ACCESS Project

Access to Justice for Children Accused and Suspect in Criminal Proceedings

Baseline Studies

On procedural rights of children suspects and accused in criminal proceedings in Belgium, Bulgaria, the Czech Republic, the Netherlands, Poland and Slovakia under Directive (EU) 2016/800

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A. Summary

1. Introduction

The ACCESS Baseline Study was developed as part of the "Access to Justice for Children Accused and Suspect in Criminal Proceedings" project. It aims to provide a comprehensive understanding of how children's procedural rights under *Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings*[1] and other international legal standards are implemented in law and practice across six participating countries: Belgium, Bulgaria, the Czech Republic, the Netherlands, Poland, and Slovakia.

The study builds on guiding questions developed during the project's Kick-Off Meeting in September 2024, ensuring uniformity across national research efforts. These questions were informed by key provisions of Directive 2016/800, addressing children's rights such as the right to information, legal assistance, individual assessment, privacy, and protections against the deprivation of liberty. Importantly, the study also considers issues that fall outside the directive's scope, including the treatment of children below the age of criminal responsibility, who often face sanctions resembling criminal penalties but without corresponding procedural safeguards.

The objective of this summary is twofold: first, to compare national laws and practices against Directive 2016/800 and international standards such as the *United Nations Convention on the Rights of the Child*[2] (CRC); and second, to identify cross-cutting themes and country-specific challenges. While the summary aims to provide a broad overview, it does not delve into every procedural right in depth due to the concise format of the national studies. Instead, it focuses on trends and systemic issues, emphasizing areas requiring further action to ensure children's rights are upheld in criminal proceedings.

2. Cross-cutting themes

The analysis of the six national baseline studies reveals that certain structural or systemic issues within the criminal justice system are either the root causes or significant contributors to specific challenges affecting children in criminal proceedings, thereby impeding or hindering the full implementation of the *Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on*

[1] European Union, Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21.5.2016, p. 1, https://eur-lex.europa.eu/eli/dir/2016/800/oj/eng.

[2] United Nations, Convention on the Rights of the Child, UN Doc. A/RES/44/25 (1989), https://digitallibrary.un.org/record/80135?v=pdf.

procedural safeguards for children who are suspects or accused persons in criminal proceedings.[3] Many of these structural or systemic issues are shared by more than one participating country, so these can be categorized as "cross-cutting themes".

2.1 Inequalities in the treatment of children from vulnerable groups

In most of the countries considered, children from vulnerable groups experience a lower level of enjoyment of their rights in proceedings. The baseline studies particularly highlight the situations of children from the following groups:

- Minority children

In the Czech Republic, children from minority groups, especially Roma children, are more likely to be removed from the family when suspected or accused of a violation of a criminal law. In Slovakia, children for whom Slovak is not their native language (including Roma and Hungarian children) may not always receive information tailored to their needs, depending on the individuals involved, such as the police officers, public prosecutors, or judges handling the case. In the Netherlands, children with language issues are among those particularly affected by inequality in decisions, while in Belgium, despite the availabilities of interpreters, their right to participation in the proceedings is still significantly limited.

- Children with disabilities, particularly those with intellectual or psychosocial ones

All the shortcomings of the Czech justice system are exacerbated in the case of children with intellectual and/or psychosocial disabilities, and there is a clear connection between the existence of those disabilities and exposure to individual coercion.

In Slovakia, legal safeguards against deprivation of liberty of children with disabilities, especially children with intellectual and/or psychosocial disabilities, are lower than those of adults or children without disabilities. They are subject to a reduced legal protection compared to both adults and children without disabilities, particularly with regards to protective measures. A child may be placed in a psychiatric institution even if the legal conditions for protective treatment are not fulfilled, including the requirement that the person poses a danger to society. Moreover, the existing legal framework permits the psychiatric placement of children below the age of criminal responsibility.

In the Netherlands, research shows that inequalities occur at various stages in the criminal justice system and children with mild intellectual disabilities are among those particularly affected by the negative effect of inequalities in decisions.

Belgian mechanisms to ensure the effective participation of children with disabilities in criminal proceedings are largely inadequate: the training provided to authorities handling children in criminal proceedings is limited and insufficient, with few specialized training programs that address the specific needs of these children, which are not widespread at the national level.

In Poland, no additional measures have been adopted to adjust the proceedings to the needs of children with disabilities.

- Children with low socio-economic background

[3] European Union, Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21.5.2016, p. 1, https://eur-lex.europa.eu/eli/dir/2016/800/oj/eng.

While this group often intersects with other marginalized categories, the studies highlight specific issues. In the Czech Republic, children subjected to coercive measures or deprived of liberty often come from structurally disadvantaged social groups, with their families experiencing destabilizing poverty or social exclusion. Their need for specific procedural accommodations is often neglected as they face difficulties understanding the formal language used by criminal justice authorities - a challenge often shared by their parents. Even though prosecutors or judges can theoretically grant free legal aid without a formal application if evidence shows the accused qualifies, in practice, economically disadvantaged children are rarely granted such aid, regardless of whether they applied for it.

In Belgium, socioeconomic precarity is among the overlooked vulnerabilities often underestimated in criminal proceedings. There are very few specialized programs that address these children needs. While some promising initiatives exist, they remain exceptions and the trainings for competent authorities lack sufficient intercultural and diversity-focused approaches in general.

In the Dutch system, children from low-income families are in general more prevalent than those from high-income families and they tend to concentrate in "vulnerable neighbourhoods." Over 50% of young suspects come from just 10% of these neighbourhoods, and nearly 15% from only 1% of these areas. This disadvantage tends to persist across generations. Youth from low-income families (28 per 1,000) are significantly overrepresented in police records, compared to youth from high-income families (7 per 1,000). Research shows that they are disproportionately overrepresented in pretrial detention particularly. The neighbourhood approach, including the Top600 and Top400 strategies, targets at-risk youth in these vulnerable neighbourhoods. However, this approach, despite its widespread use, has faced criticism due to issues like low recidivism reduction and the practice of expanding the target group to include minors under the criminal responsibility age (below 12 years old). Research further shows that they are disproportionately affected by the negative effect of inequalities in judicial decisions.

In Slovakia, the General Prosecutor’s Office has reported that a large proportion of youth crimes consists of theft, often committed by children from economically vulnerable families. Children facing poverty are largely dependent on the active and accommodating approach of the authorities or courts to receive legal aid. Moreover, deprivation of liberty disproportionately affects them, without access to effective alternatives.

2.2 The overlap between family and criminal law, especially for children below the age of criminal responsibility

The overlap between family and criminal law creates significant issues for children above and below the age of criminal responsibility, with the latter being particularly problematic. These situations undermine procedural safeguards for children and expose those who are not criminally responsible to measures that mimic criminal sanctions, including deprivation of liberty.

The problem lies in how family law measures are used as quasi-criminal tools, lowering the procedural safeguards that would otherwise be guaranteed under criminal law. In the Czech Republic, for instance, suspected criminal behaviour is often addressed through family law pathways, where children are placed in institutional care under interim measures. These measures, while framed as protective, are implemented without robust protections such as mandatory legal representation, proof beyond reasonable doubt, or adequate privacy safeguards. Similarly, in Slovakia, children are placed in re-education centres through civil measures like interim decisions or educational orders. These decisions

are based on suspicion rather than proven criminal behaviour, and children are often represented by guardians *ad litem*— who are frequently the same authorities initiating the proceedings. This overlap diminishes the rights of children, treating them as offenders without the procedural rigor required in criminal cases.

For children below the age of criminal responsibility, the situation is even more concerning. These children, who should not be held criminally responsible, are subjected to measures that closely resemble criminal sanctions, including deprivation of liberty, but without the safeguards of criminal proceedings and sometimes even with less safeguards than children above the age of criminal responsibility. In Slovakia, for example, through civil proceedings, children under the age of criminal responsibility can be imposed protective upbringing (that includes deprivation of liberty). A similar issue exists in the Czech Republic, where children below the age of criminal responsibility can be placed in psychiatric hospitals through protective treatment, which carries weaker guarantees of review regarding the justification of the placement compared to adults or criminally responsible children (under the Juvenile Justice Act for children aged 15-18 years old).

In Poland, the situation similarly highlights the reduced safeguards. While the Act on Supporting and Rehabilitation of Minors[4] introduces certain protections, children close to the age of criminal responsibility may find their cases transferred from family to adult criminal courts, subjecting them to adult criminal rules.

Similarly, in Belgium, through the legal process of "dessaisissement", minors aged 16 or older (who are not criminally responsible according to Belgian law) can be transferred to an adult court if they are accused of committing serious offenses and if the court deems protective measures inadequate.

2.3 General approach of the criminal justice system

Some states adopt a general approach to the juvenile criminal justice system which significantly impacts individual procedural rights. The Slovak and Czech juvenile justice system can be described as judicial with welfare elements—a paternalistic model that prioritizes the child's circumstances and societal notions of what is beneficial for them over the specifics of the crime committed. However, within this framework, the child is often treated as a passive subject to be examined, and the importance of legal safeguards is undervalued.

Under this model, the right to an individual assessment takes on a disciplinary character, serving primarily as a tool to evaluate the juvenile's circumstances with the goal of assessing the coercive measure to impose. Structural issues identified during this process - such as pervasive poverty or social exclusion, are either attributed to the juvenile's personal failings or, even when recognized as systemic, are addressed on an individual basis. This in practice exacerbates the social stigmatization of children living in poverty and exclusion. As a result, children - or even children below the age of criminal responsibility - are paradoxically subject to such coercive measures that would not be justified by the seriousness of the unlawful act in the case of adults but are deemed necessary to safeguard their development. This is particular evident in the measure of protective upbringing, a criminal measure that involves depriving children of their liberty by placing them in school institutions or re-education centres. While formally not intended to punish minors, it aims to protect their development and re-

[4] Polish Act on Supporting and Rehabilitation of Minors, Act of 10 June 2022, Dz. U. 2022, item 1700 (2022), https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220001700.

educate them. Consistent with the welfare approach, the severity of the crime is not the determining factor for imposing this measure; instead, it is based on the juvenile's environment and behaviour.

In both Slovakia and the Czech Republic, the welfare approach also implies a medical model of disability: rather than a question of societal structures, disability is merely seen as an issue of the individual and can justify even more intense coercive intervention towards the child.

2.4 Structural issues in criminal justice systems

Some of the structural issues may be traced back to the legal system lacking fundamental institutions essential to criminal justice, and this deficiency impacts all procedural rights of the child. In particular, in Bulgaria, the legal framework does not include the concept of a "suspect." Prosecutors formally accuse individuals of a crime after gathering sufficient evidence to prove guilt during pre-trial procedures, by issuing an "accusation order"; before that, the person does not have a status of "suspect". Consequently, since the Directive applies to children who are suspects or accused, it cannot be fully implemented throughout the entire pre-trial phase nor during the so-called "police inspections" (art. 145 of the Judiciary Act). This situation significantly affects key rights such as the right to information, the right to legal assistance, and the right to an individual assessment of the child, as these rights are guaranteed from the moment a child is recognized as a suspect:[5] due to the absence of this designation in Bulgaria's criminal justice system, they can only be ensured after formal charges have been brought.

2.5 Budgetary and capacity deficiencies

Across multiple jurisdictions, budgetary constraints and capacity shortages severely hinder the effective implementation of juvenile justice frameworks. These limitations manifest in inadequate training for law enforcement, legal professionals, and judicial authorities on child-specific needs, particularly for marginalized groups such as LGBTQ+ children, children with disabilities, and cultural minorities. For example, in Belgium, legal aid timeframes for children are insufficient to build trust and prepare an adequate defence, while training programs for professionals lack intercultural and diversity-oriented approaches. Similarly, in Poland, training programs for lawyers, judges, and prosecutors inadequately address child-related issues, with little emphasis on marginalized groups or cultural diversity.

Resource limitations also impact the implementation of restorative and preventive measures. In the Czech Republic, insufficient funding for the Probation and Mediation Service (PMS) has led to overburdened staff and reduced availability of interventions, particularly in rural areas. In Belgium the implementation of practices such as audio-visual recording of interrogations, faces significant challenges due to a lack of infrastructure, trained personnel, and administrative support. Meanwhile, in the Netherlands, staff shortages and organizational inefficiencies delay sanctions, reduce specialization, and erode institutional knowledge within the juvenile justice system.

The cumulative effect of these deficiencies is a weakened capacity to uphold procedural safeguards, provide tailored support to children, and effectively implement progressive measures aligned with international standards, such as Directive 2016/800 and the CRC. This results in delayed proceedings, reduced access to specialized services, and diminished trust in the justice system's ability to address the unique needs of children.

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[5] Or since the earliest appropriate stage in the proceedings: whenever this stage precedes a formal accusation, the corresponding right is not granted.

3. Status of the Directive implementation: law vs. practice

The Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings was adopted on 11 May 2016 and EU Member States were required to implement it into their national laws by 11 June 2019.

Despite significant progress made by countries in aligning their systems with the Directive, none of the six countries have fully implemented it so far in both law and practice. In some cases, the Directive has not been fully transposed, with critical areas remaining non-compliant. For instance, in Belgium there are still shortcomings in meeting the provisions of the Directive with regards to the systematic access to a specialized lawyer, the provision of appropriate information to children at all stages of the procedure and training of professional tailored to children's need. The Netherlands were subject to an infringement procedure as they did not meet the requirement to include a reference to the Directive when adopting the implementing measures and potentially other non-compliant aspects that have not been disclosed yet. The country is also under pressure to safeguard the rights provided by law due to budgetary and resource constraints.

Poland implemented the Directive only in 2023 and the law is still not fully compliant with the EU requirements on the right to information, access to a lawyer, presumption of innocence and the right to an individual assessment. Due to a structural issue, in Bulgaria the entire pre-trial phase is not compliant with the Directive. In Slovakia, significant changes to the criminal justice system were deemed unnecessary for transposing the directive, as the system was considered already compliant. However, a recent amendment to the Criminal Procedural Code, introduced during a second transposition attempt, included reforms that have proven problematic, particularly in terms of children with mental and/or psychosocial disabilities. A 2024 amendment to the Slovak Criminal Procedure Code (Act No. 40/2024)[6] established a provisional measure for placing an accused person in a medical (psychiatric) facility: after a suspected violation of criminal norms and in connection with the existence or presumed existence of mental and/or psychosocial disabilities, a person can be deprived of liberty through placement in a psychiatric hospital, even when such a decision would not be possible under civil law (so-called health detention).

In other cases, while the formal transposition of the Directive was deemed satisfactory, its practical implementation remains inconsistent. In the Czech Republic, there are a few objections to the transposition of the Directive, but the guarantees provided by law are not always practical or effective.

In both Slovakia and the Czech Republic, the welfare approach also implies a medical model of disability: rather than a question of societal structures, disability is merely seen as an issue of the individual and can justify even more intense coercive intervention towards the child.

4. Consequences on access to procedural rights and safeguards

The cross-cutting issues highlighted in the previous chapter directly impact the effective enjoyment of individual procedural rights. The following section examines the current state of key procedural rights, safeguards and protections and how they are affected.

[6] Slovak Criminal Procedure Code, as amended by Act 40/2024, section 85 (7), https://www.zakonypreludi.sk/zz/2024-40

4.1. Deprivation of liberty

The national baseline surveys reveal inconsistent application of the "last resort" principle in juvenile justice systems, with several countries showing a preference for custodial measures over alternative interventions.

In the Czech Republic and Slovakia, the custodial measures such as protective upbringing are often prioritized. These are not based on the severity of the crime but on the juvenile’s environment and behaviour in relation to societal norms.

In the Czech Republic, placement in institutional care often happens quickly, as child protection authorities commonly initiate it through an interim measure, which is later formalized through proceedings for long-term institutional care. As a result, short-term and long-term placements function as part of a continuum, with the practice reflecting this approach.

In Slovakia, Act No. 40/2024 introduces a provisional measure allowing the placement of accused persons who could be charged if they were not found insane due to their disability. However, this measure concerns only those above the age of criminal responsibility. For children below the age of criminal responsibility, psychiatric placement through protective upbringing remains a separate issue. This approach allows for placement in psychiatric facilities and bridges the gap between the cessation of criminal prosecution due to 'insanity' and the imposition of protective treatment, even in cases where civil law would not permit such a decision.

In the Netherlands, deprivation of liberty is applied extensively, with detention sentences of up to one year for children aged 12–16 and two years for those aged 16–17. Additional measures, such as the PIJ (Placement in a Juvenile Institution), an intramural treatment, can extend deprivation of liberty up to seven years and may be converted into a TBS measure (stands for *“terbeschikkingstelling”,* which translates to “placement in a psychiatric institution under the responsibility of the state”), an adult intramural treatment, with no legal end date. Furthermore, minors aged 16–17 can face adult sentencing laws, including prison terms of up to 30 years or TBS measures, resulting in the possibility of placement with adults.

In the Polish system, the lack of specific provisions regarding temporary arrest for children aged 17–18 means that they are treated the same as adults in court decisions, undermining juvenile-specific protections. Furthermore, the maximum age for applying each measure varies. The longest duration applies to placement in reform schools, where juveniles may stay until the age of 21, and in some cases, even until the age of 24. In extreme cases, this means that the deprivation of their liberty can last for more than 10 years.

Detention conditions across countries also raise significant concerns. In some jurisdictions, children are detained alongside adults, such as in the Netherlands, Bulgaria (young adults -after turning 18), and Poland, which contravenes international standards. Additionally, facilities often fail to meet the requirements of Directive 2016/800. For example, Slovakia's re-education centres and Bulgaria's lack of safeguards under article 12 highlight systemic deficiencies in ensuring humane and appropriate conditions for detained children.

4.2 Access to legal aid

Access to legal aid for children is a recurring issue across all studied countries, with significant gaps in timely and effective legal representation, as well as systemic shortcomings in ensuring children' rights are protected during criminal proceedings.

