in the literature, the provisions of Article 463 para. 1 point b) imposes an imperative condition in the matter of expressing consent to adoption, and the legislator has presumed a maturity from the perspective of the effects of adoption for the minor who has reached 10 years of age. Thus, the Civil Code has extended the obligation of the minor's consent imposed from the age of 14 years by the Strasbourg Convention to any minor who has reached the age of 10 years.⁷

4 By Decision 555/2014 in case No. 16125/196/2013, the Court of Braila did not consider it necessary to hear the minor, given that he has not reached the age of 10 [Online]. Available at: <https://legeaz.net/spete-civil-tribunalul-braila-2014/stabilire-domiciliu-minor-decizia-16-10-2014-nv2> (Accessed: 15 December 2023).

5 Ghiță, 2023, pp. 82–115.

6 Florian, 2007, p. 22.

7 Ivan, 2020, p. 229; Togan, 2023, pp. 315–338.

The procedure for expressing consent does not consist of a simple hearing of the child, which the court can later censor, depending on the age and maturity of the child. Rather, it is transformed into a special legal capacity with the aim of stopping the adoption procedure in the event of a refusal by the future adoptee.⁸ Prior to the expression of consent, the Directorate-General for Social Assistance and Child Protection in whose territorial area the child who has reached the age of 10 is resident will advise and inform the child, taking into account his/her age and maturity, in particular on the consequences of the adoption and of his/her consent to the adoption, and will draw up a report to this effect. The child's consent to adoption is given in front of the court at the stage of granting the adoption.

The methodological rules for the implementation of Law No. 273/2004 on adoption procedure stipulate that during adoption procedures, the child must be encouraged and supported in expressing his/her opinion, which is recorded and taken into account according to his/her age and degree of maturity. Also, in accordance with his/her age and degree of maturity, the child must be provided with clear and concrete information and explanations during the adoption procedures concerning the duration and stages of the adoption process. Per the Methodological Rules, the case manager is obliged to collaborate with the reference person(s) for the child as well as with the child's case manager throughout this process.⁹

The national legislation does not contain the terms used in international and European Union regulations, such as “capable of forming an opinion” or “sufficient level of understanding”. In the translated text of the Convention, the phrase “capable of forming his/her opinion” is translated as “capable of discernment”, a term also used in Law No. 272/2004. Romanian legislation does not establish an age threshold representing the limit for acquiring discernment. Indeed, a person has discernment only from a certain age, depending on his life experience and on his state of mental health, i.e. the existence or lack of discernment are factual states that can characterise a person regardless of his age.¹⁰

We can conclude that a child who has reached the age of 10 is considered by national law to be mature enough to understand certain aspects of the proceedings in which he/she is involved. In one case, the High Court of Cassation and Justice held that Romanian law considers that it is only after the age of 10 that the child acquires the degree of maturity that makes it obligatory to express his/her opinion.¹¹

The child's age also influences his/her civil capacity. According to the Civil Code, civil capacity has two components: *capacity of use* and *capacity of exercise*. The capacity

8 Avram, 2022, p. 336.

9 Normele metodologice de aplicare a Legii No. 273/2004 privind procedura adopției, din 28.07.2021. [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/245189> (Accessed: 15 December 2023).

10 David and László, 2021, p. 15.

11 Decision of the Court of Cassation No. 1335/2017 [Online]. Available at: <https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=143031> (Accessed: 16 December 2023).

of use, i.e. a person's legal capacity to have civil rights and obligations, begins at birth and ceases with the person's death; so, during life, all persons enjoy it. The rights of the child are recognised from conception, but only if the child is born alive. With regard to the capacity to exercise rights, i.e. the ability of a person to enter into civil legal acts alone, the Civil Code states that only a person of *full age* has *full capacity of exercise*. A person becomes of full age on reaching the age of 18. With regard to children, Article 41 para. 1 of the Civil Code provides that a minor who has reached the age of 14 has *limited capacity of exercise*, and a minor who has reached the age of 16 and marries acquires full capacity of exercise.¹² According to Article 41 of the Civil Code, the legal deeds of a minor with limited capacity of exercise are concluded by the minor with the consent of the parents or, as the case may be, of the guardian, and in cases provided by law, also with the authorisation of the tutorship court. However, a minor with limited capacity may enter alone into deeds of conservation, deeds of administration without prejudice thereof, as well as into deeds of disposition of low value, of a current nature, and executed on the date such deeds were entered into.

