

ACCESS TO JUSTICE FOR CHILDREN: ROMANIA

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Romania ratified the CRC on 28 September 1990.¹ According to the Romanian Constitution, ratified international treaties are part of national law and the State pledges to fulfil its obligations under such treaties in good faith.²

B. Does the CRC take precedence over national law?

The Constitution also provides that international instruments, including the CRC, take precedence over national law in matters relating to fundamental rights and obligations, except where national legislation is more favourable.³ Furthermore, constitutional provisions concerning the rights and liberties of citizens must be interpreted in the light of Romania's obligations stemming from international human rights treaties.⁴

C. Has the CRC been incorporated into national law?

Yes, the CRC has been incorporated into Romanian law.⁵

D. Can the CRC be directly enforced in the courts?

Yes, by virtue of being considered part of national law, the CRC can be directly relied on in court.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC has been applied by Romanian courts mainly in family law cases. Typical family adjudications involve the court assessing a child's living situation.⁶ In an adoption case,⁷ the court referred to Article 20 of the CRC

¹ Law No. 18/1990. See <http://www.law.yale.edu/rcw/rcw/jurisdictions/euroe/romania/frontpage.htm>.

² Romanian Constitution, 8 December 1991, Article 11, available at: <http://www.cdep.ro/pls/dic/site.page?id=371>.

³ *Id.*, Article 20.

⁴ *Id.*

⁵ Law No. 18/1990 dated 27 September 1990, as republished in the Romanian Official Gazette No. 314 dated 13 June 2001. The republication in 2001 was necessary due to some inconsistencies between the English version of the Convention and its Romanian language translation.

⁶ Ministerul Justiției, available at: <http://portal.just.ro/287/Lists/Jurisprudenta/DispForm.aspx?ID=13>.

⁷ Ministerul Justiției, Portalul Instanțelor de Judecată, available at:

which describes the circumstances in which a child is entitled to special protection and assistance by the State. In a child custody case,⁸ the court relied on the principle of the best interests of the child. In several cases, the court cited to the CRC to end the illegal detention of a minor, finding that holding a small child should not only be as short as possible, but also a last resort in cases of preventive arrest.⁹ Finally, in a case concerning child trafficking,¹⁰ the court cited the CRC and other international laws to define “child” as a person below 18 years of age.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children and other persons without relevant legal capacity, or with limited legal capacity, may challenge violations of their rights in domestic courts only through a representative, as outlined in part II.B below.

In relation to criminal proceedings, there are no child-specific provisions in Romanian law for reporting crimes. Romanian law allows a child victim of a crime to file a complaint with the public prosecutor,¹¹ however private prosecution is not available.

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Cases on behalf of any child under the age of 18 can be brought only with the help or consent of an adult. Children under the age of 14 must be represented by a parent while children between the ages of 14 and 18 have limited legal capacity and may exercise their rights on their own, but only with the parent's prior approval.¹²

In urgent cases, at the request of the interested party, the court may appoint a temporary special curator to represent a person who lacks legal capacity.¹³ In the case of a conflict of interest between the child and their legal representative, the court is required to appoint a special curator from a group of lawyers that specifically serve in such capacities. The special curator will have all of the rights and obligations of the legal representative.¹⁴

<http://portal.just.ro/120/Lists/Jurisprudenta/DispForm.aspx?ID=30>.

⁸ Ministerul Justiției, available at: <http://portal.just.ro/301/Lists/Jurisprudenta/DispForm.aspx?ID=159>.

⁹ Ministerul Justiției, available at: <http://portal.just.ro/54/Lists/Jurisprudenta/DispForm.aspx?ID=196>, <http://portal.just.ro/57/Lists/Jurisprudenta/DispForm.aspx?ID=299>, <http://portal.just.ro/54/Lists/Jurisprudenta/DispForm.aspx?ID=196>.

¹⁰ Ministerul Justiției, available at: <http://portal.just.ro/112/Lists/Jurisprudenta/DispForm.aspx?ID=485>.

¹¹ New Civil Procedure Code, Act No. 134/2010, Article 910(2), 911(2) and 912(2), available at: <http://legeaz.net/noul-cod-de-procedura-civila/>.

¹² See http://ec.europa.eu/civiljustice/parental_resp/parental_resp_rom_en.htm.