In Slovakia, Belgium, and Poland, delays in the appointment of defence lawyers are common. For example, in Poland, court-appointed counsel is often provided only after the first interrogation, leaving children vulnerable during initial questioning. Additionally, the privacy of communication between lawyers and their clients is poorly protected, as law enforcement authorities can restrict or monitor conversations.

In Bulgaria, access to a lawyer is granted only after a child is charged or detained, leaving children without legal representation during earlier stages of investigation. This is exacerbated by the absence of the legal concept of a "suspect," meaning children are denied legal assistance during police checks and preliminary investigative actions.

In the Czech Republic, children have the right to mandatory defence from the moment they are heard as a suspect or any procedural action is taken, but legal aid is not automatically free. Poor children often struggle to qualify for free legal aid, and if they are convicted, they may be required to reimburse legal expenses regardless of their financial situation.

In Belgium, the limited time allocated for meetings between children and their lawyers — 30 minutes before a hearing and an additional 15 minutes during the hearing — hinders the ability to build trust and prepare an adequate defence. Moreover, many court-appointed lawyers lack specialized training to work with children, further reducing the quality of assistance provided.

In the Netherlands, unequal access to free legal aid persists. Legal assistance is not universally free for children, and low fees within the legal aid system contribute to a shortage of specialized lawyers in juvenile justice, affecting the availability and quality of legal representation.

Across these countries, children below the age of criminal responsibility face even greater challenges. In Slovakia, for instance, children under this threshold are not guaranteed mandatory legal representation during police interrogations, even if they are deprived of liberty. Similarly, in Poland, legal safeguards are weak, as statements made by children without a lawyer can still be admitted in court unless vulnerability is proven.

4.3. Right to information

National baseline studies reveal inconsistencies in how information rights are communicated to minors, with tailored communication and procedural adaptations varying significantly across states.

In Bulgaria, children are informed of their rights only when they are formally accused. The absence of a legal "suspect" figure means that children are not informed of their rights at earlier stages, such as when they are under investigation, contravening the Directive's requirement to inform children immediately upon becoming suspects. Additionally, certain rights that should be communicated earlier in the proceedings are only conveyed at the accusation stage, leading to partial implementation of the Directive.

In the Czech Republic, procedural adjustments for children, such as adapting communication, are

inconsistently applied, often depending on the discretion of authorities. Similarly, in Belgium, there are no legal provisions for adapting summonses for minors, beyond requiring mandatory legal assistance.

In Slovakia, information rights are not specifically regulated, and the effectiveness of communication depends heavily on the individual investigators or judge's approach. Meanwhile, in Poland, templates for instructing children are not standardized or issued by the Ministry of Justice, leaving their format and content to the discretion of authorities in family law. The lack of reference to the subsidiary application of the Code of Criminal Procedure further weakens the consistency of information provided.

Overall, the inconsistent application of tailored communication undermines children's understanding of their rights and compliance with the Directive's standards, leaving significant gaps in procedural fairness across jurisdictions.

4.4. Right to an individual assessment

The national baseline studies reveal widespread issues with the implementation of individual assessments, which undermine the intended purpose of individual assessments as outlined in Directive 2016/800.

In Bulgaria, individual assessments are prepared only for accused children, excluding those who are merely suspects, contravening article 7.2 of the Directive, which requires assessments for all children involved in criminal proceedings.

In Slovakia, assessments are narrowly conceived as expert diagnoses to select corrective measures, treating structural issues like poverty and social exclusion as individual risk factors. This results in a disciplinary approach that fails to address systemic inequalities and instead justifies coercive measures. The Czech Republic also applies a socio-paternalistic approach, interpreting individual assessments as "anamnesis" reports to determine the appropriate measures for children. Here, children are treated as passive sources of information, and the assessments often serve to justify coercive interventions rather than addressing structural deficiencies or the child's specific needs.

In Belgium, significant gaps and inconsistencies in individual assessments persist. Assessments ordered by the police are conducted with the support of qualified staff, but this is not always guaranteed. Those carried out by juvenile court social services are typically more comprehensive but suffer from outdated reports, excessive staff workloads, and high turnover rates. A lack of standardized national practices results in varying quality, often influenced by local prosecutorial priorities. Cultural and language barriers, as well as limited participatory practices in some social services, further hinder children's involvement in the process.

In the Netherlands, individual assessments use tools like the National Set of Instruments for the Juvenile Justice System and Ritax risk assessment, which evaluate recidivism risks and areas of concern to determine suitable care interventions. While these tools provide a structured approach, their focus on risk factors may overlook the holistic needs of the child.

In Poland, individual assessments are largely discretionary, as the legal framework does not mandate psychological or psychiatric evaluations for minors. The absence of multidisciplinary assessments or measures to enhance the child's experience during proceedings reduces the practical value of such

evaluations.

Across these countries, the lack of standardization, resource constraints, and the limited involvement of children in the process weaken the effectiveness of individual assessments. Instead of focusing on the child's needs and well-being, many systems prioritize risk evaluation or corrective measures, often perpetuating systemic inequities rather than addressing them.

5. Conclusion

The baseline studies reveal systemic gaps and inconsistencies in the application of Directive 2016/800 across six countries. While national legal frameworks show progress, significant challenges remain in practice, particularly for vulnerable groups. Addressing these issues through targeted training and harmonized practices will strengthen procedural rights and enhance outcomes for children in conflict with the law.

B. Country-specific Baseline studies

I. BELGIUM

1. Introduction

This document is prepared as part of the ACCESS project, carried out jointly with the ICJ (International Commission of Jurists). It aims to address the implementation of the European Parliament and Council Directive of May 11, 2016, regarding the establishment of procedural safeguards for children who are suspects or accused in criminal proceedings, at the national level in Belgium (Directive 2016/800).

To date, Belgium has legislation and practices aimed at protecting the rights of children in criminal procedures, in accordance with international standards such as the International Convention on the Rights of the Child (CRC). However, it can be noted that there are still shortcomings in meeting the provisions of Directive 2016/800. Shortcomings have been identified in areas such as the systematic access to a specialized lawyer, the provision of appropriate information to children at all stages of the procedure, the training of professionals tailored to children's needs (particularly for police training), and other points we will highlight in this "baseline study."

We know that the European Commission has carried out an evaluation of the implementation of the Directive in Belgium, but this document is not currently public.

This research is primarily based on document analysis and a single interview conducted with a Senior Police Inspector (INPP) specializing in a Family Youth Service in a Brussels Police Zone.

Finally, it is important to emphasize that this research aims to cover the entire Belgian territory and thus provides a general overview. In practice, however, we focus more on the legislation and practices of the Fédération Wallonie-Bruxelles (the French-speaking part of the country). Additionally, the aim here was not to conduct detailed research on all the points mentioned but to provide an overview of the situation in Belgium.

This study is therefore not exhaustive and would benefit from further exploration through additional interviews and consultations with children (and young people who had an experience of justice when they were under age), who are the primary stakeholders.

2. Right to information

2.1. Legal framework of the European Union

The right to information for children in criminal proceedings is provided by European directives, particularly Directive (EU) 2016/800 (Article 4) and Directive 2012/13/EU, which ensure that children are provided with prompt and understandable information regarding their rights and the course of proceedings.[7]

2.2. Implementation in Belgium

In Belgium, when a minor has committed an act deemed a criminal offense, the police services contact the parents or guardians to summon the child. This contact is made by phone to briefly explain the alleged facts and arrange a meeting for the summons. A written summons is then sent by mail, along with a document outlining the child's rights, as guaranteed by Article 47bis of the Belgian Code of

[7] Defence for Children International Belgium, 2015. *Practical Guide for Lawyers: How to defend a child in conflict with the Law*. [French version] [pdf], p.48. Available online: Guide_Avocats_FR-web.pdf

Criminal Procedure (CICR). This right applies to all individuals, whether they are free or deprived of liberty. The children will be informed[8]:

1. Of the facts for which they are being questioned.
2. Of their right to consult a lawyer before the interrogation and to be assisted by this lawyer during the interrogation.
3. Of their right to remain silent or to answer questions.
4. That their statements may be used as evidence in court.
5. Of their right to request certain investigative measures or to bring documents to the interrogation.
6. If they are not detained, that they may leave the premises at any time.

The information included in the summons is identical to that provided to adults, with no particular adaptation for minors, other than the requirement for mandatory legal assistance for them. The form used is often deemed inappropriate for children, as these summonses are written in standardized language, without considering their age or potential vulnerabilities. [9] During an arrest, the child's rights are also explained orally, and they are required to sign a document to acknowledge that they have understood these rights. [10]

3. Access to legal assistance and procedural rights

3.1. Legal framework of the European Union

Children's access to legal assistance and appropriate procedural rights is governed by several European directives aimed at ensuring fair treatment in legal proceedings:

• **Right of access to a lawyer[11]**: Children suspected or accused of violating criminal law have the right to a lawyer (Directive 2013/48/EU, Art. 3).

• **Free legal assistance[12]**: Directive (EU) 2016/800, Art. 18, and Directive (EU) 2016/1919 establish that legal assistance must be free for minors.

• **First contact with a lawyer[13]**: The child must meet with their lawyer without undue delay, particularly before any interrogation (Directive (EU) 2016/800, Art. 6.3(a) and (c)).

• **Audio-visual recording of interrogations[14]**: Directive (EU) 2016/800 recommends the recording of interrogations.

• **Accompaniment by an adult[15]**: During procedures, children have the right to be accompanied by the holder of parental responsibility or another appropriate adult, unless this is contrary to their best interest (Directive (EU) 2016/800, Art. 15).

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[8] Article 47bis of the Belgian Code of Criminal Procedure & De Bondt, W., Vercruysse, L., 2021. *Procedural Safeguards for Children Who Are Suspects or Accused Persons in Criminal Proceedings: Belgium.* Social Fieldwork Research (FRANET), p. 20. Available online: https://fra.europa.eu/sites/default/files/fra_uploads/be_ccp-country_report.pdf.
[9] *Ibidem* De Bondt, W., Vercruysse, L., 2021 pp. 20-25.
[10] Interview with INPP Specialist from the Brussels Police Zone.
[11] Defence for Children International Belgium, 2015. pp. 48-49. Op. cit., p. 3.
[12] *Ibid*. p. 51
[13] *Ibid*. p. 73
[14] *Ibid*. p. 46
[15] *Ibid*. p. 53

• **Effective remedy**[16]: In the event of a violation of their rights, children have the right to an effective remedy (Directive (EU) 2016/800, Art. 19).

3.2. Implementation in Belgium

3.2.1. Access to legal assistance

In Belgium, these rights are reflected in the Franchimont Law and the Salduz Law, which guarantee the right to legal assistance from the first interrogation. These laws distinguish between four types of hearings:

- **Salduz 1**: "Victims, complainants, informants, and witnesses".
- **Salduz 2**: "'Free' suspects (not deprived of liberty) questioned about 'minor' offenses (not punishable by imprisonment) that may be attributed to them".
- **Salduz 3**: "'Free' suspects (not deprived of liberty) questioned about 'serious' offenses (punishable by imprisonment) that may be attributed to them".
- **Salduz 4**: "'Arrested' suspects (deprived of liberty) questioned about any offense that may be attributed to them". [17]

The rights conferred to individuals, including children, who are suspected or deprived of liberty (Salduz 2, 3, and 4) are outlined in Article 47bis of the Belgian Code of Criminal Procedure (CICR). Specifically regarding children's access to a lawyer, the following points apply:

• Children benefit from a court-appointed or designated lawyer by themselves or their legal representatives[18] (Art. 54bis, Law of April 8, 1965 & Art. 47bis §2,3 CICR).

• Legal assistance for children is free[19] (Art. 508/13/1 §4 of the Judicial Code).

• Only adults may refuse to be assisted by a lawyer in cases of deprivation of liberty (Art. 2bis §6 Law on Pretrial Detention).

• The meeting between the child and their lawyer is limited to:

- 30 minutes before the hearing (Art. 2bis §2, Law on Pretrial Detention) in a dedicated space.
- 15 additional minutes (Art. 2bis §5, para. 2, Law on Pretrial Detention) during the hearing if necessary.

These time limits are often considered insufficient to establish a trusting relationship and effectively prepare a defence. Moreover, court-appointed lawyers frequently lack specialized training to work with children, which may limit their ability to provide suitable assistance.[20]

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[16] *Ibid*. p. 53

[17] Christophe Romboux, 2023. "Audition par la police : quels sont mes droits ?" Available online: Audition par la police : quels sont mes droits ? | Police Locale Brunau

[18] Article 47bis §§2 and 3 of the Belgian Code of Criminal Procedure
& Law of 8 April 1965 - Law on the Protection of Youth, the Care of Minors Who Have Committed an Offense, and the Reparation of Damage Caused by Such Acts, *M.B.*, 15 April 1965, Article 54bis.

[19] Article 508/13/1 §4 of the Judicial Code

[20] Defence for Children International Belgium, 2015. p. 73. Op. cit., p. 3.

3.2.2. Audio-visual recording of interrogations

This practice is rare in Belgium and is mainly reserved for victims of serious offenses (such as sexual offenses or crimes listed under Article 92 of the CICR[21]). The reasons cited include[22]:

- Lack of infrastructure and personnel trained in TAM (Techniques for Interviewing Minors).
- Budgetary and administrative constraints.

3.2.3. Accompaniment by an adult

During interrogations and for certain cases referred to in Article 91bis of the CICR, children who are victims or witnesses can be accompanied by a holder of parental authority or a chosen adult, provided this is not contrary to the child's best interests. However, the law makes no mention of this right for children who are suspects or deprived of liberty.

During the interview with the Senior Police Inspector (INPP) of the Brussels Police Zone[23], it was noted that suspected or detained individuals may, in addition to their lawyer, be accompanied by a legally responsible person during police interviews.

3.2.4. Right to an effective remedy

There is no explicit provision in the law for a remedy in cases of deficiencies in the interrogation process or access to a lawyer. However, a new Appeals Commission (CdR) has been established in French-speaking Belgium to review decisions made by the director of an institution regarding a young person deprived of liberty.[24]

4. Right to an individual assessment

4.1. Legal framework of the European Union

The right to a individual assessment for children involved in criminal proceedings is a fundamental guarantee established under EU law. Article 7 of Directive (EU) 2016/800 requires that every child suspected or accused of a criminal offense undergo an individual assessment. This obligation is binding on member states, with exceptions permitted only in exceptional circumstances and when in the child's best interests.

[21] Belgian Code of Criminal Procedure, Article 92.
[22] De Bondt, W., Vercruysse, L., 2021, pp. 31-32. Op. cit., p. 3.
[23] Interview with INPP Specialist from the Brussels Police Zone.
[24] For more information, please consult the attached link available online: Procédure de recours - CDS-CDR

4.2. Implementation in Belgium

4.2.1. Legal framework

In Belgium, although certain practices and legal provisions aim to uphold this right, significant gaps and inconsistencies persist.[25] These provisions allow judges to rely on reports from social services investigating the child's personality and environment, as well as psycho-medical-social evaluations.[26]

4.2.2. When, how, and by whom?

There are two main scenarios[27]:

1. **Assessments conducted by the police**

   These evaluations are sometimes carried out by the police on the prosecutor's orders. Certain brigades have youth sections with social workers collaborating with investigators. These evaluations, based on interviews with the child, parents, schools, and social networks, aim to provide a comprehensive view of the child's life, including living conditions, behaviour, family and social networks, and potential reasons for the offenses. While these evaluations are initiated by the prosecutor, some police officers admit conducting them independently. However, these practices are not systematic, and some areas lack qualified social staff.

2. **Assessments conducted by juvenile court social services (SPJ)**

   Ideally, these evaluations should be conducted before the indictment or, if not, before the judicial hearing begins. They can be done after a summary trial to inform future decisions or prepared in advance of a hearing. These assessments, presented to the court in a report with recommendations, are considered more comprehensive than those by the police.[28]

   The evaluations take a multidisciplinary approach, addressing factors outlined in the relevant legal provisions. The methodology often includes tools like "Signs of Safety," which focuses on concerns, strengths, and potential solutions.[29]

   However, several challenges undermine the quality and consistency of these assessments:

   - Outdated reports.

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[25] The personalized assessment is governed in the French Community by Article 99 of the Decree of 18 January 2018 on the Code of Prevention, Youth Assistance, and Youth Protection, in the Flemish Community by Article 37 of the Decree of 15 February 2019 on Juvenile Delinquency Law, and in the German-speaking Community by Article 64 of the Decree of 13 November 2023 on Youth Assistance and Youth Protection.

[26] For the French-speaking part of Belgium, this matter is governed by the Decree of 18 January 2018 - Decree on Youth Assistance, Protection, and Prevention, Articles 65, 71, 99, and 125 (dispossession). Available online: https://etaamb.openjustice.be/fr/decret-du-18-janvier-2018_n2018011568.html.
For the Dutch-speaking part of Belgium, this matter is governed by the Decree of 15 February 2019 - Decree on Juvenile Delinquency Law, specifically Articles 37 §6 and 38 §3 (dispossession). Available online: https://etaamb.openjustice.be/fr/decret-du-15-fevrier-2019_n2019011711.html.
For the German-speaking part of Belgium, this matter is governed by the Decree of 13 November 2023 - Decree on Youth Assistance and Youth Protection, Article 64. Available online: [Decree of 13/11/2023 on Youth Assistance and Protection] (Decret du 13/11/2023 decret relatif à l'aide à la jeunesse et à la protection de la jeunesse).

[27] De Bondt, W., Vercruysse, L., 2021, pp. 50-55. Op. cit., p. 3.

[28] *Ibid.*, pp. 51-53

[29] *Ibid.*

- Excessive workload for professionals.
- High staff turnover rates.[30]

4.2.3. Stakeholders

Evaluations are carried out by:

- Police social services, upon the prosecutor's request.
- Juvenile court social services, known as SPJ (Service de Protection de la Jeunesse) in French-speaking Belgium and SDJ (Sociale Dienst Jeugdrechtbank) in Flemish-speaking Belgium, which investigate children's personality and environment.[31]
- Other external services may also contribute to the assessment process.