Further, according to the Civil Code, a minor may enter into legal deeds concerning work, artistic or sports occupations, or related to the minor's profession, with the consent of the parents or guardian, as well as in compliance with the provisions of the special law, if applicable.¹³ In this case, the minor exercises their rights alone, and as such shall also execute the obligations arising from these deeds and may dispose of the acquired income alone.

With regard to a child's social relations, the parents or legal representatives of the child may obstruct, for justified reasons, the correspondence and personal connections of the child up to the age of 14. Disputes shall be settled by the tutorship court upon the hearing of the child, under the terms provided for in Article 264 of the Civil Code.¹⁴ With regard to the liability of minors, the Civil Code provides that a minor who has not reached the age of 14 shall not be liable for the damage caused, unless their discernment at the time of the deed is proven. If the minor has reached the age of 14, he/she shall be liable for the damage caused unless it is proven that they lacked discernment at the time of the deed.

12 According to Article 272 para. 2 of Civil Code: For good reasons, a minor who has reached the age of 16 may marry on the basis of a medical certificate, with the consent of their parent or, as the case may be, of the guardian and upon the authorisation of the tutorship court, with jurisdiction in the area where the minor's domicile is located. If one of the parents refuses to consent to the marriage, the tutorship court shall also decide on such divergence, taking into account the best interests of the child.

13 For example, according to the first paragraph of Article 13 of the Romanian Labour Code, an individual acquires the capacity to work when he/she reaches the age of 16. This means that a minor who has reached the age of 16 can conclude an employment contract on his/her own without any authorisation.

14 According to the first paragraph of Article 264 of the Civil Code: In administrative or judicial proceedings concerning a child, the hearing of a child who has reached the age of 10 is mandatory. However, a child who has not reached the age of 10 may also be heard if the content authority deems it necessary to settle the case.

With regard to the hearing of certain categories of persons as witnesses in civil proceedings, the Code of Civil Procedure stipulates that children who have not reached the age of 14 and those who are not competent at the time of the hearing may be heard without an oath; however, the court shall call on them to tell the truth and shall take into account their special situation when assessing their testimony. We note, therefore, that minors and persons lacking discernment are exempted from the obligation to take an oath. The hearing of minors as witnesses takes place in the *council chamber*, and the court decides whether parents, guardians, or other persons will be present at the hearing.

As shown in legal literature, the procedure of hearing a child, regulated by Article 264 of the Civil Code, in order to ascertain the child's opinion on certain proceedings concerning him/her, is a different institution from the administration of evidence with witnesses provided for by Article 320 of the Code of Civil Procedure. A child heard under Article 264 of the Civil Code does not provide testimonial evidence, and what he/she states during the hearing procedure is not to be taken into account by the court with probative value but can be taken into account when pronouncing the decision.¹⁵ The hearing of the child must be free, without pressure, in a stress-free environment, and in language accessible to the child.¹⁶

Article 101 of Law No. 272/2004 provides for a special form of hearing of abused, neglected, exploited, and otherwise abused children in the case of the establishment of a special protection measure. According to this article, if the court deems it necessary, it may summon the child to appear before it to be heard. The hearing takes place only in the courtroom, in the presence of a psychologist, and only after prior preparation of the child.¹⁷ The court may, of its own motion, give the child's written statement on the abuse, neglect, exploitation, or any form of violence against the child as evidence in the proceedings. The child's statement may be recorded by audio-visual technical means. Recordings must be made with the assistance of a psychologist and only with the child's prior consent.¹⁸

Another situation in which a child must be heard is when parents fail to agree on the child's place of residence. According to Law No. 272/2004, in such cases, the guardianship court will determine the child's place of residence in accordance with Article 496 para. 3 of the Civil Code. When assessing the child's interests, the court may also take into account aspects such as the history of violence of the parents against the child or against other persons. This history may also be proved by means

15 Székely, 2021, p. 129.

16 Pivniceru and Luca, 2016, p. 71.

17 In a case concerning a request for a change of the visitation schedule of the father of the minor child, the Bucharest Court of Appeal established that the hearing of the minor child was not done in violation of Article 101 paragraph 3 of Law 272/2004, because the situation was not about "protection of the child against abuse and neglect" and the presence of the psychologist at the hearing of the minor child by the judge was not necessary. Bucharest Court of Appeal, Decision no. 805/2009 in case No. 574/2009 [Online]. Available at: <https://legeaz.net/spete-civil-minori-familie/stabilire-program-vizitare-minor-805-2009-yo1> (Accessed: 16 December 2023).