¹³ New Civil Procedure Code, Article 58.

¹⁴ *Id.*

Articles 110 through 163 of the New Civil Code¹⁵, provide for the rights and obligations of the legal representatives and curators for children and the procedure for appointing such representatives and curators. Any person can qualify as a representative, unless expressly prohibited by Article 113,¹⁶ which provides that the legal representative and curator for children must not (a) be a child or other person without relevant legal capacity, (b) have forfeited his/her rights as a parent or have been officially declared incapable to become a representative or curator, (c) have forfeited his/her legal capacity, (d) have been excluded from a previous position as representative or curator, (e) be insolvent, (f) be in conflict with the best interest of the child, or (g) be excluded by the will of the parent.¹⁷ Lastly, the representative and curator must perform any and all actions in the best interests of the child only, both with respect to the child's person and his/her assets.¹⁸

C. In the case of infants and young children, how would cases typically be brought?

Just like older children, infants and young children must be represented by their parents, legal guardians, or curators. Please refer to parts II.A-B.

A legal guardian is appointed when both parents are deceased, unknown, deprived of parental rights, incapacitated or disappeared or legally declared deceased.¹⁹ In addition, a legal guardian may be appointed to a child in the case where an adoption is terminated and the court decides guardianship is necessary in the best interest of the infant.²⁰

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Any individual domiciled in Romania or in another EU Member State, including children and their representative, who is unable to pay for litigation costs or necessary legal advice in connection with his legal rights and interests may request legal aid.²¹ Public legal aid is granted only for civil, commercial, administrative, labour and social insurance matters, as well as other areas, but generally not for criminal matters.

In certain specific cases, however, in particular if the defendant is a minor, the Romanian State must ensure that they are represented by a lawyer, either of his or her choice or appointed by the State, throughout all stages of the criminal proceedings.²² Each local bar association maintains a Legal Aid Registry and has created a Legal Aid Bureau (*Serviciu de Asistență Juridică*)

¹⁵ New Civil Code, Act No. 287/2009, available at: <http://legeaz.net/noul-cod-civil/>.

¹⁶ *Id.*, Article 112.

¹⁷ *Id.*, Article 113.

¹⁸ *Id.*, Article 133.

¹⁹ *Id.*, Article 110.

²⁰ *Id.*

²¹ Emergency Ordinance on Legal Aid in Civil Matters, No. 51/2008 available at: http://www.dreptonline.ro/legislatie/ordonanta_instituire_ajutor_materie_civila_oug_51_2008.php.

²² New Criminal Procedure Code, Act No 135/2010, Article 90, available at: <http://www.lex.ro/Legea-135-2010-106292.aspx>.

responsible, among other things, for designating the lawyers who provide legal aid. In Romania, bar associations ensure legal assistance in the following cases:

- a) criminal cases where defence is mandatory;
- b) any other case than a criminal one, as public legal aid; and
- c) legal assistance through a lawyer, granted upon request of the local public administration.²³

The lawyer designated for the purpose of providing public legal aid may not refuse the assignment, except in cases of conflict of interest or for other justified reasons. The lawyer providing public legal aid may not receive any type of compensation or reward from the client, or other persons they may represent in connection with the client. This restriction also applies to legal expense reimbursements.²⁴

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

According to Romanian law, all cases involving children should have a representative of the Public Ministry (a prosecutor) present in court, who is charged with protecting the interest of the child.²⁵

III. **How can children's rights violations be challenged before national courts?**

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Such violations can be challenged through a court motion in front of a civil court.²⁶ The administrative divisions of the civil courts can hear claims against decisions by public administrative authorities.²⁷ A civil action may also be raised for damages arising as result of a criminal offence.²⁸

Compatibility of legislation with the rights granted by the Constitution may also be challenged before the Constitutional Court through judicial review.²⁹

If the breach in question constitutes a criminal offence under Romanian law

²³ Law on the Legal Profession, No. 51/1995 Article 91, available at: http://www.dreptonline.ro/legislatie/statut_avocati.php and the Decision No. 64/2011 of the Council of the National Association of the Romanian Bar, Article 168, available at http://unbr.ro/ro/wp-content/uploads/2013/10/Statutul_Profesiei_de_Avocat_041013.pdf.