Despite training on children's rights, the absence of standardized national practices leads to significant variations in evaluation quality, often influenced by local prosecutorial policies or priorities.[32]

4.2.4. What aspects are evaluated and how are they considered?

The individual assessment aims to understand "the individual's personality, upbringing environment, and to determine their best interests and appropriate educational or treatment measures".[33]

In practice, evaluations focus on:

- The child's personality and maturity.
- The socio-economic and family context, considering specific vulnerabilities like disabilities or communication challenges.

These factors influence:

1. Protective or supportive measures required for the child.
2. Procedural decisions, including alternatives to detention.
3. Final judgments and suitable educational sanctions.

In practice, severe cases often take precedence, leaving minor infractions insufficiently addressed.

When deciding on or extending a deprivation of liberty of a child, they are also entitled to a individual assessment[34] and judicial oversight (Article 7, Directive 2016/800). Judges must follow specific procedures and request evaluations (e.g., medical-psychological reports) before making or extending such decisions, in compliance with federal and regional rules.[35]

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[30] *Ibid.*
[31] In accordance with Article 50 of the Law of 8 January 1965 in Brussels, Article 99 of the Decree of 18 January 2018 on the Code of Prevention, Youth Assistance, and Youth Protection in the French Community, and Article 37 §6 of the Decree of 15 February 2019 on Juvenile Delinquency Law in the Flemish Community.
[32] *Ibid.*
[33] Law of 8 April 1965, Article 50, §1, p. 1. Op. cit., p. 4 (This article remains applicable in Brussels but summarizes well the requirements of the reports requested by the judge).
[34] Defence for Children International Belgium, 2015, p. 53. Op. cit., p. 3.
[35] De Bondt, W., Vercruysse, L., 2021, pp. 96-97. Op. cit., p. 3.

4.2.5. Ensuring the child's right to participation

The child's right to participate and be heard is fundamental. Individual assessments should include the active involvement of the child, ensuring they are informed of the assessment's objectives and methodology. However, this right is frequently overlooked in practice due to[36]:

- **Cultural barriers**: Communication often occurs through a supervisor, and children are not always taken seriously.
- **Linguistic barriers**: A lack of proficiency in the language of proceedings significantly limits the participation of the child and their family, despite the availability of interpreters.

In Belgium, Article 50 of the Law of January 8, 1965, Article 125 of the Decree of January 18, 2018 (French-speaking community), and Article 38 §3 of the Decree of February 15, 2019 (Flemish community) allow courts to waive the requirement for a psycho-medical report if the child refuses to participate.[37] Additionally, Article 50 §2 of the Law of April 8, 1965, permits "adjusting the scope and precision of a personalized assessment based on the circumstances of the case." This flexibility often compromises the quality and completeness of the evaluations.[38]

Combined with a still-limited participatory culture in some social services,[39] these provisions highlight the need for progress in ensuring full and effective participation of children.

4.2.6. The role of personalized assessments

Individual assessments, conducted by either police or juvenile court social services, aim to provide competent authorities with an accurate understanding of the child's situation. They enable prosecutors to offer recommendations to juvenile courts and assist judges in making informed decisions about the most suitable measures.

Beyond informing case decisions, these assessments seek to identify underlying causes, such as problematic educational contexts, that might contribute to juvenile delinquency. Measures recommended through these evaluations may include:

- **Psychological support** throughout the proceedings.
- **Procedural adaptations**, such as interpreters or mediators.
- **Alternatives to detention**, such as educational placements or restorative justice programs.

However, the implementation of these measures often varies due to resource constraints and a lack of standardized practices.[40]

5. Deprivation of liberty

In Belgium, the deprivation of liberty for children is strictly regulated by international provisions, such as Directive (EU) 2016/800 (Article 10), as well as national standards, including the Law on Preventive

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[36] *Ibid.* pp54-55 Op cit. p3
[37] Law of 8 April 1965, Article 50, §2. Op. cit., p. 4.
[38] Defence for Children International Belgium, 2015, pp. 63-69. Op. cit., p. 3.
[39] De Bondt, W., Vercruysse, L., 2021, pp. 53-55. Op. cit., p. 3.
[40] *Ibid.*

Detention and the Belgian Code of Criminal Procedure. In theory, it can only be used as a measure of last resort, for the shortest possible duration, and must take into account the best interests of the child and their individual needs. [41]

Deprivation of liberty is generally reserved for serious cases. Federal and community laws on youth protection[42] emphasize that placement in a closed facility should be a last resort, preceded by systematic recourse to alternative measures. These alternatives aim to reduce the use of deprivation of liberty while ensuring the reintegration of children into society.[43]

Alternative measures for children fall into three categories:

- **Restorative measures:** restorative offers and mediation.
- **Educational measures:** a written project, a reprimand, or community service.
- **Custodial measures:** supervision by a professional or service, the imposition of conditions for remaining in the family environment (obligatory or prohibitory conditions), and removal from the living environment, prioritizing non-custodial settings.[44]

Children deprived of liberty are placed in Public Youth Protection Institutions (IPPJ), where their rights to health, development, education, family life, and freedom of religion must be guaranteed.[45][46]

Finally, children are strictly separated from adults at all stages of the procedure. [47] Even in cases of referral to an adult court, children remain in dedicated wings of detention centres until they turn 18, after which they may be transferred to a prison.

6. Potentially vulnerable/marginalized children

In Belgium, the competent authorities dealing with children in criminal proceedings, such as law enforcement, judges, and lawyers, receive some training on children's rights, adapted interrogation techniques, child psychology, and appropriate communication. However, these training programs

[41] Defence for Children International Belgium, 2015, p. 54, 97-98. Op. cit., p. 3.
[42] Regulations in force at the level of communities and regions:

- **Flanders**: Article 20 §2 of the Decree on Juvenile Delinquency specifies that restorative interventions are a priority. Deprivation of liberty is only considered in exceptional circumstances.
- **Brussels**: The Brussels Ordinance prioritizes support and protection within the young person’s living environment. Removal from this environment is exceptional and must be accompanied by respect for family relationships and a regular assessment of the possibility of returning to the parents. Closed institutions are a last resort, and only if the young person’s behavior poses a danger, or if there is a risk of reoffending, fleeing, or obstructing justice.
- **Wallonia**: The Walloon Decree emphasizes prevention as the top priority (Article 1). Deprivation of liberty is excluded except in very specific cases where strict conditions are met (Article 63). This framework also reflects the principle of ultimate recourse for restrictive measures. Chapter 5 of this decree outlines the various measures that a youth judge can take concerning a young person suspected of or having committed an offense.

[43] De Bondt, W., Vercruysse, L., 2021, pp. 97-102. Op. cit., p. 3.
[44] Infor Jeunes, 2024, *Le mineur et la justice, Droit avant 18 ans*. Available online: Les mineurs et la justice - Infor Jeunes
[45] Defence for Children International Belgium, 2015, pp. 55, 97-98. Op. cit., p. 3.
[46] De Schutter O., Ringelheim J., Dhetz N., Van Keirsbilck B. (eds.), "L'éducation des enfants privés de liberté : ils ont aussi droit à l'éducation quand ils sont derrière les barreaux", 2015, Outil pédagogique N°5. Available online: https://www.brudoc.be/opac_css/doc_num.php?explnum_id=1434
[47] De Bondt, W., Vercruysse, L., 2021, p. 63. Op. cit., p. 3 & Defence for Children International Belgium, 2018. *My Lawyer, My Rights - Enhancing children's rights in criminal proceedings in the EU* - The role of the minor's lawyer in protective and criminal proceedings in Belgium. National Report Belgium. [online], p. 55. Available online: https://lachild.eu/wp-content/uploads/2016/05/RAPPORT-MLMR-COMPLET.pdf

remain limited and insufficient, particularly for children belonging to marginalized or vulnerable groups.

6.1. Training for competent authorities

Francophone and Dutch-speaking bar associations require specialized training in youth law for lawyers. The Judicial Code also mandates specific training provided by the Judicial Training Institute for judges and prosecutors, which includes skills in child psychology and communication. However, these programs lack sufficient intercultural and diversity-focused approaches.[48]

Additionally, the Family and Youth training provided by the Brussels Police Academy primarily addresses children's rights in legal frameworks rather than their specific needs during care and proceedings. Another more specific training program on handling children reportedly exists on paper but has never been implemented. The only way to gain expertise in listening to children is through training in TAM (Techniques for Hearing Minors) methods for video-recorded interviews.[49]

6.2. Training for marginalized groups

Few specific programs address the needs of LGBTQ+ children, children with disabilities, or children from cultural minorities. While some Dutch-speaking bar associations offer multidisciplinary training, including role-playing exercises to better understand children, these initiatives are not widespread at the national level.[50]

6.3. Equal access to procedural rights

Practical obstacles remain significant, particularly in ensuring equitable access to comprehensible and adapted information:

- **Insufficient interpreters**: Interpreters, essential for children who do not speak one of the national languages, are not always available. Moreover, those who do intervene are often not trained in child-friendly communication. For example, emotionally complex situations can be challenging for a child to articulate in a less familiar language, necessitating a qualified interpreter to ensure accurate expression in the child's native language.[51]
- **Lack of support for children with disabilities**: Mechanisms to ensure the effective participation of children with specific needs, such as intellectual disabilities, behavioural disorders, or personality disorders, are largely inadequate.[52]
- **Other overlooked vulnerabilities**: Factors such as culture, religion, low language proficiency, and socioeconomic precarity are often underestimated in proceedings. While these vulnerabilities are sporadically mentioned, they warrant systematic attention to ensure equal treatment.[53]

6.4. Support measures and innovations

Promising initiatives exist, including Services Droit des Jeunes (Youth Rights Services), social and legal services for children, and some law firms that work with other professionals such as psychologists. These multidisciplinary approaches, though effective, remain exceptions.

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[48] *Ibidem*, Defence for Children International Belgium, 2018, pp. 58-61. Op. cit., p. 3.
[49] Interview with INPP Specialist from the Brussels Police Zone.
[50] Defence for Children International Belgium, 2018, pp. 58-61. Op. cit., p. 3
[51] De Bondt, W., Vercruysse, L., 2021, pp. 54-55. Op. cit., p. 3
[52] *Ibid.*
[53] *Ibid.*

7. Children under the age of criminal responsibility

In Belgium, the age of the criminal majority is set at 18 years. This means that, in principle, only individuals aged 18 or older can be tried and sanctioned as adults under criminal law.

Minors under 18 years old who are "in conflict with the law" (Belgian law refers to minors suspected of committing a "fact qualified as an offence"—an act that, if committed by an adult, would be subject to criminal prosecution) are referred to the Youth Court. This court can impose measures related to custody, education, and preservation.

However, there is an exception: minors aged 16 or older can be transferred to an adult court (*desaisissement*) if they are accused of committing serious offences and if the court deems protective measures inadequate.[54]

Additionally, a minimum age of 12 is set for measures involving removal from the family environment and for placement in an open IPPJ (Institution Publique de Protection de la Jeunesse / Public Youth Protection Institutions).[55]

8. Conclusion

Overall, Belgian regulations are relatively aligned with Directive 2016/800 and the United Nations Convention on the Rights of the Child (CRC), with the significant exception of the measure allowing for the transfer of cases ("*dessaisissement*"), which is considered contrary to the CRC.

Nonetheless, substantial improvements are still required, particularly in the implementation of these measures, the training of all professionals involved, and the quality of services provided.

As stated in the introduction, this brief study remains limited in scope, primarily focusing on regulations. It would benefit from a more practical perspective, incorporating further interviews, especially insights from the children themselves.

II. BULGARIA

1. Introduction

The main challenges for Bulgaria in transposing Directive 2016/800 arise from the fact that Bulgarian law does not recognize the legal concept of "suspect". According to the case-law of the Court of Justice of the European Union, specifically the judgment C-209/22,[56] a person is considered a "suspect" where the competent national authorities have suspicions that he or she has committed a criminal offence and information in that regard was provided to that person by the authorities by means of an official notification or otherwise.

In Bulgaria, the stages of criminal proceedings are regulated in the Criminal Procedure Code (CPC) and include a pre-trial and trial phase, where the criminal proceedings are deemed to be instituted with the initiation of the pre-trial procedure. In general, a pre-trial procedure is initiated by order of the public prosecutor if two cumulative conditions are satisfied – the existence of legitimate grounds and sufficient

[54] Ibid. and Decree of the French Community of January 18, 2018, on the Code of Prevention, Youth Assistance, and Child Protection, Art. 125.

[55] Decree of the French Community of January 18, 2018, on the Code of Prevention, Youth Assistance, and Child Protection, Art. 101.

[56] Judgment of 7 September 2023, Criminal proceedings against AB, C-209/22, EU:C:2023:634.

evidence of the commission of an offence.[57] After the initiation of the pre-trial proceedings, once sufficient evidence is gathered of the guilt of a person for having committed a criminal offence, the investigating authority formally accuses him or her by issuing an order to that effect ("accusation order"). The investigating authority may also formally accuse the person by drawing up a record of the first investigative act in respect of him or her. Before being formally accused, the person does not have the status of "suspect" under Bulgarian law, even though the investigating authorities may suspect him or her of having committed the criminal offence in question and take actions to gather sufficient evidence of his or her guilt. Due to the absence of national rules governing the concept of "suspect", most of the rights guaranteed by Directive 2016/800 are granted under national law only to children who are formally accused by an accusation order in the course of criminal proceedings or are detained, but not to children who, at the pre-trial stage, are suspected of having committed a criminal offence and are made aware of these suspicions.

In certain cases, where there is some evidence that a criminal offence had been committed, the prosecutor may personally conduct a prior investigation or assign the competent authorities, including the Ministry of Interior, to carry out such activities in order to establish whether the conditions for initiating a pre-trial procedure are met. This is the so-called "police inspection" under Article 145 of the Judiciary Act (JA), which precedes the initiation of criminal proceedings. In the course of this "inspection", the competent authorities may carry out criminal intelligence activities, such as, inter alia, gathering information and questioning persons suspected of having committed an offence. In accordance with the case-law of the Court of Justice of the European Union, these individuals should also be considered "suspects" if they are informed that the competent authorities suspect them of having committed a criminal offence. As already clarified, since Bulgarian law does not recognize the concept of "suspect", this category of individuals currently does not enjoy the rights guaranteed by Directive 2016/800.

2. Right to information

Information about the right to provide statements or to remain silent, to have access to the materials of the case, to be assisted by a lawyer, to be informed of the accusation , to participate effectively in the criminal proceedings, to appeal or otherwise refer the case to a court having jurisdiction in criminal matters, as well as the right to interpretation and translation and to legal aid, is provided to the child from the moment at which he or she is formally "accused" by an accusation order. From this moment, the child is also informed about the right of his or her parent or any holder of parental responsibility, to be provided with information about the rights of the child in the criminal proceedings, together with the right to accompany the child during court hearings, and, where it is in the child's best interests and would not prejudice an ongoing investigation, during any investigative actions and other procedural activities. The child is also informed about his or her right to a medical examination upon detention, the right to an individual assessment, and the right to respect for his or her private and family life.

The information about the aforementioned rights is included in the accusation order. The child and his or her defence lawyer are allowed to take cognisance of the full contents of the order, and if necessary, the investigating authority provides additional clarifications. When the accused is a minor, the investigating authority informs him or her about their rights in the criminal proceedings orally, in accessible language, taking into account their specific needs.

[57] In certain cases, pre-trial proceedings may be initiated by drawing up the protocol for the first investigative action.

Currently, the requirement of Article 4, paragraph 1, letter a) of Directive 2016/800, which stipulates that the information provided for in this provision should be available to the child not only from the moment when he or she is formally "accused" but also promptly when the child is made aware that he or she is suspect, has not been fulfilled. Similarly, the requirement of Article 4, paragraph 1, letter b) of the directive, stating that the information should be provided at the earliest appropriate stage in the proceedings, which may precede the moment where the child is being formally "accused", remains unfulfilled.

It is necessary to further develop the existing national legislation concerning the information about the rights of the child upon detention, including detention under the Ministry of Interior Act (MIA), especially when it comes to the right to specific treatment during deprivation of liberty, as well as the right to limitation of deprivation of liberty and to apply alternative measures.

3. Assistance by a lawyer

In Bulgaria, the participation of a defence lawyer in criminal proceedings is mandatory where the accused is a minor. In such cases, the competent authority appoints a public defence lawyer. If the child appoints another lawyer, the appointed by the competent authority public defence lawyer continues to participate in the criminal proceedings as a substitute defence lawyer.

However, the defence lawyer, whether appointed by the child or by the competent authority, is allowed to participate in the criminal proceedings from whichever of the following points in time is the earliest: the moment the child is formally "accused" by an accusation order or upon detention, including "police" detention under the MIA.

From the moment whichever of these events occurs, the child is entitled to be assisted by a defence lawyer in any investigative actions and other procedural activities he or she is involved in. On the other hand, the investigating authorities are not allowed to carry out any investigative actions or other procedural activities involving the child, unless they inform the latter of his or her right of access to a lawyer and enable him or her to immediately get in contact with the lawyer.

The child has the right to communicate freely with his or her defence lawyer, to meet in private with them, and to receive advice and other legal assistance, including before and during questioning or any other procedural actions the child is involved in. Correspondence between the lawyer and the child, regardless of the method used, including by electronic means, is not subject to review, copying, inspection, or seizure and cannot be used as evidence. Listening or tapping the conversations between the lawyer and the child is prohibited.

Similarly, to the situation with the right to information in criminal proceedings, the national legislation does not grant children access to a lawyer without undue delay once they are made aware that they are suspects. Thus, in practice, children are not ensured legal defence during investigative actions or other procedural activities involving them from the moment of initiation of the pre-trial proceedings up until the moment children are formally "accused" by an accusation order, nor during criminal intelligence activities at the "police inspection" stage under Article 145 of the Judiciary Act.

4. Right to an individual assessment

In Bulgarian criminal proceedings, an assessment of the child's individual characteristics and circumstances is carried out within 14 days after issuing the accusation order. Children who are merely suspected of having committed a criminal offence but are not yet formally "accused" by an accusation order are not subject to an individual assessment.