18 Domocoş, 2021, pp. 116–139.

of psychological expert reports on the minor or by hearing the minor in the courtroom, in conjunction with any other means of proof provided for by law. Article 496 para. 3 regarding the establishment of the child's residence states, *inter alia*, that the conclusions of the psychosocial investigation report must be taken into account, but the parents and the child who has reached the age of 10 must also be heard.

Criminal law does not set an age limit from which a child can be heard in a criminal case. However, we cannot say that minors can be heard in criminal cases regardless of their age or legal capacity. Here, it needs to be mentioned that according to the provisions of Article 29 para. 2 of Law No. 272/2004, in any judicial or administrative proceedings concerning him/her, it is mandatory to hear the child who has reached the age of 10 years; however, a child who has not reached this age may also be heard if the competent authority deems it necessary for the resolution of the case. Thus, the hearing of a child who has reached the age of 10 is mandatory in criminal proceedings. Furthermore, in the case of a child who has not reached that age, the judicial authorities are free to decide whether or not it is appropriate to hear him/her.

With regard to the criminal liability of minors, Article 113 of the Criminal Code¹⁹ provides that a minor who has not reached the age of 14 is not criminally liable, a minor between 14 and 16 is only criminally liable if it is proven that he/she committed the act with discernment, and a minor who has reached the age of 16 is criminally liable according to the law. We, therefore, note that the criminal law establishes an absolute presumption of lack of discernment in the case of a minor who has not reached the age of 14. Minority is, therefore, a ground for non-liability governed by Article 27 of the Criminal Code. According to this text of the law, an act provided for by the criminal law committed by a minor who, at the time of its commission, did not meet the legal conditions for criminal liability is not imputable. In the case of a minor aged between 14 and 16, the law establishes a relative presumption of lack of discernment. For criminal liability to operate, the existence of discernment must be proven, which consists of a forensic psychiatric expert report. Lastly, a minor who has reached the age of 16 is criminally liable, but the penalty regime is different from that for adults.²⁰

The Code of Criminal Procedure contains special provisions on preventive measures for minors. Thus, taking in custody and pre-trial arrest may be ordered exceptionally against a minor only if the effects of their deprivation of freedom on their personality and development are not disproportionate to the objective pursued by such measure. In determining the duration of a pre-trial arrest measure, the minor's age at the date of ordering, extending, or maintaining such measure shall be considered. Minor defendants may enter into plea agreements with the consent of their legal representative.

19 Penal Code 2009 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/109855> (Accessed: 16 December 2023).

20 Tudorel et al., 2014, p. 10.

According to Article 504 of the Code of Criminal Procedure, the prosecution and trial of offences committed by minors shall be conducted per the rules of ordinary procedure, with certain additions and exceptions contained in the chapter entitled *Procedure in cases involving juvenile offenders*. This procedure shall also apply to persons who have reached the age of 18, up to the age of 21, if they were minors at the time they became suspects, when the judicial body deems it necessary, taking into account all the circumstances of the case, including the maturity and vulnerability of the person concerned. Where the suspect or accused person is a minor, his/her legal assistance shall be mandatory. If the person detained or arrested is a minor, he/she shall also benefit from special conditions for the execution of detention and custody. With regard to the summons of a minor, the law provides that a minor under 16 years of age shall be summoned through his parents or guardian unless this is not possible.

Following the amendment of the Criminal Procedure Code in 2020²¹, some special provisions applicable to the hearing of children in conflict with criminal law have been introduced in the text of the law. According to these provisions, when the suspect or the accused is a minor, at any hearing or confrontation of the minor, the prosecution body shall summon the parents or, as the case may be, the guardian, curator, or the person in whose care or supervision the minor is temporarily placed, as well as the general directorate for social assistance and child protection of the locality where the hearing is held. At any other act of criminal proceedings to which the suspect or accused minor is summoned, the minor's legal representatives are also summoned if the judicial body considers that their presence is in the best interest of the minor and is not likely to prejudice the proper conduct of the criminal proceedings²².