²⁴ Law on the Legal Profession, No. 51/1995, available at: http://www.dreptonline.ro/legislatie/statut_avocati.php.

²⁵ Law on Judicial Organization, No. 304/2004, Article 63(g) available at: <http://www.just.ro/Sectiuni/SistemulJudiciarinRomânia/Legeaprivindorganizareaajudiciarănr3042004/tabid/275/Default.aspx>.

²⁶ New Civil Procedure Code, Articles 1 and 29.

²⁷ See http://ec.europa.eu/civiljustice/jurisdiction_courts/jurisdiction_courts_rom_en.htm.

²⁸ New Civil Procedure Code, Articles 19 and 20.

²⁹ Constitution, Article 146.

(e.g., the child is molested, subjected to theft or physical violence), the violation must be challenged through a criminal complaint.³⁰

The Office of the Ombudsman of Romania (*Avocatul Poporului*) includes a Deputy Ombudsman for children's rights.³¹ The Ombudsman can receive individual complaints against actions of public administration authorities, as well as complaints by non-governmental organisations, and it may also act on its own initiative. Where, as a result of an investigation, it is found that there has been a breach of human rights, the Ombudsman can issue recommendations to the authority concerned.

Lastly, children and their representatives can turn to the European Court of Human Rights which decides cases concerning alleged violations of one of the rights contained in the European Convention on Human Rights.³² Any individual, group of individuals or an NGO who considers to be a victim of a violation of one of these rights may submit a complaint to the Court,³³ but the complaint will be admissible only if all domestic remedies have been exhausted.³⁴ Anonymous complaints are not permitted.³⁵ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.³⁶ After examining the case, the Court renders judgements which are binding on the state³⁷ and also has powers to award monetary compensation to the victims of human rights abuses.³⁸ It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

B. What powers would courts have to review these violations, and what remedies could they offer?

In Romania, judicial bodies, courts, and prosecutors have broad remedial power to ensure that an aggrieved party is appropriately compensated, whether the damages are material or moral. The law also provides for injunctions and immediate remedial action where deemed necessary to prevent an ongoing violation.³⁹

³⁰ New Criminal Procedure Code, art. 14, Monitorul Oficial no. 86, available at <http://lege5.ro/Gratuit/geztkobyha/codul-de-procedura-penala-din-2010>; Romania Criminal Procedure Code, Article 9, Monitorul Oficial no. 78 dated 30 April 1997, available at <http://legeaz.net/cpp-cod-procedura-penala/>.

³¹ Official website available at:

http://www.avp.ro/index.php?option=com_content&view=article&id=58&Itemid=90&lang=en.

³² European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Articles 19 and 32, available at: http://www.echr.coe.int/Documents/convention_ENg.pdf.

³³ European Convention on Human Rights, Article 34.

³⁴ European Convention on Human Rights, Article 35.

³⁵ *Id.*

³⁶ Rules of Court, July 2014, Rule 36, available at:

http://www.echr.coe.int/documents/rules_court_eng.pdf.

³⁷ European Convention on Human Rights, Article 46.

³⁸ European Convention on Human Rights, Article 41.

³⁹ New Civil Code, Article 255 and New Civil Procedure Code, Articles 998-1001.

Where the Constitutional Court finds that a law that has already entered into force is unconstitutional, that law will cease to have legal effect within 45 days if, in the meantime, the Parliament or the Government cannot bring it into line with the provisions of the Constitution.⁴⁰ Where the Court finds that a proposed law which is in the process of being promulgated is unconstitutional, Parliament is bound to reconsider the proposal and bring it in line with the Court's decision.⁴¹

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Although there is no formal right to collective action under Romanian law, persons suffering similar violations of their rights are permitted to file joint court actions. Multiple persons may be joint plaintiffs if litigation concerns a joint right or obligation, if their rights or obligations have the same causes, or if they are strongly connected.⁴²

The Criminal Code contains provisions protecting the privacy of children involved in the proceedings as either defendants or victims.⁴³

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

The Romanian legal system does not afford a formal right to collective action, however, as mentioned in part III.D, persons suffering similar infringements may file joint actions.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

In Romania, only public institutions or authorities are permitted to initiate legal proceedings to protect children's rights. NGOs are not considered a public institution or authority for this purpose, however such organisations may refer a case to the public institutions for legal proceedings to be initiated.