In accordance with the requirements of Directive 2016/800, the individual assessment takes into account the child's personality, his or her level of emotional and social maturity, economic status, social and family background, vulnerabilities, previous criminal behaviour and measures taken in that regard, as well as any risk factors pertaining to the circumstances of the case. A multidisciplinary approach is ensured, since the individual assessment is carried out by an inspector from the Children's Pedagogical Support Services, and, where necessary, the Social Services Directorate provides a social report. The child, his or her parent or any holder of parental responsibility, as well as any individual who has information about the child's personality, including the adult nominated by the child, are actively involved in the process of individual assessment.

The individual assessment is used when taking decisions on restraint measures or other precautionary measures, when conducting procedural activities, and when determining the nature and level of the penalty or any corrective measures imposed. If new circumstances arise that are relevant to the individual assessment, the competent authorities ensure that it is updated.

5. Deprivation of liberty

A restraint measure "detention in custody" can only be imposed on minors in exceptional cases. Wherever possible, the competent authorities apply measures alternative to detention, such as parental or guardian supervision, supervision by the administration of the educational institution in which the minor is placed, or supervision by an inspector from the Children's Pedagogical Support Services or a member of the local Commission for Combating Juvenile Delinquency.

The national legislation prescribes that children are detained for shorter periods of time compared to adults. During the pre-trial phase, detention may not last: more than five months where the child is formally "accused" for a serious and premeditated offence, more than one year where the child is formally "accused" for an offence punishable by at least 15 years of imprisonment or another more severe penalty, and more than two months in all other cases. To ensure that the child is brought before the court, the prosecutor may order detention for a maximum of 48 hours.

In the pre-trial phase, the court of first-instance is the competent authority to assess whether a restraint measure "detention in custody" should be imposed following an application by the public prosecutor. The court rules by way of order that may be appealed within three days by the public prosecutor or by the child submittingan appeal on a point of law before the appellate court.

The child or his or her defence lawyer may request commutation of the restraint measure "detention in custody" at any point during the pre-trial proceedings. The case is set for hearing within three days following the request for commutation. After considering all circumstances relating to the lawfulness of the detention, the court rules by way of order that may be appealed within three days before the appellate court by the public prosecutor or by the child.

Other than that, without any pre-trial proceedings being initiated, a child may be detained by the police for up to 48 hours where there is evidence that a criminal offence had been committed. The child has the right to appeal the lawfulness of the detention before the district court, which rules immediately. The district court's decision is subject to appeal before the court of cassation.

In case of detention, whether by the police or in the pre-trial phase, children are held separately from adults.

In order to ensure full compliance with the requirements of Directive 2016/800 regarding deprivation of liberty, the national legislation should provide for the possibility when a detained child reaches the age of 18 to continue to be held separately from other detained adults under the conditions laid down in the directive. The measures and safeguards set out in Article 12 of Directive 2016/800 should also be fully introduced in the national legislation.

6. Children below the age of criminal responsibility

In Bulgaria, children under the age of 14 cannot be held criminally responsible. Children who have committed acts representing a danger to society are subject to appropriate corrective measures under the Act on Combating Juvenile Delinquency.

The corrective measures that may be imposed to a minor include:

1. Warning;
2. Order to apologise to the victim;
3. Order to participate in consultations, training, and programs to overcome behavioural deviations;
4. Order for parental or guardians supervision, with an enhanced duty of care;
5. Order for supervision by a public supervisor-teacher;
6. Prohibition from visiting certain places and establishments;
7. Prohibition from meeting and establishing contact with certain individuals;
8. Prohibition from leaving their current residence;
9. Order to repair the damage caused by their own labour, if possible;
10. Order to perform certain work for the benefit of society;
11. Placement in a Pedagogical boarding school;
12. Warning of placement in a Reform school for minors with a probation period of up to 6 months;
13. Placement in a Reform school for minors.

Since minors are exempt from criminal responsibility and are subject to corrective measures, they cannot benefit from the rights granted by Directive 2016/800.

III. THE CZECH REPUBLIC

1. Introduction

The adoption of Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (hereinafter "Directive 2016/800") led to several legislative changes in the Czech legal framework. The most significant change was the amendment of Act No. 218/2003 Coll., on Youth Responsibility for Unlawful Acts and on Juvenile Justice (hereinafter "Juvenile Justice Act"),

which was carried out through Act No. 203/2019 Coll., specifically dedicated to transposing Directive 2016/800. Act No. 203/2019 Coll. introduced the following changes:

- Establishing a presumption that an individual whose age is uncertain and who might be under 18 is considered a juvenile.[58]
- Adding details about the information juveniles must be informed about[59] and introducing a general rule that the accused must be advised of their rights with a focus on the current stage of criminal proceedings.[60]
- Extending the right to mandatory legal representation up to the age of 21 if deemed appropriate by the court or public prosecutor, considering the juvenile's intellectual and moral maturity and the circumstances of the case.[61]
- Granting the right to provide information about the juvenile's rights to their parents or guardian.[62]
- Involving the juvenile's parents or guardian in assessing the juvenile's circumstances[63] or preparing a report on their circumstances,[64] which are regarded in the Czech context as fulfilling the right to individual assessment (discussed further in Section 4).
- Clarifying the timing of assessing a juvenile's circumstances (without undue delay)[65] and establishing the obligation to update the assessment[66] or report if substantial changes in the juvenile's circumstances are reasonably expected.[67]
- Introducing the rule to create audio-visual recordings of the juvenile's interviews, provided it is suitable given the case circumstances and the juvenile's condition, and technically feasible.[68]
- Establishing the rule of separating juveniles from adults in custody, even after the juvenile turns 18, if justified by their personal circumstances and not contrary to the best interests of other juveniles held together.[69]

The most recent amendment to the Juvenile Justice Act, Act No. 165/2024 Coll., also brought important clarifications for the transposition of Directive 2016/800. It refined the rule, already applicable before, that a juvenile must have legal counsel from the moment they provide an explanation as a suspect or when any non-confidential procedural acts are conducted against them. An exception to this rule is permitted only if the act cannot be postponed and notifying the legal counsel is not feasible.[70] Additionally, this amendment extended certain rights previously granted only to the juvenile's parents or guardian to foster parents or other individuals entrusted with the juvenile's care. These rights include those where the involvement of individuals providing personal care may be equally or more important to the juvenile than the participation of those authorized to act on their behalf.[71]

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[58] Juvenile Justice Act, section 2 (1) (c).
[59] Juvenile Justice Act, section 42 (3).
[60] Act No. 141/1961 Coll., Criminal Procedure Code (hereinafter „Criminal Procedure Code“), section 33 (5).
[61] Juvenile Justice Act, section 42a (2).
[62] Juvenile Justice Act, section 43 (1).
[63] Juvenile Justice Act, section 55 (3).
[64] Juvenile Justice Act, section 56 (2).
[65] Juvenile Justice Act, section 55 (1) .
[66] Juvenile Justice Act, section 55 (4).
[67] Juvenile Justice Act, section 56 (4).
[68] Juvenile Justice Act, section 57 (1).
[69] Act No. 293/1993 Coll., on pretrial detention, section 26 (1).
[70] Juvenile Justice Act, section 42a (1) (a). It is worth noting that juveniles are the only group in the Czech legal system that is granted the right to a mandatory defence by an attorney before being charged
[71] The foster parent or other person entrusted with the care of the juvenile is thus mentioned in the institutes that are associated with the fulfilment of the minor's right to individual assessment. At the same time, the right of such persons to participate in the main trial against the juvenile has been enshrined. [Juvenile Justice Act, section 54 (1)].

From a formal perspective, there are few objections to the transposition of Directive 2016/800 into Czech law. However, this does not imply that the guarantees provided by Czech law to juvenile suspects or accused persons are always practical and effective in reality. The practical effectiveness of these procedural guarantees largely depends on how they are implemented by professionals within the justice system for children in conflict with the law. In this respect, a significant limiting factor in the Czech context is the prevailing welfare approach of public authorities and institutions towards children, rather than a rights-based approach.[72]

The welfare approach refers to one that perceives a juvenile not as an active agent of change but rather as a passive object that requires appropriate educational influence. In this approach, considerable attention is given not only to the unlawful act committed but also to the juvenile's personality, living conditions, and family circumstances. However, these factors become the subject of expert evaluation and the basis for formulating interventions, which are derived more from professional expertise than from interaction with the juvenile. This expertise may stem from various disciplines related to human development and education, with pedagogy, psychology, psychiatry, and social work playing dominant roles. The passive position of the juvenile and the dominance of expert perspectives in formulating interventions make the welfare approach closely resemble the medical model of disability.[73]

The consequences of both approaches are the same. Procedurally, this is reflected, among other things, in the lack of attention paid to the procedural accommodations that a specific juvenile may need to participate practically and effectively in the proceedings. It is often assumed that the juvenile's participation, sufficient to fulfil their right to a fair trial, is adequately ensured by mechanisms such as mandatory representation by counsel, notification and participation of parents, or the appointment of a guardian if the parents cannot represent the juvenile in the proceedings. However, these mechanisms may not be effective for all juveniles.

For instance, juveniles facing destabilizing poverty and social exclusion may struggle significantly with understanding the formal language used by criminal justice authorities. Similarly, their parents may encounter the same difficulties, preventing them from effectively exercising the juvenile's rights on their behalf. In such cases, everything depends on the approach of the criminal justice authorities, the

[72] From the statements of professionals working within the juvenile justice system, as captured in research conducted by the Institute for Criminology and Social Prevention, it appears that the welfare approach predominates primarily among the staff of child protection authorities, which are responsible for protecting the rights of children at risk. These workers' statements also reflect how closely the welfare approach aligns with a repressive approach, as both are based on the view of the child as a passive object to be shaped from a position of authority. Statements from workers in child protection authorities often suggest that, in dealing with the unlawful behaviour of children and adolescents, too much attention is paid to the rights of the children and adolescents, rather than their duties. Some workers criticize the repeated imposition of conditional sentences on juveniles, even though they are in a probation period, which presumably implies that these cases should result, in the workers' views, in the juvenile's imprisonment. Others believe, for example, that pretrial detention could have an "educational" effect on the juvenile. Others speak critically about the low authority of public agencies with juveniles in conflict with the law, noting that these individuals invoke their rights, pointing out that "everything can be changed, but only through legal amendments and a change in legislators' attitudes."– Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, pp. 82–83. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024].

[73] The medical approach to disability is often referred to as the individual model, which views disability as an individual deficiency or flaw. This deficiency or flaw is ideally something to be removed. This approach is dominated by professionals, especially doctors, who possess the appropriate expertise and methods to "treat" individuals with disabilities. In contrast to the medical model, the social or human rights model is often presented, which views disability as a consequence of the inability of social structures to guarantee equal life opportunities for people with physical, mental, psychosocial, or sensory impairments. The social or human rights model emphasizes equality, recognizing people with disabilities as active participants in their own lives and removing the asymmetry of power in favor of professionals. – For further reference, see the definitions of the medical (individual) and human rights models of disability in the General Comment No. 6 of the UN Committee on the Rights of Persons with Disabilities on equality and non-discrimination, CRPD/C/GC/6, paras. 8–9. Available at: https://digitallibrary.un.org/record/1626976?ln=en.

quality of the defence counsel's work, and the professionals' ability to adapt communication to the needs of the juvenile and their parents.

Experience from non-governmental organization (NGO) workers who provide social services to children and juveniles or implement preventive and/or probation programs for children and juveniles in conflict with the law demonstrates that communication adaptation does not always occur. These workers report that while some clients had positive experiences with their defence counsel, others were often confused, lacked sufficient information about what was happening in the proceedings and what would happen next, and, after the proceedings ended, often did not know what steps to take—for example, if they were assigned community service.[74]

The position of juveniles with intellectual and/or psychosocial disabilities is particularly vulnerable in this regard (see Section 6 below). Under the welfare approach, the participatory rights of juveniles may be reduced to mere interrogation[75] or their formal personal presence during criminal proceedings.

On the substantive level, the welfare approach leads to a focus not only on the severity of the unlawful act but also on the juvenile's personality and circumstances when determining an intervention. These factors are assessed through the lens of protective and risk factors. The welfare approach does not consider it problematic to address risk factors with coercive interventions against the juvenile, even when these risk factors have clear structural, societal origins, such as destabilizing poverty or social exclusion (see Section 4), or the inability of social structures to accommodate an individual's mental or psychosocial disadvantages (see Section 6).

Juveniles may paradoxically find themselves in a position where the seriousness of a specific unlawful act would not justify such intense coercive intervention for adults, yet it is deemed necessary for juveniles on the grounds of safeguarding their development. This is particularly evident in measures such as protective upbringing, implemented in closed residential educational facilities with strict regimes and rigid schedules. The imposition of protective upbringing is influenced not by the severity of the unlawful act but rather by an assessment of the quality of the juvenile's upbringing environment.[76] Given the problem of individualizing structural deficiencies, it is clear that juveniles subjected to such measures will often come from structurally disadvantaged social groups whose families struggle with phenomena such as destabilizing poverty or social exclusion.[77] This issue is further exacerbated by the

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[74] Based on an interview with employees of a non-profit organization providing social services to children in conflict with the law and implementing probation and prevention programs, conducted on 7 November 2024.

[75] This narrow understanding of participatory rights, which effectively conflates a child's participation in proceedings with a form of evidence (interrogation), appears in a recent study by the Institute for Criminology and Social Prevention, focusing on the status of children below the age of criminal responsibility in the juvenile justice system. See Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, pp. 24–25. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024]. Although this source does not directly address juveniles but rather children below the age of criminal responsibility, its relevance to the understanding of participatory rights for juveniles should not be underestimated. It reflects a deeply rooted general approach to the participatory rights of children in the Czech context, as evidenced by the explanatory report on the amendment to the Juvenile Justice Act No. 220/2021 Coll., which established the right for a child under 15 to be subjected to interrogation in court proceedings if they request it, precisely referencing their right "to be heard."

[76] In accordance with Section 22, Paragraph 1 of the Juvenile Justice Act, protective education may be imposed on a juvenile if: a) their upbringing is not adequately provided for and the lack of proper upbringing cannot be rectified within their own family or the family in which they live; b) the juvenile's upbringing has been neglected; or c) the environment in which the juvenile lives does not provide a guarantee of proper upbringing. A general condition for the imposition of protective education in all cases is that educational measures alone are insufficient.

[77] In this context, it is noteworthy that, for example, in a study among professionals working within the juvenile justice system, conducted by the Institute for Criminology and Social Prevention, which focused on recidivism among juveniles, one judge stated that the juveniles appearing before them often come from poor backgrounds. Although this single experience cannot be automatically considered as a representative statement about the practice of the entire system, it may suggest that juveniles who commit unlawful acts but do not face the structural issues, such as poverty and its associated phenomena, likely have a greater chance that their case will be diverted and that they will not end up before a juvenile court, nor will protective education

fact that a juvenile may be placed in the same type of re-educational facility through family law channels, which happens even more frequently than through the imposition of protective upbringing (see Section 5).

The Juvenile Justice Act incorporates restorative justice principles as part of its approach to juveniles.[78] Restorative justice can align with a rights-based approach to justice for children in conflict with the law. Both approaches view the juvenile as an active participant who can contribute to finding ways to address the unlawful act they committed and repair the harm caused. However, studies indicate that restorative approaches are used in relatively few cases.[79] This may be due to the emphasis on another principle governing juvenile proceedings—speed.[80] Additionally, insufficient budgetary support for the Probation and Mediation Service (PMS), the primary institution implementing restorative approaches in the Czech Republic, contributes to this situation. [81]

Limited financial support leads to an overburdened workforce, required to manage other responsibilities under the law. Budget constraints also affect the development of probationary and preventive programs—interventions that, like restorative approaches, could treat juveniles as active agents of change. [82] Studies suggest that such programs are unavailable in certain regions of the Czech Republic. Organizations providing these programs report decreasing funding, unpredictable public support, and significant limitations on planning for their development.[83]

In light of the above, it can be concluded that the most progressive principles established by the Juvenile Justice Act for addressing juveniles are often formal declarations, with prevailing practices predominantly adhering to the welfare model described above.

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be imposed. This is indirectly confirmed by another statement from a judge in the same study, who noted that there are very few defendants "from normal backgrounds," and that "it is almost always exceptional behavior due to circumstances..." Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, pp. 72, 86. Dostupné z: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [cit. 27. prosince 2024].

[78] For example, Section 1, Paragraph 2 of the Juvenile Justice Act, which defines the goal of addressing unlawful acts committed by children and juveniles, mentions that one of the purposes is for the child or juvenile, according to their strengths and abilities, to contribute to compensating for the harm caused by their unlawful act. Section 3 of the Juvenile Justice Act, which outlines the fundamental principles of the juvenile justice system, states that sanctions and their imposition should primarily aim at restoring disrupted social relationships (Paragraph 1). Additionally, it specifies that proceedings under this law must aim to ensure that the victim receives compensation for the harm caused by the unlawful act, or is granted another form of appropriate redress (Paragraph 7).

[79] Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, p. 58. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024]. In relation to children below the age of criminal responsibility, the low use of restorative techniques is mentioned by Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, p. 33. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024]. This study points out at the same time that, for example, the implementation of family group conferences is a unique practice in a few centres of the Probation and Mediation Service. – Ibid., p. 55–56.

[80] Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, p. 58. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024].

[81] The above-quoted research report of the Institute for Criminology and Social Prevention also speaks of the limited staff capacity of the PMS, precisely in connection with the increase in other agendas to be performed by the PMS. – Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, p. 58. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024.]

[82] Ibid, p. 55. The study also confirms that there are problems with the funding of these programmes.

[83] Based on an interview with employees of a non-profit organization providing social services to children in conflict with the law and implementing probation and prevention programs, conducted on 7 November 2024.