Before the first hearing in cases involving juvenile suspects or defendants, they must be informed of a series of information concerning, inter alia, the main stages of the criminal proceedings, the preventive measures that may be applied to them, the right to protection of privacy, the right for parents or legal representatives to receive the same information communicated to the juvenile, the right to be evaluated by means of the evaluation report, the right to be present at the trial, etc. All communications to the minor shall be made in simple and accessible language appropriate to the minor's age and to the minor's parents or, where appropriate, guardian, curator, or the person in whose care or supervision the minor is temporarily placed, and shall not be contrary to the minor's best interests.

In cases involving juvenile defendants, the prosecuting authorities may, where they deem it necessary, request a report on the assessment of the juvenile by the probation service. If the juvenile is committed for trial, the request for the assessment report is mandatory unless it would be contrary to the best interests of the juvenile. Even during the trial, the court may require the probation service to make an

21 Law No. 248/2020 transposed into national law Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspected or accused persons in criminal proceedings.

22 Art. 505 of the Code of Criminal Procedure.

assessment report. Cases with juvenile defendants are tried urgently and in a pretrial hearing, which is not public.

When the defendant is a minor person aged less than 16, the court, if it feels that hearing certain items of evidence can exercise a negative influence on the defendant, can have the defendant temporarily removed from the courtroom. A minor defendant can only be heard once, and hearing them again shall only be allowed by the judge in thoroughly justified situations.

Law No. 304/2022 on the organisation of the judiciary²³ stipulates that within the courts, depending on the complexity and number of cases, there shall be divisions or, where appropriate, specialised panels for juvenile and family cases, which shall try both offences committed by minors and offences committed against minors. In reality, there is only one specialised court and prosecutor's office for minors and family offences in Romania, located in Braşov, which started operating 20 years ago in 2004. Unfortunately, however, neither the old nor the new law on the organisation of the judiciary makes it compulsory to set up specialised courts for minors and families at least at the level of each county.²⁴

We consider that the provisions introduced into the Code of Civil Procedure by Law 248/2020 are not sufficient to effectively protect the rights and interests of children in conflict with the criminal law. It would be necessary for the law to lay down special provisions applicable to the stage of the hearing of the child suspect or accused, mandatory minimum procedural rules provided for in, for example, the *European Convention on the Exercise of Children's Rights* (ETS 160) or the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules).²⁵ These mandatory minimum procedural rules provide, among other things, for an immediate hearing upon discovery of the criminal offence and its perpetrator.²⁶

The main procedural rights and safeguards applicable to the hearing of injured parties are set out in the Code of Criminal Procedure. With regard to the hearing of child victims, the law provides only for a few special provisions introduced into the Code by Law No. 51/2023.²⁷ Thus, according to Article 111 para. 8¹, the hearing of the injured person under the age of 14 takes place in the presence of one of the parents, the guardian, or the person or representative of the institution to which the minor is entrusted for upbringing and education, as well as in the presence of a psychologist, established by the judicial body. The psychologist will provide expert advice to the minor throughout the court proceedings. Cases involving injured minors are also tried urgently and with priority.

23 Law No. 304/2022 on the organisation of the judiciary [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocumentAfis/261410> (Accessed: 14 December 2023).

24 Rus, 2023, pp. 40–65.

25 Council of Europe, 1996; United Nations, 1985.

26 Pivniceru and Luca, 2009, pp. 122–149.

27 Law No. 51/2023 on amending and supplementing Law No. 135/2010 on the Code of Criminal Procedure.

With regard to the hearing of witnesses, the Code of Criminal Procedure provides that any person who has knowledge of facts or factual circumstances constituting evidence in a criminal case may be heard as a witness. The hearing of a witness who is a minor up to the age of 14 takes place, as in the case of the hearing of an injured person who is a minor of the same age, in the presence of a parent, guardian, or the person or representative of the institution to which the minor is entrusted for upbringing and education, as well as in the presence of a psychologist, who will provide expert advice to the minor throughout the court proceedings. The hearing of the minor witness must avoid any negative effect on the minor's mental state. A minor who has not reached the age of 14 at the time of the hearing shall not be told that he/she is required to give truthful statements and shall not be made aware that the law punishes the offence of perjury. At the same time, a minor who has not reached the age of 14 does not take an oath but is warned to tell the truth.