Non-governmental organisations whose aim is to protect human rights or which have a legitimate interest in combating discrimination have legal standing in cases where discrimination is manifested in their field and affects a community or a group of people and also in cases where discrimination affects an individual, at his or her request.⁴⁴

⁴⁰ Constitution, Article 147.

⁴¹ *Id.*

⁴² New Civil Procedure Code, Article 59.

⁴³ New Criminal Procedure Code, Article 504-520.

⁴⁴ Emergency Ordinance on preventing and sanctioning all forms of discrimination, No. 137/2000 (31 August 2000), Article 28, available at: http://www.cncd.org.ro/new/files/file/ORDONANTA_137.pdf.

IV. **Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Civil and administrative cases must be filed at the local court with jurisdiction for the place of the child's permanent address.

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

All legal proceedings to protect children's rights are excluded from court costs regardless of the nature of the relief sought or the persons initiating the proceeding.⁴⁵ Please see part II.D for further detail on the provision of legal aid.

C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Romanian lawyers are generally entitled to provide pro bono assistance, however, professional rules prohibiting advertising and unfair competition among lawyers lead to general hesitation on the part of lawyers to voluntarily engage in pro bono work.

Despite some positive developments such as the creation of the first pro bono Romanian clearinghouse (for NGOs seeking direct free legal advice), there continues to exist an overriding hesitation among lawyers which stifles initiatives to organise the Romanian pro bono community. Child rights organizations are free to join the first pro bono Romanian clearinghouse and thereby have access to reputable local and international attorneys. The pro bono Romanian clearinghouse is a program provided by the Civil Society Development Foundation (*Fundatia pentru Dezvoltarea Societatii Civile*) (FDSC).⁴⁶

A Pro Bono Network for Human Rights was launched at the end of 2014 to connect lawyers willing to offer pro bono services with NGOs or individuals seeking free legal advice. The Pro Bono Network is the initiative of the

⁴⁵ Emergency Ordinance on Judicial Stamp Duties, No. 80/2013 (16 June 2013), Article 29(e), available at http://www.dreptonline.ro/legislatie/oug_80_2013_taxele_judiciare_de_timbru_ordonanta_de_urgenta_80_2013.php.

⁴⁶ See: <http://www.fdsc.ro/servicii-juridice-pro-bono-pentru-onguri>.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

As a general rule, a civil action seeking damages should be brought within the three years following the date when such damages were caused.⁴⁸ For criminal cases, there is a broader timeframe, lasting from five to fifteen years.⁴⁹ There are no general provisions allowing persons over 18 to pursue claims for violations which occurred when they were minors. This is based on the understanding that the legal representative of the child is responsible for supervising and defending their rights and interests. However, actions may be admitted even after the limitation period has expired, provided there is evidence that the legal representative did not carry out their duty to represent the child adequately.⁵⁰

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

All available evidence may be issued to prove a violation (e.g., testimony, documents, expert opinions, interrogatory etc.). Facts can be proven through documents, witnesses, presumptions, confession of one party, made on its own initiative or obtained by questioning the expertise, the material evidence, the crime scene investigation or any other means provided by law.⁵¹

Children under age 14 giving evidence in court must be accompanied by their parents, legal representatives or curators and in certain specific cases provided by law (for example, if the child is the defendant) even by representatives of the guardianship authority and a psychologist.⁵² Any hearing of testimony by children must avoid any negative effects on the psychological state of the child.⁵³

A minor may testify as a witness. Until the age of 14, a child witness does not take a judicial oath but is nevertheless advised of the importance of telling the truth.⁵⁴

In cases where the hearing of a child is compulsory, such hearing will take place in chambers. If on the basis of the facts of the case, the court considers it necessary or beneficial, the child can be heard in the absence of the parties

⁴⁷ See <http://probono.actedo.org/despre-proiect/>.

⁴⁸ New Civil Code, Article 2517.

⁴⁹ New Criminal Procedure Code, Articles 153-154; New Criminal Procedure Code, Article 97.

⁵⁰ New Civil Code, Article 2522.

⁵¹ New Civil Procedure Code, Article 250.

⁵² New Criminal Procedure Code, Article 124.