2. The position of children below the minimum age of criminal responsibility (15 years)

The Czech justice system for children in conflict with the law provides a special formalized procedure even for children below the minimum age of criminal responsibility (15 years), in connection with suspected violations of criminal law norms. Over time, the legislative sophistication of this system, as well as the range of measures that can be imposed on children under the minimum age of criminal responsibility, has expanded. [84] An important role in the current form of this system has been played primarily by pressure from international human rights organizations, especially the decision of the European Committee of Social Rights on the collective complaint of the *International Commission of Jurists (ICJ) against the Czech Republic*.[85] In this decision, the Committee found that the Czech Republic violated the right of children below the age of criminal responsibility to social protection under Article 17 of the European Social Charter (1961), for two reasons. First, it did not ensure the right to mandatory legal assistance for children suspected of violating criminal law norms in proceedings before law enforcement authorities. [86] Second, its legal framework was set up so that practically all children whom law enforcement authorities believed had violated criminal law norms had to undergo court proceedings.

In 2024, an amendment to the Juvenile Justice Act was adopted, addressing both shortcomings.[87] Now, children below the age of criminal responsibility must have a lawyer obligatorily from the same point as juveniles, i.e., from the moment law enforcement authorities interrogate them as suspects or take procedural steps against them. [88] The law also specifies situations in which the prosecutor is not required to file a motion for the imposition of measures with the youth court. The common denominator of these situations is the futility of court proceedings. This is either determined by the circumstances of the case, including the nature and seriousness of the unlawful act,[89] or by the fact that the child has been subjected to another measure in their educational environment, [90] an educational measure by the child protection authority,[91] or a measure for another violation of criminal law norms, making further proceedings before the youth court unnecessary.[92]

This change significantly strengthens the right of children below the age of criminal responsibility to a fair trial and their right to have their best interests considered in every matter that concerns them, as the UN Committee on the Rights of the Child associates this, among other things, with the existence of alternatives to court proceedings. However, even here, the effectiveness of individual safeguards will be determined primarily by the principled approach of the representatives of the respective public

[84] Before the adoption of the Juvenile Justice Act, children below the age of criminal responsibility could only be subjected to protective upbringing and proceedings concerning them were not specifically regulated. With the adoption of the law, the range of measures was expanded to include probation supervision and placement in therapeutic, psychological, or other appropriate educational programs at educational care centres. Additionally, the judicial stage of proceedings concerning the child was modified, including, for example, mandatory representation by a guardian from among attorneys. Today, the list of measures that can be imposed on a child below the age of criminal responsibility essentially mirrors all the educational measures that can be imposed on a juvenile, with the exception of probation programs. In addition, the child can be subjected to protective treatment, including in an institutional form. Alongside judicial proceedings, the pre-trial stage of the proceedings is also regulated (the investigative phase before criminal justice authorities and the proposal phase before the public prosecutor). – Section 88b et seq. of the Juvenile Justice Act.

[85] *International Commission of Jurists (ICJ) proti České republice*, decision of the European Committee of Social Rights on the merits of 20 October 2020, collective complaint No. 148/2017.

[86] This assistance was guaranteed to children only in the form of mandatory representation by a guardian from among lawyers in civil proceedings before the court. However, even according to the lawyers themselves, this was too late for them to intervene effectively in the case.

[87] Act No. 165/2024 Sb.

[88] Juvenile Justice Act, section 89c (1).

[89] Juvenile Justice Act, section 89j (1) (a).

[90] Juvenile Justice Act, section 89j (1) (b).

[91] Juvenile Justice Act, section 89j (1) (b).

[92] Juvenile Justice Act, section 89j (1) (c)–(d).

authorities and lawyers. In this context, it is worth noting that with regard to the justice system for children below the age of criminal responsibility, all criticisms raised above regarding the welfare approach to juveniles can be reiterated. Moreover, many welfare elements are directly embedded in the law, as the justice system for children below the age of criminal responsibility is explicitly based on a welfare approach.[93] The proceedings are officially approached as being "in the interest of the child," not against the child.[94]

The lawyer available to these children is not intended to act as a defender but rather to take on the role of a guardian—i.e., their task is primarily to advocate for the child's interests rather than their rights. [95] Additionally, doubts persist as to whether these children are sufficiently capable of engaging in restorative approaches. [96] This appears somewhat paradoxical, given the concurrent assumption that they are sufficiently mature to bear welfare sanctions, which can often be very severe. For example, children below the age of criminal responsibility can be subjected to the aforementioned protective upbringing or institutional protective treatment, [97] i.e., placement in a psychiatric hospital. In the latter case, they are even subject to weaker guarantees of review regarding the justification of their placement compared to adults or juveniles. For adults or juveniles, institutional protective treatment can be ordered for a maximum of two years, and a decision on its extension must be made before this period expires. [98] For children below the age of criminal responsibility, the Juvenile Justice Act mandates an annual review;[99] however, the mechanism requiring the court to decide on the continuation of protective treatment, failing which the child is released, does not apply. A child can only be released from protective treatment by court decision.[100]

It should be added that, according to a recent study by the Institute for Criminology and Social Prevention, even very young children find themselves in the justice system for those below the age of criminal responsibility. Of the 256 children whose files were examined in the study, 10% were younger than 10 years, with the youngest children being as young as seven years old (2).[101]

3. The right of juveniles to access free legal aid

A significant issue faced by juveniles in the justice system for children in conflict with the law is access to free legal defence. While the legal framework guarantees juveniles the right to mandatory defence, it does not ensure that this defence will be provided free of charge. To access free legal aid or reduced-fee legal aid, a juvenile must apply, either personally or through their lawyer, parent, or appointed

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[93] See Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, p. 213. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024].

[94] See, for instance, the explanatory report to the amendment to the Juvenile Justice Act No. 165/2024 Coll.

[95] A recent study focused on the juvenile justice system for children below the age of criminal responsibility found that other actors in this system, such as criminal justice authorities or child protection authorities, view it as a failure on the part of the lawyer if they approach their role strictly as a defense attorney. – Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, pp. 29, 149, 200, 221. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024].

[96] Ibid., p. 33.

[97] It must be added, however, that when imposing protective upbringing on children below the age of criminal responsibility, one of the aspects considered is always the nature of the offence committed . – Juvenile Justice Act, section 93 (2).

[98] Act No. 40/2009 Coll., Criminal Code, section 99 (6).

[99] Juvenile Justice Act, section 95a (2) and (4).

[100] Hrušáková, Milana. § 95a. In Brucknerová, Eva, Hrušáková, Milana. *Zákon o soudnictví ve věcech mládeže. Komentář* [Systém ASPI]. Wolters Kluwer [accessed 23/12/2024]. ASPI_ID KO218_2003CZ. Available at: www.aspi.cz. ISSN 2336-517X.

[101] Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, p. 65. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024].

guardian. The application must be submitted during the course of the criminal proceedings. The basis for granting free or reduced-fee legal aid is the accused's inability to afford the services of a lawyer.[102]

The law stipulates that the prosecutor or judge may decide on the entitlement to free or reduced-fee legal aid even without a formal request if evidence gathered indicates that the accused qualifies for such assistance.[103] However, in practice, even very poor juveniles may find that such a decision is not made, even if an application has been submitted. [104] In a study conducted by the Institute for Criminology and Social Prevention, a child protection authority worker criticized lawyers for failing to inform juveniles about the possibility of applying for free legal aid.[105] The effective realization of this right thus again depends on how individual judges, prosecutors, and lawyers approach their duties.

If a juvenile is not granted the right to free or reduced-fee legal aid during the criminal proceedings and is subsequently convicted, they must reimburse the state for the costs incurred for their lawyer's services.[106] These costs are calculated according to legal provisions, specifically the attorney tariff. [107] At this stage, the convicted person's financial situation is no longer taken into account.

4. The concept of the right to individual assessment and its impact on marginalized groups

One of the procedural rights of children and juveniles in which the predominance of the welfare approach is most evident in the Czech context is the right to individual assessment. This right is commonly associated with very traditional institutes of Czech criminal law, such as the investigation of the circumstances of a juvenile[108] and the report on the circumstances of a juvenile,[109] and this also corresponds to the way their purpose is understood. These institutes are generally perceived as aiming to provide an "anamnesis" of the child or juvenile, which serves as a basis for determining the measures to be applied to the child.[110] In this framework, children or juveniles are regarded as passive participants

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[102] Criminal Procedure Code, section 33 (2) and (3), in connection with Juvenile Justice Act, section 43 (1) (concerning the right of the parent or appointed guardian).

[103] Criminal Procedure Code, section 33 (2).

[104] This was the case of a young man addressed in the decision of the Constitutional Court dated September 1, 2020, case No. II. ÚS 1411/2020. The courts rejected the request, among other reasons, by stating that "although his financial situation is below the commonly recognized standard of society, it is necessary to take into account the potential income and his approach to securing a sufficient income" (quoted from Paragraph 1 of the decision). The Constitutional Court disagreed with this reasoning and concluded that the petitioner should have been granted the right to free legal aid. Interestingly, the petitioner was involved in two proceedings and thus filed two requests for free legal aid. His case therefore reached the Constitutional Court twice, with his complaint being rejected in the decision of May 19, 2020. In that decision, the Constitutional Court acknowledged that "the petitioner undoubtedly comes from a disadvantaged social background, had been placed in institutional care where he stayed until reaching adulthood"; "[he] has only basic education, is dependent on methamphetamine, and consumes alcohol" and is currently in pretrial detention. However, it concluded that there was nothing preventing the petitioner from earning money in the future through work, and thus covering the costs of his defense (Paragraph 12 of the decision). The Constitutional Court's approach is therefore also ambiguous.

[105] Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, p. 79. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024].

[106] Criminal Procedure Code, section 152 (1) (b), section 155 (1).

[107] Decree of the Ministry of Justice No. 177/1996 Coll., on attorneys' fees and reimbursement of attorneys' fees for the provision of legal services (Advocates' Tariff).

[108] Juvenile Justice Act, section 55.

[109] Specifically, this refers to the report on the personal, family, and social circumstances and the current life situation of the juvenile, as defined in Section 56 of the Juvenile Justice Act. However, in practice, there is no distinction between the two institutes. In the case of children below the age of criminal responsibility, only the determination of circumstances is applied, as per Section 89a, Paragraph 1 of the Juvenile Justice Act. As mentioned earlier, since there is no practical distinction between determining circumstances and a report on circumstances, the exclusion of the report on circumstances for children has no practical significance.

[110] This is, for example, the approach presented in a study by the Institute for Criminology and Social Prevention. – Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, pp. 63, 76. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024]. In another part of the research report, it is mentioned that reports from the child protection authority, which is most often responsible for determining the circumstances of a child or juvenile or preparing

in the entire process. This does not mean that they are not spoken to; however, they find themselves more in the position of being sources of information rather than partners in the process of individual assessment, whose perspective is relevant both for identifying their needs and for contextualizing their unlawful conduct within the broader framework of their life experiences.[111]

As previously mentioned, this approach provides little room for addressing the structural deficiencies to which the child is exposed. More precisely, these structural deficiencies are individualized, meaning they are treated as risk factors that justify the adoption of more intensive coercive interventions against the child or juvenile. Any discussion of the failures of the juvenile's environment rarely extends to societal structures. It is now relatively common to say that the juvenile's unlawful conduct reflects deficiencies in their environment, but this typically refers to the idea that the juvenile lives in a "dysfunctional" family or associates with "the wrong people."[112]

The destabilizing influence of poverty and social exclusion, on the other hand, is not addressed (apart from framing it as the individual failure of the child's or juvenile's parents). This lack of attention applies not only to the question of whether the social conditions faced by the family even allow it to function in a way that meets societal expectations, but also, for example, to the issue of school success. School failure and potential problems at school are again individualized as risk factors.[113] There is little consideration of the fact that success at school is significantly influenced by factors such as housing stability or instability[114] or that a juvenile's problems at school may not necessarily indicate their shortcomings. Rather, these problems might reflect the school's inability to appropriately respond to the individual needs and conditions of the juvenile and to fulfil their right to inclusive education.

5. The issue of overlap between family law and criminal law measures

A significant challenge concerning the effectiveness of safeguards guaranteed by Directive 2016/800 is the aforementioned overlap between family law and criminal law measures. This issue also reflects the prevailing welfare approach to children and juveniles. The problem lies in the fact that a child's suspected or alleged violation of criminal law norms is simultaneously perceived as a behavioural issue.

For children and juveniles already facing challenges, such as difficulties in school—often children who confront destabilizing poverty, social exclusion, and/or racial discrimination (e.g., Romani children)[115]—this is frequently viewed as the decisive factor or "the last straw" prompting child

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a report on their circumstances, are "a primary source of information about risk and protective factors for the specific juvenile."– Ibid., p. 60.

[111] For a more detailed critique of the way the right to individual assessment is implemented in the Czech environment, see the final recommendations made in the previous PRACTICE project.. ICJ, Forum for Human Rights. Recommendations on the Main Principles Governing the Individual Assessment of Children in Conflict with the Law, pp. 29–33, 36–39 [online]. ICJ, 9/12/2021 [accessed 30/12/2024]. Available at: https://www.icj.org/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf.

[112] Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, pp. 71–72. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024].

[113] Ibid., pp. 99–103.

[114] See, for instance, the research conducted by MEDIAN, s.r.o. for the Ministry of Labour and Social Affairs, which confirmed a significant correlation between children's unsatisfactory housing and their school success/failure. – MEDIAN. Analýza dopadů nedostačujícího bydlení na školní a další problémy dětí v ČR [online]. Ministry of Labour and Social Affairs [accessed 27/12/2024]. Available at: https://www.google.com/search?q=vliv+bydlen%C3%AD+na+%C5%A1koln%C3%AD+%C3%BAsp%C4%9B%C5%A1nost&oq=vliv+bydlen%C3%AD+na+%C5%A1koln%C3%AD+%C3%BAsp%C4%9B%C5%A1nost&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQABjvBTIKCAIQABiABBiiBDIHCAMQABjvBTIHCAQQABjvBTIHCAUQABjvBdIBCDYyMzdqMGo0qAIAsAIB&sourceid=chrome&ie=UTF-8#vhid=zephyr:0&vssid=atritem-https://www.mpsv.cz/documents/20142/225517/Analyza_dopadu_nedostacujiciho_bydleni_na_skolni_a_dalsi_problemy_deti_v_CR.pdf/26bac884-b124-6f49-beec-a062b2eec275.

[115] We are currently providing legal assistance to a Roma adolescent boy, whose caregivers (grandparents) were informally pressured by the system to change his school (from integration with an assistant to a segregated school), and who began

protection authorities to initiate the removal of the child from their family and placement in institutional care. [116] Placement often occurs swiftly, as it is common practice for child protection authorities to propose placement via an interim measure,[117] followed by proceedings for long-term institutional care.

Facilities where children are placed through this family law pathway are often the same as those used for juveniles under criminal protective upbringing. Although the law stipulates that family law institutional upbringing and criminal protective upbringing should be carried out separately,[118] this rule is not consistently observed in practice.[119] This can be understood considering that criminal protective care has strong welfare underpinnings, and the upbringing background of the child plays a crucial role, at least in the case of juveniles. Given this, both measures can be seen as part of a continuum, and the practice corresponds to this view.[120] For instance, a study by the Office of the Public Defender of Rights

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rebelling at the new school. The boy was eventually placed in a closed re-education facility—first a diagnostic institution and later a children's home with a school—where the only reason for his placement was his behavioral issues at school, which the school reported. We believe that this case demonstrates how Roma children are often subjected to a certain approach in the Czech educational system. This approach is characterized by the fact that the children's specific needs, in this case the onset of puberty and the need to rebel not only against the adult world but also against the majority world (the boy was also from a very poor background), are perceived by the system's representatives as individual problems that need to be solved from a position of authority and coercion. These solutions, however, only escalate the situation, as they reproduce the very principle against which children and adolescents rebel—the principle of exclusion and subjugation. This leads to the escalation of the situation, which extends from the school to the realm of child protection authorities, and often ends with the child or adolescent being placed in a closed regime-based facility. In this case, the boy did not commit an illegal act, but if this were to happen in some cases, the likelihood of a family-law placement of the child or adolescent in a closed regime-based facility would be even higher, as is also supported by the statistics cited below.

[116] This was confirmed in an interview by staff at a non-governmental organization that provides services and programs for children and adolescents, including children and adolescents in conflict with the law.

[117] The number of children and adolescents who are removed from the care of their parents on the basis of an interim measure each year far exceeds the number of children and adolescents who are removed on the basis of a court judgment on the merits. For example, in 2023, according to the statistics of the child protection authorities, 2 332 children and adolescents were removed on the basis of an interim measure and 1 153 on the basis of a judgment. – Ministry of Labour and Social Affairs. Annual report on the performance of social-legal protection of children for the year 2023, table F [online]. Ministry of Labour and Social Affairs [accessed 23/12/2024]. Available for download at: https://www.mpsv.cz/web/cz/statistiky-1.

[118] Act No. 109/2002 Coll., on the performance of institutional upbringing or protective upbringin in school facilities and on preventive educational care in school facilities, sections 13(2) and 14(2).

[119] See, for instance, The Office of the Public Defender of Rights. Školská zařízení pro výkon ústavní výchovy. Zpráva z návštěv zařízení [online]. Brno: The Office of the Public Defender of Rights, 2022, p. 28. Available at: https://www.ochrance.cz/uploads-import/ESO/%C5%A0kolsk%C3%A1-za%C5%99%C3%ADzen%C3%AD_CZ_el-verze.pdf [accessed 27/12/ 2024].