In criminal matters, in addition to the Code of Criminal Procedure, which provides the general framework at the national level for dealing with offences committed by or against minors, there are also two guidelines on the working methodology for hearing minors. *The methodological guide on hearing minors who are victims of violence*²⁸ was adopted in April 2017 as part of a project co-funded by a grant from Switzerland. Furthermore, the *guide on hearing children in judicial proceedings*²⁹ adopted under the aegis of the National Institute of Magistracy was published in 2009. The hearing methodology proposed by the first guide is based on the interview protocol developed by the *National Institute of Child Health and Human Development*. This Protocol is designed to encourage the use of open-ended questions likely to elicit concrete, detailed answers in the form of a verbal account. The second guide, according to its authors, represents a practical application of a complex of interdisciplinary psychological concepts and practices and national and international legal rules, all aimed at enhancing and respecting the rights of the child in relation to the legal situations in which he/she finds himself/herself.³⁰

As we can see, in both civil and criminal proceedings, the hearing of minors takes place in the courtroom. These chambers serve as a framework for activities of a jurisdictional nature. In 2014, as part of a project carried out by the Federation of Non-Governmental Organisations for Children (FONPC), two specialised rooms for hearing minors were set up in two large Romanian cities (Cluj, Craiova). Later, in 2016, the official inauguration of the room for hearing minors took place at the Prosecutor's Office of the Bucharest Court. The provision of more separate spaces for the hearing of minors is still a priority, as minors are often heard in inappropriate places full of stressors. Currently, Romanian courts and prosecutors' offices have a total of 8 such rooms for hearing minors. Although, according to the strategy for the development of

28 Badea and Trandafir, 2021.

29 Ibid.

30 Pivniceru and Luca, 2009, p. 13.

the judicial system, between 2022-2025, 30 more such rooms will be set up specifically for minor victims in both criminal and civil proceedings.³¹

In Romania, the People's Advocate (Avocatul Poporului) is the institution where the Child Ombudsman (Avocatul Copilului) operates. According to Law No. 35/1997,³² the Child's Advocate, under the coordination of the People's Advocate, acts to promote and protect the rights of children up to the age of 18 and supports and encourages the respect and promotion of children's rights. In fulfilling the specific mandate in the field of protection and promotion of the rights of the child, the Children's Advocate performs tasks such as dealing with individual complaints made by children or their representatives in relation to the actions of public institutions in the field of health, education, or special protection of children, in the field of application of custodial and non-custodial measures provided for in the Penal Code, dealing with complaints in relation to the violation of one or more rights of the child, and promoting the rights of the child among children and adults. The Children's Advocate collaborates with the formal structures for children, formulates proposals for measures to encourage children's participation in decision-making that concerns them, draws up studies on the exercise and respect for children's rights, and recommends, where appropriate, measures for the respect of children's rights at the public policy and legislative levels, including by drawing up special reports, and immediately refers cases to the criminal prosecution authorities, either *ex officio* or on request when finding evidence of offences against children under criminal law.

In the special report on respect for children's rights in Romania³³ of November 2019, on the right of the child to justice adapted to his/her needs, it is very clearly underlined that the hearing of minors is a real challenge due to the lack of adequate conditions, such as special hearing rooms, audio-video equipment for recording hearings, and the presence of multi-disciplinary teams. Children's right to be heard is closely linked to their right to feel safe when speaking and their right to be in a place where they feel comfortable. The direct effect of not providing adequate conditions for their hearing is to rehear them and thus prolong court proceedings. The child witness or victim, in many cases, is exposed to the presence and proximity of the perpetrators, which means re-victimisation. However, progress can also be observed, such as the project carried out by the Federation of Non-Governmental Organisations for Children to set up specialised rooms for hearing minors and the Public Prosecutor's Office's plans to create a network of prosecutors specialising in cases involving children and strengthen the capacity for hearings carried out in accordance with legal provisions.