⁵³ *Id.*

⁵⁴ New Civil Procedure Code, Article 320. Criminal Procedure Code, Article 124.

to the dispute.⁵⁵

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Legal proceedings in Romania are often time consuming - although criminal cases may be processed quicker than civil ones, it may be years before a court finally issues a decision. In a sweeping report, the European Court of Human Rights documented the raft of inefficiency and delay in the justice system.⁵⁶ In some cases, criminal proceedings have taken over ten years to resolve.⁵⁷ The European Court of Human Rights has encouraged the Romanian government to provide new remedies for long case processing.⁵⁸

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

Appellate courts in Romania have specialised panels according to the subject matter of the dispute - civil cases, criminal cases, cases concerning minors and family, commercial cases, etc.⁵⁹

The process of filing appeals is outlined in the New Civil Procedure Code and the New Criminal Procedure Code, respectively, including the circumstances under which a court may decline to hear an appeal.⁶⁰ Decisions rendered in the first instance may be appealed unless the law expressly provides otherwise.⁶¹ Usually, the court whose decision is appealed must receive the filing for appeal.⁶²

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

The Romanian legal system is of the civil law type.⁶³ Therefore, case law or judicial precedent are not recognised as a source of legal rules and previously decided cases are not binding on the lower courts.⁶⁴

Furthermore, there is no obligation for legislative acts to be amended as a result of court decisions. However, in practice the political legislative

⁵⁵ Civil Procedure Code, Article 144(1).

⁵⁶ Romania-Insider.com, *European Court of Human Rights criticizes Romania's slow court system* (27 November 2013), available at <http://www.romania-insider.com/european-court-of-human-rights-criticizes-romania-s-slow-court-system/110381/>.

⁵⁷ European Court of Human Rights, *Further reforms needed for Romania to provide adequate compensation to citizens whose cases take too long*, (26 November 2013), available at hudoc.echr.coe.int/webservices/content/pdf/003-4582878-5539919.

⁵⁸ *Id.*

⁵⁹ Justiția Română, *Romanian Judicial System* (11 March 2014), available at: http://www.justitia-romana.org/Site_Engl/Pagina_Principala_Eng.html.

⁶⁰ New Civil Procedure Code, Articles 466-508 and New Criminal Procedure Code, Articles 408-425.

⁶¹ *Id.*, Article 466(1).

⁶² *Id.*, Article 471(1).

⁶³ GlobaLex, *Doing Legal Research in Romania*, available at: http://www.nyulawglobal.org/globalex/romania1.htm#_5.5_Civil_and.

⁶⁴ *Id.*

environment is quite responsive to court decisions.

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

The law on the procedure for enforcement of judicial decisions⁶⁵ contains detailed provisions in the field, however, the practical challenges to enforcing a decision are unknown.

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

The CRC together with Law No. 272/2004 dated 21 June 2014⁶⁶ regarding protection and promotion of child rights, as subsequently amended, contains the majority of national provisions that concern children's rights. Pursuant to Article 43 of that law, if there are sound reasons to suspect that a child's life and security are endangered in the family, the representatives of the public authorities for child protection in Romania are entitled to visit the children at their residence and to gather information on how the children are being cared for, on the children's health and physical development, education and professional training. If such visits establish that the child's physical, mental, spiritual, moral or social development is endangered, the public social security service must immediately notify the general department for social security and child protection, in view of undertaking certain protection measures. The general department for social security and child protection must refer the case to the court in all cases where it considers that the conditions required by the law regarding the partial or complete termination of the parental rights of one or both of the parents are met.

Pursuant to Article 18 of the same law, the general department for social security and child protection is entitled to monitor the development and the care provided to a child. The person authorised by the general department for social security and child protection will draft reports concerning the evolution of the child's physical, mental, spiritual, moral or social development and the way in which the child is taken care of, on a regular basis. Such reports may be used as legal evidence in legal proceedings that affect a child's rights.

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁶⁵ Law on the procedure to enforce judicial decisions, annexed to the New Civil Procedure Code, available at:

<http://www.just.ro/Sectiuni/Cooperarejudiciarăinternațională/Ghiddecooperareînmateriecivilășicomercială/RecunoaștereașiExecutareaHotărârilor/RecunoaștereașiExecutareaHotărârilor/tabid/751/Default.aspx>.

⁶⁶ Republished in the Romanian Official Gazette Part I No. 159 dated 5 March 2014 and last amended by Law No 131/2014.