[120] This practice also finds theoretical support. For example, the commentary to the Juvenile Justice Act by Eva Brucknerová and Milana Hrušáková leans towards understanding the relationship between family law institutional upbringing and protective upbringing as a continuum. The commentary specifically states that "[p]rotective upbringing may be applied only when institutional upbringing under Section 971 et seq. of the Civil Code is insufficient... Thus, there is a relationship of subsidiarity between protective and institutional upbringing." – Brucknerová, Eva, Hrušáková, Milana. § 22. In Brucknerová, Eva, Hrušáková, Milana. Juvenile Justice Act: Commentary. [ASPI System]. Wolters Kluwer [accessed December 27, 2024]. ASPI_ID KO218_2003CZ. Available at: www.aspi.cz. ISSN 2336-517X. It must be added that this conclusion does not entirely reflect the legislative development of the legal framework, which initially established a subsidiary relationship of protective upbringing to institutional upbringing. However, in 2005 (Amendment No. 383/2005 Coll.), the law was amended, specifically to clarify that these are entirely different legal measures that should not be connected in this way. As mentioned earlier, however, practice tends to lean towards the approach presented by the authors in their commentary. This understanding is also found in the previously cited research report from the Institute for Criminology and Social Prevention on juvenile recidivism, which states that criminal law protective upbringing should be imposed only when other interventions are not feasible, even within the scope of family law." – Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, p. 57. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024]. Similarly, a research report focused on children below the age of criminal responsibility suggests that if a child fails to fulfill the measures imposed on them under the Juvenile Justice Act, family law measures should be applied, including even provisional measures, i.e., measures leading to the child's placement outside the family. This proposal aims to compensate for the lack of effective coercive tools for enforcing the measures directly in the Juvenile Justice Act. – Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, p. 38. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024]. The mixing of family law and criminal law measures is thus a relatively strongly accepted and not so much problematized practice in the Czech environment.

analysing decisions on the imposition of protective upbringing found that whether a child ends up in family law institutional upbringing or criminal protective upbringing is often a matter of chance,[121] though certain distinguishing criteria can be identified. These include the child or juvenile's aggression[122] and the characterization of their environment as criminogenic.[123] Mentioned were also the significance of the child or juvenile's psychological issues (e.g., "behavioural disorders, severe mental illnesses") deemed severe enough to preclude correction within the family, necessitating the imposition of protective upbringing.[124]

Nonetheless, it remains true that committing or being suspected of committing a criminal offense is the most common reason for placing children and juveniles in closed, regime-based facilities.[125] Children and juveniles placed under criminal protective upbringing represent only a small proportion of the total population in these facilities. For example, a 2017 report by the Czech School Inspectorate focused on these facilities, stating that criminal offenses were the reason for placement in 1,000 cases.[126] During the 2015/2016 school year (the period covered by the report), there were a total of 2,222 children, juveniles, and young adults (135 of whom were over 18 years old) in such facilities.[127] Of these, only 73 were placed under criminal protective care, with the rest placed based on family law measures (interim measures, educational measures, or institutional upbringing).[128] In recent years, there has been a slight increase in the imposition of protective upbringing measures; however, they still apply to a significant minority of children and juveniles placed in closed regime-based facilities.[129]

This highlights that criminal offenses or suspicions of such are often addressed through family law pathways as behavioural issues, with measures frequently involving severe interventions, such as the deprivation of the child's or juvenile's personal freedom. Family law measures, legislatively designed as tools for protecting children at risk, thereby become quasi-criminal instruments. However, their imposition is not accompanied by the same robust safeguards as criminal law measures. In family law proceedings, children and juveniles are not required to have legal representation. Instead, they are

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[121] Office of the Public Defender of Rights. Školská zařízení pro výkon ochranné výchovy. Zpráva z návštěv zařízení [online]. Brno: Office of the Public Defender of Rights, 2024, p. 20. Available at: https://www.ochrance.cz/media/vykon-ochranne-vychovy.pdf?fbclid=IwY2xjawGnYDdleHRuA2FlbQIxMAABHf6ifotJ23kqoHHxPf-113PCpygzls3qvBz3Qcis3raXJhyf3xOj0LkQNg_aem_P0wMjklQhw1IT329MO1Gow [accessed 27/12/2024]. See also Office of the Public Defender of Rights. Analýza soudních rozhodnutí o uložení ochranné výchovy. Brno: Office of the Public Defender of Rights, p. 3.

[122] Office of the Public Defender of Rights. Analýza soudních rozhodnutí o uložení ochranné výchovy. Brno: Office of the Public Defender of Rights, p. 5.

[123] The report defines the environment as one that "motivates, triggers, facilitates, or supports the commission of unlawful acts." – Ibid., p. 5. However, it is possible that these descriptions appear more frequently in judgments ordering protective upbringing, partly due to the way the conditions for imposing protective upbringing are defined in the law, as well as the fact that these decisions are written by criminal law judges.

[124] Office of the Public Defender of Rights. Analýza soudních rozhodnutí o uložení ochranné výchovy. Brno: Office of the Public Defender of Rights, pp. 33–34.

[125] Diagnostic institutions, children's homes with school and re-education facilities, all administered by the Ministry of Education, Youth and Sports.

[126] It did not necessarily have to be the only reason; the report creates several categories of reasons, recording each case in which these reasons are mentioned. As a result, the total number of reasons exceeds the total number of children placed – Czech School Inspectorate. Kvalita výchovně-vzdělávací činnosti v zařízeních pro výkon ústavní nebo ochranné výchovy. Tematická zpráva, s. 5 [online]. Czech School Inspectorate, 4/5/2017 [accessed. 23/12/2024]. Available at: https://www.csicr.cz/Csicr/media/Prilohy/PDF_el._publikace/Tematick%c3%a9%20zpr%c3%a1vy/01-F_TZ-Kvalita-vychovne-vzdelavaci-cinnosti-v-zarizenich-pro-vykon-UV-OV_FINAL-2-5.pdf.

[127] Ministry of Education, Youth and Sports. Statistical Yearbook of Education - School Year Performance Indicators 2015/2016. Table H1.2.1. Available at: https://statis.msmt.cz/rocenka/rocenka.asp [accessed 23/12/2024].

[128] Ministry of Education, Youth and Sports. Statistical Yearbook of Education - School Year Performance Indicators 2015/2016. Table H1.1.1. Available at: https://statis.msmt.cz/rocenka/rocenka.asp [accessed 23/12/2024].

[129] For example, in the school year 2023/2024, a total of 2,098 children, adolescents and young people (53 of whom were over 18 years of age) were placed in closed regime-based facilities, with protective upbringing imposed on 118 of them. – Ministry of Education, Youth and Sports. Statistical Yearbook of Education - School Year Performance Indicators 2023/2024. Tables H1.1.1 and H1.2.1. Available at: https://statis.msmt.cz/rocenka/rocenka.asp [accessed 23/12/2024].

represented by a guardian ad litem, typically a child protection authority.[130] The only requirement is that the guardian cannot be the same authority proposing the placement.[131] However, the effectiveness of this safeguard should not be overestimated, as the system often involves sharing files and opinions about the child among various authorities. Moreover, measures are usually taken before the juvenile court determines whether the child or juvenile has indeed engaged in unlawful behaviour. This determination is not central here; what matters is the suspicion itself, framed as a "behavioural problem" warranting removal from the family and re-education in a closed regime-based facility. Family law proceedings are also not automatically accompanied by the same privacy protections for children and juveniles as proceedings under the Juvenile Justice Act. [132] For instance, public access to court hearings is not automatically excluded, though the court may decide to exclude it.

As mentioned earlier, such placements disproportionately affect children already facing some form of vulnerability, often combined with criminal activity or suspicions thereof. These are frequently children from impoverished backgrounds, many of whom belong to the Romani minority[133] or have mental and/or psychosocial disabilities.[134] The presence of children with such disabilities in regulated re-education facilities demonstrates the connection between the socio-paternalistic approach to children and the medical model of disability. This intervention is based not on adapting the environment to the needs of the child or juvenile but on individual coercion and isolation.

6. Access to children and adolescents with intellectual and/or psychosocial disabilities

As indicated earlier, in the attitudes of professionals involved in addressing criminal activity by children or suspicions of it, a medical approach to disability predominates. This approach can be detected in expert research focusing on juvenile crime, which tends to treat mental and/or psychosocial disabilities as risk factors that may justify more intensive individual coercive intervention towards the child or adolescent. [135] This is also evident, for example, in the reports of the Office of the Public Defender of Rights, which is paradoxical, since this institution is tasked, among other things, with monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities [Article 33 (2) of the mentioned convention] in the Czech Republic. Even reports from the Office of the Public Defender of Rights, related to closed regime-based facilities or protective upbringing, view mental and/or

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[130] Act No. 292/2013 Coll., on Special Court Proceedings, section 469 (1).

[131] Act No. 292/2013 Coll., on Special Court Proceedings, section 469 (2).

[132] The reasons for such a decision may include the important interests of the parties or morality – see Act No. 99/1963 Coll., Civil Procedure Code, section 116 (2).

[133]Romani children are disproportionately represented in these institutions, although data on the number of children in these institutions is not available. The European Committee of Social Rights found in its decision on a collective complaint against the Czech Republic that the failure of the Czech Republic to collect sufficiently disaggregated statistical data on children in institutional care, including data on their ethnicity, constitutes a violation of Articles 16 and 17 of the European Social Charter. – Viz *European Roma Rights Center (ERRC) v. the Czech Republic*, decision of the European Committee of Social Rights on the merits of 18/10/2023, collective complaint No. 190/2020.

[134] The presence of these children is evidenced, for example, by the report of the Office of the Public Defender of Rights on systematic visits to these facilities. – Office of the Public Defender of Rights. Školská zařízení pro výkon ústavní výchovy. Zpráva z návštěv zařízení [online]. Brno: Office of the Public Defender of Rights, 2022, p. 18. Available at: https://www.ochrance.cz/uploads-import/ESO/%C5%A0kolsk%C3%A1-za%C5%99%C3%ADzen%C3%AD_CZ_el-verze.pdf. [accessed 23/12/2024].

[135] For example, a research report from the Institute for Criminology and Social Prevention, focusing on juvenile recidivism and based on foreign studies, mentions "significant mental disorders" or "low IQ" among risk factors.". – Večerka, Kazimír, Hulmáková, Jana, Štěchová, Markéta. Mladiství v procesu poruchové socializace [online]. Prague: Institute for Criminology and Social Prevention, 2019, p. 24. Available at: https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf. [accessed 27/12/2024]. A research report focusing on children under the age of criminal responsibility finds that children placed under protective upbringing, which is the most intensive response to violations of criminal law norms by a child, were recorded with "on average more than 3 psychological or behavioral issues." – Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, p. 83. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024].

psychosocial disability as a risk factor that could justify, for example, the imposition of protective upbringing (as noted earlier). Although the Office criticizes the conditions currently offered by those facilities to children and adolescents with mental and/or psychosocial disabilities,[136] it does not reject the idea of placing children with disabilities in school facilities as such. The Office opposes their placement in psychiatric hospitals, such as in the case of protective treatment, which is another criminal law measure.[137] The preferred solution in the Office's view is to ensure "educational therapeutic care" for these children and adolescents in closed regime-based facilities.[138] However, this fact does not break the connection between the existence of mental and/or psychosocial disabilities on the one hand and exposure to individual coercion on the other, including in terms of the personal freedom of the child or adolescent. Therefore, the proposed solution remains highly problematic, particularly from the perspective of Article 14, paragraph 1 of the UN Convention on the Rights of Persons with Disabilities.

All the shortcomings of the Czech justice system for children in conflict with the law, whether procedural or substantive, may be further exacerbated in the case of children with mental and/or psychosocial disabilities. Criminal justice authorities are able to make the necessary effort to communicate with the child or adolescent, but they usually do so only when the child's testimony is needed for evidence.[139] The exercise of other procedural rights of the child or adolescent is then treated as the responsibility of the parents or guardian and the lawyer to carry out on behalf of the child or adolescent. Substitute decision-making regarding individuals with mental and/or psychosocial disabilities is generally not problematized by criminal justice authorities.[140]

Further significant procedural shortcomings may arise in connection with the Czech legal system's use of the concept of "insanity." The problematic impact of this concept on the procedural rights of the accused is pointed out by the UN Committee on the Rights of Persons with Disabilities.[141] In Czech law, this leads to the cessation of criminal prosecution.[142] However, the public prosecutor may still propose to the court the imposition of protective measures, including protective treatment, even in its institutional form, i.e., the placement of an individual in a psychiatric hospital. A recent analysis of court decisions regarding the imposition of protective treatment by the Office of the Public Defender of Rights points out that in many decisions regarding the imposition of institutional protective treatment, it is unclear how the court addressed the issue of the person's guilt. In other words, according to the decisions, it seems that the court focused primarily on the issue of the measure to be imposed on the individual. The analysis also points out that in these cases, the legal requirement for the necessary scope

[136] See, for instance,. Office of the Public Defender of Rights. Školská zařízení pro výkon ústavní výchovy. Zpráva z návštěv zařízení [online]. Brno: Office of the Public Defender of Rights, 2022, pp. 18–21. Available at: https://www.ochrance.cz/uploads-import/ESO/%C5%A0kolsk%C3%A1-za%C5%99%C3%ADzen%C3%AD_CZ_el-verze.pdf accessed 27/12/2024]. See also Office of the Public Defender of Rights. Zranitelné skupiny lidí v ochranném léčení [online]. Brno: Office of the Public Defender of Rights, 2024, p. 10. Available at: https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ_ochranna_lecba_vyzkumna_zprava.pdf [accessed 29/12/2024].

[137] Office of the Public Defender of Rights. Zranitelné skupiny lidí v ochranném léčení [online]. Brno, Office of the Public Defender o Rights, 2024, p. 10. Available at: https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ_ochranna_lecba_vyzkumna_zprava.pdf [29/12/2024].

[138] Ibid., p. 10.

[139] This is a finding from our previous research conducted in 2021 for a project that focused on communication and information provision to victims with intellectual and/or psychosocial disabilities. – See Forum for Human Rights. Victims of crime with disabilities in Czechia. Prague: Validity, Forum for Human Rights, 2022, pp. 47, 51–52. The report is available in English at: https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-CZ-en-2-220422.pdf.

[140] Ibid..

[141] See, for instance, Guidelines of the UN Committee on the Rights of Persons with Disabilities on Article 14 of the Convention on the Rights of Persons with Disabilities: Right to liberty and security of persons with disabilities, A/72/55, Annex 1, paras. 16, 20. Available at: https://digitallibrary.un.org/record/1298412?ln=ar []accessed 29/12/2024].

[142] Criminal Procedure Code, section 172 (1) (e).

of evidence in criminal cases is not applied. [143] Nevertheless, it suggests at the same time that the risk of such court proceedings could be sufficiently mitigated by the existence of mandatory representation by a defence counsel.[144] However, we should not lose sight of the fact that there is a risk that the legal representation may be purely formal, especially if the lawyer holds a medical approach to disability. The analysis also points out that some decisions regarding the imposition of institutional protective treatment are not justified at all, as the law allows this in cases where both the perpetrator and the public prosecutor waive the right to appeal or complain and declare that they do not require a justification.[145] There were 40 (35%) such decisions out of a total sample of 115[146] analysed decisions. [147]

The analysis by the Office of the Public Defender of Rights also revealed that institutional protective treatment is not frequently imposed on children or adolescents; it is rather an exceptional measure. Out of the analysed sample of 115 decisions, only 5 concerned individuals who were imposed with institutional protective treatment as minors.[148] Children and adolescents with mental and/or psychosocial disabilities are most likely to be placed in closed regime-based facilities if they are perceived as dangerous.[149]

However, cases of imposing institutional protective treatment do occur, and when this happens, children or adolescents may find themselves in completely inadequate conditions. The legal regulation does not prohibit placing children together with adults, and the analysis states that, according to the experiences of employees of the Office of the Public Defender of Rights, minors are treated together with adults. [150] A major problem is also ensuring access to education for the placed minors. [151] The Office of the Public Defender of Rights points out that hospitals do not feel responsible for ensuring the education of minors. [152] This has been criticized by representatives of psychiatric hospitals. For example, they point out, in connection with the possibility of imposing protective treatment even on children below the age of

[143] Office of the Public Defender of Rights. Zranitelné skupiny lidí v ochranném léčení [online]. Brno, Office of the Public Defender o Rights, 2024, p. 13. Available at: https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ_ochranna_lecba_vyzkumna_zprava.pdf [29/12/2024].
[144] Ibid., p. 13.
[145] Criminal Procedure Code, section 136 (3).
[146] This is not the total number of individuals placed in protective treatment, which, according to the analysis, stood at April 20, 2023. The analyzed decisions concern those from the placed individuals who fall into vulnerable groups, as defined by the staff of the Office for the purposes of the analysis. These groups were women, foreigners, and minors. – Office of the Public Defender of Rights. Zranitelné skupiny lidí v ochranném léčení [online]. Brno, Office of the Public Defender o Rights, 2024, p. 7. Available at: https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ_ochranna_lecba_vyzkumna_zprava.pdf [29/12/2024].
[147] Ibid., p. 25.
[148] Ibid., p. 15.
[149] This is supported by the findings of research from the Institute for Criminology and Social Prevention. For example, a study focusing on children below the age of criminal responsibility found that protective upbringing was imposed in 7 cases within their examined files. These involved cases of violent crime, mainly robberies, or a combination of robberies and thefts. The research report further states that "most of the children had multiple mental health problems, and 4 of these children had been repeatedly before a juvenile court." The study provides specific examples of these cases. For instance, it mentions a 14-year-old boy who, along with others, committed an act that led to a death by negligence. The boy was described as having "mental impairment, his family lived in modest socio-economic conditions, and he had a history of alcohol abuse." Another boy, who at 13 years old committed bodily harm and violated a residence's privacy in complicity, "had prior psychological problems and behavioral issues, including aggression, truancy, and had attempted suicide." The report also notes that this boy grew up in a family where domestic violence was present, which led to his placement in a crisis center for children, after which protective upbringing was ordered. – Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, pp. 86–87. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024].
[150] Ibid., pp. 5, 10.
[151] The analysis mentions that currently, there would be a child under the age of 15 in the regime of institutional protective treatment. However, this does not mean that there are no individuals who were placed in protective treatment following a criminal act committed when they were a child below the age of criminal responsibility. The analysis itself mentions one such case. Specifically, it involved a boy who committed an otherwise criminal act at the age of 14.5.– Ibid., p. 16.
[152] Office of the Public Defender of Rights. Ochranné léčení, omezovací prostředky a další témata. Zpráva ze systematických návštěv. Brno: Office of the Public Defender of Rights, 2019, p. 30.

criminal responsibility, which was incorporated into Czech law in 2011, that they originally envisioned primarily outpatient protective treatment. Their aim was ensuring that in the case of serious illegal acts, there would be a measure that allows the child to be monitored and worked with even after they turn 18. However, according to them, courts "recklessly impose institutional protective treatment on children, and children here are unnecessarily isolated without education and without contact with peers."[153]

The analysis by the Office of the Public Defender of Rights further points out that when imposing institutional protective treatment, the special vulnerability of the affected individual is not taken into account, neither the fact that they are a child or adolescent, nor the impact of this measure on their future life.[154] It also mentions that institutional protective treatment is not only imposed for serious criminal acts, but also to a large extent for less serious offenses such as theft, hooliganism, dangerous threats, and property damage.[155]

IV. THE NETHERLANDS

1. Introduction

Since the early 20th century, the Netherlands has maintained a separate youth justice system[156] for minors aged 12 to 18 at the time of committing a criminal offence. [157] However, many general criminal law provisions also apply to minors. For example, the justification for intervention (the individual culpability of the child suspect) remains the same, and general legal rules, safeguards, and fundamental principles such as proportionality and subsidiarity are fully applicable.[158]

At the same time, the legislator has repeatedly stated over the years that child suspects can be held less responsible for their actions and should therefore be treated and punished in a manner specific to children.[159] While the legislator adopted a more sympathetic approach towards young offenders at the beginning of the last century, this tone has gradually shifted. In the current century, discussions increasingly focus on a risk-based approach to children.[160] The principle of individualisation remains paramount. This means that interventions must be tailored as closely as possible to the development and circumstances of the child in question.[161] The aim is to implement interventions that are "evidence-

[153] Páv, Marek, Švarc, Jiří. Stávající stav a doporučení k dalšímu rozvoji sítě ochranného léčení [online]. Prague: Ministry of Health, 2018, pp. 28–29. Available at: https://www.reformapsychiatrie.cz/sites/default/files/2023-02/KA1_St%C3%A1vaj%C3%ADc%C3%AD%20stav%20a%20doporu%C4%8Den%C3%AD%20k%20dal%C5%A1%C3%ADmu%20rozvoji%20s%C3%ADt%C4%9B%20ochrann%C3%A9ho%20l%C3%A9%C4%8Den%C3%AD%2C%20anal%C3%BDza.pdf.