31 Annex to the Decision on the approval of the Strategy for the Development of the Judicial System 2022- 2025 and its Action Plan [Online]. Available at: <https://sgg.gov.ro/1/wp-content/uploads/2022/03/ANEXA-50.pdf> (Accessed: 19 December 2023).

32 Law No. 35/1997 on the organisation and functioning of the People's Advocate Institution [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/11200> (Accessed: 19 December 2023).

33 Onu et al., 2019.

Initial and continuous professional training and education of magistrates is organised by the National Institute of Magistracy (NIM). According to the *Thematic Monitoring Report on the Investigation and Resolution of Sexual Offences Cases with Child Victims*,³⁴ several training activities were organised till 2022 focusing on the topic of hearing child victims. For example, seminars on *Juvenile Justice* and the *Hearing of Minors* were organised as part of the continuous training of magistrates. These seminars presented the psychological aspects to be taken into account when hearing a minor in judicial proceedings, as well as the steps and rules to be followed to ensure an effective hearing. The need for a clear and effective protocol for the hearing of minors has increasingly become part of the didactic strategy of continuing professional development.

Within the project *Justice 2020: professionalism and integrity*, from 2018 until the end of 2023, 12 seminars were organised on the topic of *Hearing techniques in criminal proceedings*, including 5 seminars with specificity in the case of hearing vulnerable persons, including children. Also, under this project, 8 training seminars on *Juvenile Justice* were organised for 20 judges and prosecutors dealing with juvenile cases.³⁵

According to the *Thematic Control Report* for the initial training in *Criminal Procedural Law*, the resolution of cases involving minors is the subject of a separate seminar, which deals with procedural issues concerning both minor offenders and minor victims. It also includes issues concerning the hearing of a minor victim of sexual abuse and specific issues related to the assessment of the credibility of the statements of those involved in the commission of such crimes.

Since 2014, the Romanian Government has been developing national strategies for the protection and promotion of children's rights. The first strategy for the period 2014-2020 aimed to ensure an effective framework for the implementation of the main priorities in the field of children's policies to allow conditions for the development and training of children from birth to adulthood.³⁶ The non-governmental sector, associations, and foundations whose mission is to defend and promote children's rights played a key role in the development of the strategy. This first strategy for the hearing of minors in conflict with the criminal law already proposed to create hearing rooms to provide a favourable framework for an optimal hearing. An evaluation showed that the number of hearing rooms in the units under the Ministry of Internal Affairs increased during the reporting period, but these rooms were not exclusively intended for the hearing of minors and do not have specific facilities to make them child-friendly. According to the evaluation report, the number of child-friendly rooms for children visiting their parents increased from 9 to 40 during the period under review.

34 Inspekția Judiciară, 2022.

35 Badea, 2019.

36 Strategia națională pentru protecția și promovarea drepturilor copilului pentru perioada 2014-2020 și a Planului operațional pentru implementarea Strategiei naționale pentru protecția și promovarea drepturilor copilului 2014-2016 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/164656> (Accessed: 15 December 2023).

Finally, the report found with regard to the reform of the child justice system that both police and court procedures and infrastructure remained child-unfriendly.³⁷

The new national strategy for the protection and promotion of children's rights 2023-2027 includes among its priorities the continuation of the reform process of the juvenile justice system in Romania, given that the child-friendly infrastructure in legal proceedings is still deficient. According to the *EU Justice Scoreboard 2020*, although Romania invests in training judges on child-friendly and child rights-based communication, it ranks last in the EU in terms of investment in training judges on topics such as hearings. With regard to making information on proceedings available to children, there is a concern for adequate preparation of children in court proceedings. However, there are no child-friendly websites that provide online information on the justice system. Another problem according to the *EU Justice Scoreboard* is that there is no data available on the experience of child witnesses in civil, criminal, or administrative proceedings. Furthermore, the Romanian authorities do not regularly or systematically collect data on children's needs and their experiences throughout court proceedings. Although a legal framework on children's rights exists in Romania, children are not sufficiently informed about their rights, including their right to development, protection, and participation. Thus, there is a lack of adequate knowledge of how these rights are implemented.

37 ANDPDCA, Biroului Național UNICEF în România, 2021.

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