[154] Office of the Public Defender of Rights. Zranitelné skupiny lidí v ochranném léčení [online]. Brno: Office of the Public Defender of Rights, 2024, p. 7. Available at: https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ_ochranna_lecba_vyzkumna_zprava.pdf [accessed 29/12/2024].

[155] Ibid., p. 7.

[156] In this baseline study the definitions used by the UN Committee on the Rights of the Child in General Comment 24, are utilised.

[157] Article 488, eerste lid, Sv en article 77a Sr.

[158] *Kamerstukken II* 1955-56, 4141, nr. 3: 10; *Kamerstukken II* 1989-90, 21327, nr. 3: 2-3 en 6, met verwijzing naar Commissie Anneveldt, *Sanctierecht voor jeugdigen*, Den Haag: Staatsuitgeverij 1982; 14.

[159] *Kamerstukken II* 1897-98, 219, nr. 3: 7-8. Vgl. *Kamerstukken II* 2012-13, 33498, nr. 3: 18 e.v. Zie ook: Commissie Overwater, *Rapport van de commissie ingesteld met het doel van advies te dienen over de vraag in welke richting het rijkstucht- en opvoedingswezen en in verband daarmee het kinderstrafrecht zich zullen moeten ontwikkelen*, Den Haag 1951. Commissie Anneveldt, *Sanctierecht voor jeugdigen*, Den Haag: Staatsuitgeverij 1982. Commissie Van Montfrans, *Met de neus op de feiten; aanpak jeugdcriminaliteit,* Den Haag 1994.

[160] J. van der Spek, 'Dystopische doelmatigheid', *PROCES* 2024, p. 393-395

[161] *Kamerstukken II* 2005-06, 30332, nr. 3: 12; *Kamerstukken II* 2012-13, 33498, nr. 3; 21 e.v.

based" and "effective".[162] Professional actors in the youth criminal justice system are therefore compelled to consider both traditional (culpability-focused) criminal law elements and a pedagogical approach.[163] This can be challenging, particularly in cases involving serious offences.[164]

Although youth crime shows a declining trend at the national level, certain neighbourhoods in the Netherlands experience a persistent concentration of police-registered youth crime.[165] Additionally, there has recently been an increase in severe violence among young people, adding complexity to cases.[166] Furthermore, there is still insufficient understanding of cybercrime[167] and "girls' crime".[168]

EU Directive 2016/800

The EU Directive 2016/800 was transposed into Dutch legislation in 2019, although not fully. This was highlighted in a December 2022[169] evaluation of the directive and a letter received from the European Commission in October 2023 (INFR(2023)2089) as part of an infringement procedure. The Netherlands failed to meet the requirement to include a reference to the EU Directive when adopting implementing measures.[170] The letter is not publicly accessible, so it remains unclear which aspects the European Commission considers non-compliant. On December 19, 2024, the Secretary of State for Justice and Security announced full implementation of the Directive.[171]

In practice, safeguarding the rights mentioned in the EU Directive in the Netherlands is challenging.[172] This is, in summary, due to the organisational structure of the system, capacity shortages, and insufficient youth support available within the criminal justice framework.[173] As a result, sanctions are either not enforced or significantly delayed.[174]

The current practice shows that minors (12–18 years old) and young adults (18–24 years old) can be placed together in youth detention centres. Another concerning issue is inequality of opportunity in criminal justice. Research shows that children and young people with a migration background,

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[162] *Kamerstukken II* 2012-13, 33 498, nr. 3, p. 7. *Kamerstukken II* 2010-11, 28741, nr. 17. *Kamerstukken II* 2011-12, 28741, nr. 18.
[163] T. Liefaard & Y.N. van den Brink, 'Juveniles' right to counsel during police interrogations. An interdisciplinary analysis of a youth specific approach, with a particular focus on the Netherland', *Erasmus Law Review* 2014, afl. 4, p. 206-218.
[164] Huls e.a. (2022), *Strafmaat en strafdoelen in ernstige jeugd- en adolescentenstrafzaken. Opvattingen van magistraten over de sanctionering van 16- tot 23-jarige daders van ernstige gewelds- en zedenmisdrijven*, Den Haag: WODC. English summary available: 3295-strafmaat-en-strafdoelen-in-ernstige-jeugd-en-adolescentenstrafzaken-summary.pdf.
[165] Tollenaar e.a. (2022). *Woon- en pleegbuurten van geregistreerde jeugdcriminaliteit. De samenhang met buurtkenmerken en de veranderingen die zich daarin voordoen over de tijd*, Den Haag: WODC. English summary available: Woon- en pleegbuurten van geregistreerde jeugdcriminaliteit.
[166] OM (2023). *Openbaar Ministerie Jaarbericht 2022*. OM. Van der Laan e.a. (2024). *Ontwikkelingen in de jeugdcriminaliteit 2000-2023. Synthese van bevindingen uit de Monitor Jeugdcriminaliteit*. Den Haag: WODC. English summary available: Trends in juvenile crime in the Netherlands 2000 up until 2023.
[167] Tollenaar e.a. (2024). *Monitor zelfgerapporteerde jeugddelinquentie 2023*. Den Haag: WODC. English summary available: Self-reported juvenile delinquency in the Netherlands in 2022/2023
[168] Beerthuizen e.a. (2023) *Meisjescriminaliteit,* Den Haag: WODC. English summary available: Meisjescriminaliteit.
[169] Compliance assessment of measures of Member States to transpose Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Country summary report for the Netherlands, December 2022.
[170] Ref. nr. INFR(2023)2089), Igs 18-10-2023, CIE van mening dat NL de RL 2016/800 (procedurele rechten minderjarige verdachten) niet in zijn geheel heeft omgezet. https://zoek.officielebekendmakingen.nl/blg-1168602 , https://ecer.minbuza.nl/-/inbreukenpakket-oktober-nederland-aangesproken-op-omzetting-van-richtlijn-evenredigheidstoets-en-richtlijn-procedurele-waarborgen-voor-kinderen-als-verdachten-in-strafprocedures , https://ec.europa.eu/commission/presscorner/detail/en/inf_23_4577 https://www.pubaffairsbruxelles.eu/eu-institution-news/october-infringement-package-key-decisions/
[171] Staatscourant 2024, 41713; https://zoek.officielebekendmakingen.nl/stcrt-2024-41713.html
[172] Met name articles 6, 7, 10, 11, 12, 13 en 20 van de Richtlijn
[173] Inspectie Justitie en Veiligheid (2024), Pedagogisch uitgangspunt onder druk. Een onderzoek naar wachtlijsten in de jeugdstrafrechtketen.
[174] Ibid.

intellectual disabilities, or low socioeconomic status are significantly overrepresented in pretrial detention.[175] Finally, specialization in youth justice among various institutions is under pressure, contrary to Article 20 of the EU Directive, among others.[176] These challenges are further elaborated below.

2. Specialization and legal assistance (articles 6, 18, and 20 EU Directive)

In the Netherlands, both detained and non-detained minors are entitled to free legal assistance from a lawyer.[177] A child suspect cannot be interrogated without a lawyer and cannot waive their right to legal assistance.[178] Legal aid in the Netherlands is provided through a subsidized system.[179] Legal aid lawyers working in the area of child justice receive a specific training. This is reflected in the membership requirements of the Dutch Bar Association and the disciplinary law for lawyers, and the registration requirements of the Legal Aid Board. The requirements to register as a lawyer specialising in child justice are particularly high.[180] Children can choose their lawyer if they want to. However, they have to pay for the services provided by the lawyer if the lawyer is not part of the legal aid system. This can be an issue for children who are not entitled to free legal assistance, e.g. children who are summoned to appear before the sub-district judge under the Compulsory Education Act (truancy) or the Mulder Act (minor traffic violations); or in cases where the public prosecutor wants to impose a settlement of community service (up to 60 hours).[181] Thus, not all children in conflict with the law enjoy equal access to free legal aid.

Lawyers are paid by the Legal Aid Board, according to a points-based system with fixed rates. Concerns have been raised by professionals and several committees established by the State Secretary for Justice and Security. They consider that fees are too low and do not adequately compensate the time spent on a case. Another concern is that it is difficult to motivate new lawyers to work in the legal aid sector when there is no prospect of a reasonable income. Lawyer's availability is becoming an issue in the Netherlands, including the number of lawyers working in the area of child justice.[182]

Additionally, specialisation within institutions such as the police, the Public Prosecution Service, the Child Protection Board, the judiciary, youth probation services, and youth justice centres is under

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[175] Y.N. van den Brink, 'Ongelijkheid ontrafeld. Een empirische verkenning van mogelijke katalysatoren van ongelijkheid in het besluitvormingsproces over voorlopige hechtenis van jeugdige verdachten', *Strafblad* 2023, nr. 5; Y.N. van den Brink, '*Different but equal? Exploring potential catalysts of disparity in remand decision-making in the youth court'*, *Social & Legal Studies* (31) 2022, afl. 3, p. 477-500.

[176] Inspectie Justitie en Veiligheid (2024), Pedagogisch uitgangspunt onder druk. Een onderzoek naar wachtlijsten in de jeugdstrafrechtketen.

[177] Zie Raad van State, 31 juli 2024, ECLI:NL:RVS:2024:3083 en Hoge Raad, 9 april 2024 , ECLI:NL:HR:2024:555.

[178] Zie ook article 489 lid 2 Sv.

[179] For a detailed description of the Dutch legal aid system, we refer to the European review prepared by the EU Clear Rights project. The report is available in Dutch and English on the website of Defence for Children Netherlands https://www.defenceforchildren.nl/wat-doen-we/projecten/clear-rights/

[180] See Art. 6b and Annex 5 of the Legal Aid Board's Registration Requirements 2021, at wetten.nl - Regeling - Inschrijvingsvoorwaarden advocatuur 2021, versie 1.0 - BWBR0044503 (overheid.nl): (i) lawyers need to have a minimum of three years of relevant professional experience, (ii) have completed Dutch Bar Association vocational education training with a specialisation in criminal law, (iii) have attended a child justice court hearing three times, accompanying another specialised lawyer who has already been registered for three years, (iv) have attended a court hearing on an out-of-home placement in a closed youth care institution one time, accompanying another specialised lawyer in civil youth law who has already been registered for three years, (v) have achieved, in the course of the three years prior to their request for registration, a minimum of eight training points in the area of child justice and a minimum of four training points in the area of civil youth law.

[181] Article 77f Sr.

[182] https://www.raadvoorrechtsbijstand.org/actueel/nieuws/2024/jonge-sociaal-advocaten-verlaten-steeds/

pressure, according to the Inspectorate of Justice and Security. Each profession has its specialised training and course offerings, but multidisciplinary training involving different professions is often lacking. Staff shortages, a tight labour market, and high turnover contribute to the loss of experience, knowledge, and expertise. This also impacts the timely handling of cases. Furthermore, some organisations, including the police, are shifting towards generalism instead of specialisation, often due to capacity issues. The Inspectorate emphasizes that inadequately trained personnel can lead to reduced effectiveness in youth justice.[183]

3. Right to an individual assessment (article 7 EU Directive)

The right to an individual assessment is enshrined in the Code of Criminal Procedure as "the right to advice concerning one's personality and living circumstances".[184] At the policy level, this right is reflected in the Guidelines and Framework for Child and Adolescent Prosecution, including Halt sanctions, which emphasize a "person-focused, context-oriented, and future-oriented approach" to enable meaningful intervention.[185]

In practice, the individual assessment of child suspects is conducted using the National Set of Instruments for the Youth Justice System (Dutch abbreviation: LIJ). The LIJ is based on the principles of the Risk-Needs-Responsivity (RNR) model.[186] Three principles are central to this model: (i) the risk principle, which states that the intensity of interventions must be appropriate to the risk of recidivism, (ii) the principle of need, which holds that the intervention should focus on the criminogenic needs of the young person and (iii) the principle of responsiveness, which means that the intervention must also fit the motivation, learning style and intellectual capabilities of a young person. A key component of the LIJ is the Ritax risk assessment tool, employed by the Child Protection Board. The tool provides scores for general recidivism risk (in Dutch: ARR) and generates a Dynamic Risk Profile (DRP). These outcomes are used to suggest appropriate behavioural interventions.[187]

The LIJ is applied by multiple professionals during trial proceedings and after sentencing. Police officers initiate the process during a child's initial police questioning by gathering information about personal circumstances (the "social interview"). This forms the basis for the **Pre-Select Recidivism Assessment**; police and the Child Protection Board use statistical data to conduct a preliminary risk evaluation. Following this, a **RITAX A** assessment is carried out in every youth justice case. However, when the child is held in formal custody (*inverzekeringstelling*), the Child Protection Board conducts a brief individual assessment (**RITAX A IVS**) to determine whether and under what conditions the child can be released. If pre-trial detention continues, the Child Protect Board will conduct the broader **RITAX B** assessment.[188] These tools rely on information from diverse sources, including judicial records, input from care providers, parents, and the child.[189] During legal proceedings, assessments can be updated by the Child Protection Board, youth probation officers, or staff from the youth justice

[183] Inspectie Justitie en Veiligheid (2024), Pedagogisch uitgangspunt onder druk. Een onderzoek naar wachtlijsten in de jeugdstrafrechtketen, p. 37-38.
[184] Articles 488aa lid 1 onder e, 494, 494a, 494b en 498 Sv.
[185] https://wetten.overheid.nl/BWBR0044737/2021-02-01
[186] Andrews, D. A., & Bonta, J. (2010). Rehabilitating criminal justice policy and practice. Psychology, Public Policy, and Law, 16(1), 39–55.
[187] Buysse e.a. 2022, *Toeleiding naar gedragsinterventies in de jeugdstrafrechtketen*, Den Haag; WODC. English summary available: Summary - Referral to behavioural interventions in the juvenile justice chain.
[188] Child Protection Board, Protocol youth justice cases. The RITAX B is also used in other youth justice cases, e.d. when the child scores medium or high with regard to the DRP or when the child has reoffended.
[189] https://algoritmes.overheid.nl/nl/algoritme/risico-taxatie-instrument-jeugdstrafrecht-ritax-raad-voor-de-kinderbescherming/15996611#verantwoordGebruik.

facility where the child is held. These assessments contribute to the sentencing advice provided by the Child Protection Board.[190]

In some cases, a forensic report may be necessary, prepared by a forensic psychologist or psychiatrist at the request of the court, the prosecution, or the child's lawyer.[191] This forensic investigation focuses on identifying the root causes of the child's behaviour, which could stem from developmental disorders or mental health issues. Through desk research (the case file), interviews, and testing,[192] the report advises on accountability and measures to prevent reoffending. It also examines the sufficiency of youth sanctions, particularly for 16- and 17-year-olds.[193] Assessments can be conducted in freedom (ambulatory) or during pre-trial detention, with observation studies possible if the child refuses cooperation.[194]

4. Deprivation of liberty as a last resort (articles 10, 11 & 12 EU Directive)

In the Netherlands, suspects may be held in police custody for up to nine hours in a cell at or near a police station, including children from the age of 12. Hours between midnight and 9:00 AM do not count toward this limit.[195] Police custody can be extended by the prosecutor, without judicial review, for up to three days (referred to as "inverzekeringstelling").[196] To extend pre-trial detention beyond this, the prosecutor must request approval from the investigative judge, who can authorize a maximum of 14 days ("inbewaringstelling").[197] The minor is then transferred from the police cell to a judicial youth facility. Afterwards, the court decides on the duration of the pretrial detention, with a review required every 90 days.[198] In practice, courts in youth justice cases review this more frequently, namely every 30 days. In youth criminal justice, initiatives have been developed to prevent minors from staying for extended periods in police cells or youth justice facilities. For example, they can serve pretrial detention at home, with their residence designated as the place of detention, or they can be placed in a small-scale youth justice facility.[199] In principle, child suspects are released with behavioural conditions, such as participation in counselling, mandatory reporting, prohibitions on certain areas or substances, and requirements to attend education or maintain a daily routine (in line with Article 10 EU Directive).[200] Statistics show that most child suspects are released after arrest and questioning. In 2023, 17,109 children were questioned regarding offenses, with 13,950 placed in police custody. Among these, 3,665

[190] https://algoritmes.overheid.nl/nl/algoritme/risico-taxatie-instrument-jeugdstrafrecht-ritax-raad-voor-de-kinderbescherming/15996611#werking. In the Ritax, all questions are completed by clicking a bullet. All answers are accompanied by points. The Ritax adds up all the points. These points are assigned to risk groups. The answer categories of most questions have a scale ranging from no risk to high risk. The choice of scoring is scientifically based. Extensive analyses were used to determine when the young person falls into very low/low/mid/high/very high risk or protection for each topic. The outcome is made visible in a diagram where the risk factors and protective factors are shown in red and green for each subject. Using the youth's protective and risk factors, the Ritax looks at what punishment would be the best fit, such as an educational sanctionor supervision by the youth probation team. The employee of the Child Protection Board decides which sentence is ultimately recommended. The calculation model behind the recidivism rates is based on scientific research on influencing factors concerning youth and recidivism.

[191] https://www.nifp.nl/onderwerpen/rapportage-jeugdstrafrecht. Triple examination also exists: examination by a psychiatrist and a psychologist and an environmental reporter, but this is not common.

[192] For example the WISC-V, J-SOAP, SCIL.

[193] In the Netherlands 16- and 17-year olds can be sentenced according to adult criminal law.

[194] Article 196 of 317 Sv.

[195] Article 56a lid 2 Sv.

[196] Article 58 Sv.

[197] Article 63 en 64 Sv.

[198] Article 65 en 66 Sv.

[199] Article 493 lid 3 Sv.

[200] Article 493 lid 1 Sv. Article 2.6 Besluit tenuitvoerlegging strafrechtelijke beslissingen.

were formally detained (*inverzekeringstelling*), while 577 were allowed to serve detention at home or elsewhere. Following judicial review, 1,410 child suspects remained in pre-trial detention, including 34 aged 12 or 13 years.[201]

Children are held in the same detention complexes as adults after arrest. The Council for the Administration of Criminal Justice and Protection of Youth (RSJ) advises relocating them to more child-friendly alternatives. If such alternatives are unavailable, the RSJ recommends limiting police cell stays to one night.[202]

The further development of judicial youth detention centres into nationally high-security Forensic Youth Centres and lower-security small-scale youth detention facilities has not yet been realised. The minister indicates that alternatives for short-term detention are being further investigated (cf. Article 11 EU Directive).[203] The five established small-scale youth justice facilities (Dutch abbreviation KVJJ) each have eight places. These are lower-security facilities where young people can continue to attend school or work during the day. In 2023 and 2024, the KVJJs were partially empty, with occupancy rates of 54% and 41%, respectively.[204]

In the Netherlands, a detention sentence of up to one year can be imposed on 12- to 16-year-olds.[205] For 16- and 17-year-olds, the maximum detention sentence is two years. In addition, all minors can be subjected to the deprivation of liberty measure (PIJ measure, intramural treatment), which can last up to seven years. However, during the sixth year of the measure, the Public Prosecution Service can request the court to convert the measure into placement into a closed psychiatric treatment facility for adults (*TBS-maatregel*), which can be for life. Moreover, 16- and 17-year-olds can be sentenced according to adult criminal law, allowing for a prison sentence of up to 30 years and the imposition of the TBS measure (closed psychiatric treatment). If this occurs, the child offender will serve their sentence in an adult prison or closed psychiatric treatment facility. In the Netherlands, long-term deprivation of liberty for originally minor offenders is therefore possible, and placement with adults is not excluded.

The number of sanctions imposed on minors by the police, Public Prosecution Service, and courts together decreased by 49% from 2013 to 2023.[206] In 2023, a total of 4,400 sentences were imposed on minors. Community service was imposed 3,100 times, making it the most frequently imposed sentence. The number of youth detention sentences imposed was 1,100.[207] The PIJ measure was imposed 70 times in 2023.[208] In total, there were still 269 active PIJ measures in 2023, with an average stay of 1,343 days in a youth justice institution.[209] The average stay during pretrial detention was 52 days, and during youth detention (as a sentence), it was 58 days.[210]

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[201] https://www.kinderrechteninbeweging.nl/kinderrechten-in-beweging/jeugdstrafrecht/ (instroom OM)
[202] Raad voor Strafrechtstoepassing en Jeugdbescherming (dec 2019), Minderjarigen in een politiecel. Een advies over duur, verblijf en alternatieve locaties. Vgl. https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2024:1099
[203] Tweede Kamer, vergaderjaar 2022–2023, 28 741, nr. 92; Werken aan effectievere detentie van jeugdigen, Interdepartementaal Beleidsonderzoek Jeugdcriminaliteit, 2022
[204] Ministerie van Justitie en Veiligheid, Verzamelbrief justitiële jeugd, 22 april 2024.
[205] Hoewel het huidige kabinet van plan is om de maximum detentiestraf te verhogen voor 14- en 15-jarigen. Zie Hoop, lef en trots - Hoofdlijnenakkoord 2024 – 2028 van PVV, VVD, NSC en BBB – Regeerakkoord.
[206] Criminaliteit en Rechtshandhaving 2023, Cahier 2024-19, WODC, p. 5.
[207] Criminaliteit en Rechtshandhaving 2023, Cahier 2024-19, WODC, p. 37.
[208] Criminaliteit en Rechtshandhaving 2023, Cahier 2024-19, WODC, p. 40, figuur 5.6 (zie ook tabel 5.16).
[209] Criminaliteit en Rechtshandhaving 2023, Cahier 2024-19, WODC, tabel 7.8 en 7.9.
[210] Criminaliteit en Rechtshandhaving 2023, Cahier 2024-19, WODC, tabel 7.9..

Due to a tight labour market, high sickness absenteeism, and closures of youth justice institutions, a shortage of cells and staff has arisen since 2021. Youth offenders receive less guidance and education than they are entitled to and are sometimes forced to stay in their rooms (cf. Article 12 EU Directive).[211] In 2023, in violation of the Youth Justice Institutions Act (BJJ), staff shortages and/or excessive workload in several youth justice institutions led to a reduction in the group program from 77 to 62 hours.[212]

5. Right to privacy protection (article 14 EU Directive)

Child suspects are required to appear in court (see Article 16 EU Directive).[213] This also applies to parents with parental authority (see Article 15 EU Directive).[214] However, child suspects may be heard without their parents being present.[215] Cases are handled behind closed doors. Nevertheless, the court may grant special access to third parties. Victims or their relatives are generally granted access unless the court decides otherwise for special reasons. The court may order a public hearing of the case if the public interest in the hearing outweighs the interest in protecting the personal privacy of the defendant, their co-defendant, or the parent(s). Unlike the trial hearing, the ruling takes place in public.[216] In many cases, the ruling is anonymised and published on the judiciary's website (in the rulings database).[217] In order to justify the imposition of the sanction(s), many rulings briefly summarize the recommendations from the Child Protection Board, youth probation services, and any forensic reports prepared. These contain sensitive personal data, and anonymising the ruling does not (adequately) guarantee that the ruling cannot be traced back to the minor. This is particularly a concern in media-sensitive cases.

The criminal records of child suspects and offenders can be registered according to the Justice and Criminal Procedural Data Act.[218] The general rule is that data on all crimes and certain offences sent to the Public Prosecution Service are recorded, including personal details of the individual involved and the decisions made by the Public Prosecution Service and the court.[219]

6. Potentially vulnerable/marginalized children

Youth crime in the Netherlands shows a concentration in "vulnerable neighbourhoods" with structural socioeconomic disadvantages. Over fifty percent of the young suspects live in ten percent of these neighbourhoods, and nearly fifteen percent live in just one percent of them. In absolute numbers, this is primarily an issue in large cities.[220] The disadvantage in these neighbourhoods can persist for years

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[211] https://www.inspectie-jenv.nl/actueel/nieuws/2021/10/28/inspecties-dringen-aan-op-snelle-oplossing-voor-problemen-jjis

[212] [212] Tweede Kamer, vergaderjaar 2022-2023, 24587; 28741, nr. 921 - Justitiële Inrichtingen; Ministerie van Justitie en Veiligheid, Verzamelbrief justitiële jeugd, 22 april 2024.. The Minister for Legal Protection plans to change the law (BJJ) and aims to introduce more flexibility in the daily program. The Academic Workshop for at Risk Youth is conducting research into the characteristics of minors and young adults staying in a JJI. The results of this research will be used to determine the extent to which treatment and stay in the JJI should be adjusted. The results are expected in 2025.

[213] Article 495a Sv. It is possible to discuss personal circumstances outside the presence of defendant, see article 497 Sv.

[214] Article 496 Sv. If the parent(s) fail to appear, an order of custody may be ordered, article496a Sv.

[215] Article 496 lid 5 Sv.

[216] Article 495b Sv.

[217] Article 362 Sv.

[218] *Stb*. 2004, 129. Dit is de opvolger van de Wet justitiële gegevens (WJG) van 7 november 2002, *Stb*. 552.

[219] M.R. Bruning & M.J.F. Berger, Recht op privacy van minderjarige delinquenten – over justitiële documentatie en DNA-afname bij jeugdigen, Strafblad 2008, SDU Uitgevers, p. 184.

[220] These include, for example, neighbourhoods with many young men, neighbourhoods with households at or below the social minimum, many social rentals and neighbourhoods with a very diverse composition of the population.

and be passed on from one generation of residents to the next.[221] Looking at the registration of youth crime, it is noticeable that there is a phenomenon of "net widening." The target group is expanding to include the "risky child", young people in vulnerable neighbourhoods who are at risk of becoming offenders.[222] The neighbourhood approach can be described as a "predictive identification program," such as the Top600 approach in Amsterdam; it identifies known high impact crime offenders on the basis of police data to structurally intervene in their lives to prevent future crimes. The three main pillars are: tit-for-tat, combining control and care to manage the behaviour of the 600 known offenders and preventing their younger siblings from engaging in criminal activity.[223] However, this approach has not demonstrably reduced recidivism.[224] Nevertheless, after the Top600 approach, the Top400 approach was introduced. The handling of youth crime in this way has faced criticism, partly due to experimenting with different data models and continuously lowering the inclusion criteria to monitor more minors under the label of "prevention" from a criminal justice framework.[225] This also applies to minors below the criminal responsibility age threshold (children under 12 years old).

Although research on inequalities in the Dutch youth justice system is generally still quite limited and fragmented, it is ongoing and empirical evidence is increasing. Data shows that of the children registered as suspects in police records in 2022, those with a migration background are clearly overrepresented: youth from the Dutch Caribbean (44/1,000), Morocco (31/1,000), and Suriname (31/1,000) are registered as suspects more often than youth without a migration background (11/1,000). Furthermore, the data shows that children and young people from low-income families (28/1,000) are much more prevalent than those from high-income families (7/1,000). Additionally, boys (21/1,000) are more prevalent than girls (8/1,000). Research further shows that inequalities occur at various stages in the criminal justice system. The negative effect of inequalities in decisions seems to particularly affect certain groups of children: those with a non-Western migration background, those from low socioeconomic status backgrounds, and those with mild intellectual disabilities and/or language issues. Boys also seem to be disadvantaged compared to girls.[226] To combat discrimination, promote equal opportunities, and prevent inequalities, awareness, training, and diversity among professionals are essential. There is still much to be gained in this area within the Dutch youth justice system.[227]

V. POLAND

1. Introduction

- **What is the state of implementation of Directive 2016/800 in the State in question?**

  Directive 2016/800 was formally implemented into the national legal framework in April 2023[228]. Until that point, the Polish legal system was, in many areas, directly non-compliant

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[221] A.M. van der Laan, Over jeugdcriminaliteit en reacties daarop. Oratie Universiteit Leiden, 6 dec 2024, p. 7
[222] A.M. van der Laan, Over jeugdcriminaliteit en reacties daarop. Oratie Universiteit Leiden, 6 dec 2024, p. 9.
[223] Top400 a top-down crime prevention strategy in Amsterdam p. 10.
[224] https://www.wodc.nl/actueel/nieuws/2023/11/16/geen-aanwijzingen-dat-top600-aanpak-leidt-tot-minder-recidive.
[225] Top400 a top-down crime prevention strategy in Amsterdam.
[226] Y.N. van den Brink, 'Ongelijkheid ontrafeld. Een empirische verkenning van mogelijke katalysatoren van ongelijkheid in het besluitvormingsproces over voorlopige hechtenis van jeugdige verdachten', *Strafblad* 2023, nr. 5.
[227] Y.N. van den Brink, '*Different but equal? Exploring potential catalysts of disparity in remand decision-making in the youth court'*, *Social & Legal Studies* (31) 2022, afl. 3, p. 477-500; Y.N. van den Brink, M Slotboom, *Girls in the youth justice system: a special status?:* On the *principle of equality and the treatment of girls in the Dutch youth justice system*, p. 201-226, Tijdschrift voor Criminologie, juni 2023; R. van der Burgh, E. Heilbron, A. Kootsra, Investico, Lager op de ladder, zwaarder gestraft, Klassenjustitie in Nederland (2024).
[228] The Act of April 14, 2023, amending the Code of Criminal Procedure and certain other acts (Journal of Laws, item 818, as amended).

with the provisions of the directive[229]. However, the current manner of implementation and the quality of the directive's incorporation may raise certain concerns. It still appears that the criminal procedure system is not fully adapted to the requirements related to applying criminal liability to persons under the age of 18.

- **Does the law and practice on children's rights in criminal proceedings against them align with Directive 2016/800? Does it align with international standards, such as the CRC?**

  The law regulating the criminal liability of minors under the provisions applicable to adults, as well as the liability of minors under the Act on Supporting and Rehabilitation of Minors, is not fully compliant with the provisions of Directive 2016/800 and the requirements of the Convention on the Rights of the Child. Problematic areas include ensuring minors receive adequate information about the proceedings and their rights, guaranteeing their right to legal counsel before the first interrogation in the case, upholding the guarantees arising from the presumption of innocence, and ensuring the right to an individual assessment of their situation.

- **What are the potential gaps and challenges?**

  Particularly problematic is the intersection of criminal proceedings and proceedings conducted under the juvenile justice system. This is especially relevant in situations where a minor's case may be transferred by the family court to a criminal court, which then handles the case under the rules applicable to adult offenders.

2. Right to information

- **How is children's right to information in criminal proceedings, where they are accused or suspected of a crime, ensured?**

The Code of Criminal Procedure requires that every suspect be informed of their procedural rights, including the right to legal assistance, such as court-appointed legal aid. Suspects, regardless of age, are also informed about the rules on excluding public access to proceedings, the conditions that prevent pre-trial detention, and the provisions concerning preventive measures other than pre-trial detention.

Procedural authorities are further obliged to provide information on regulations regarding expert psychiatric opinions, medical opinions, psychological assessments, and probation interviews. However, in light of these provisions, there are justified doubts as to whether the directive's requirement to inform minor suspects about their right to an individual assessment, as specified in Article 7 of Directive 2016/800, is fully met.

The Code also imposes additional obligations for informing suspects under 18 years of age. Such suspects must be informed about rights related to having an accompanying adult present during court hearings and procedural activities conducted during the preparatory phase of proceedings. The information provided to them must also include the role of authorities involved in the criminal process.

From the perspective of Directive 2016/800, the obligation to inform a minor suspect about their right to a medical examination, including access to medical assistance, may be problematic. A detained suspect is informed that they have "access to necessary medical assistance," but this right is difficult to equate with the right to undergo a medical examination. Moreover, this information is provided only to detained individuals and does not apply to those who have not been subject to such a coercive measure.

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[229] M. Kalisz, M. Szuleka, M. Wolny, Procedural safeguards for children who are suspects or accused persons in criminal proceedings, Poland 2021 (accessible 31.12.2024).

Another potentially problematic issue is whether Polish authorities meet the requirement to inform minors about their right to effective remedies. In practice, this right is addressed during individual procedural actions, where minors are informed of their right to file complaints or appeals.

- **How are parents or guardians (holders of parental responsibility) informed?**

In the case of suspects under the age of 18, the procedural authorities are required to provide the written information about the rights to both the suspect and their legal representative or substitute guardian.

- **Is information provided in oral or in writing? By whom? Are the authorities involved trained in working with children and in children's rights? Are written materials adapted to children?**

The information required by the Code must be provided both orally and in writing. The Code establishes the requirement that, for individuals under the age of 18 the manner of providing the information must be adapted to their age, health condition, and mental development.

The written information is based on a template included as an annex to the regulation of the Minister of Justice[230]. These templates can generally be assessed positively[231]. They use a personal tone and relatively simple language. They also include graphic elements that highlight certain content and indicate its importance. However, a drawback of the current templates is their excessive content, which may discourage recipients from reading them.

In addition to the templates for informing individuals, the Minister of Justice has also developed a template for explanations intended for individuals who are disadvantaged due to age or health condition, as well as for those under 18 years old[232]. These explanations are written in a relatively accessible manner. However, like the information templates, they contain a substantial amount of content. A positive feature is the inclusion of pictograms in some sections to enhance clarity.

- **Are there safeguards to make sure the child understands the information provided?**

The suspect must be informed of their rights and obligations no later than before their first interrogation as a suspect in the case. The Code of Criminal Procedure provides that incorrect or missing information cannot have negative consequences for the person being informed.

Additionally, the Code stipulates that the authority conducting the proceedings should, as needed, provide participants, including suspects, with information about their obligations and rights, even in cases where the law does not explicitly impose such an obligation.

However, the Code does not include additional mechanisms to protect minor suspects or to ensure that they have understood the information provided to them. Moreover, a study commissioned by the FRA

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[230] Regulation of the Minister of Justice of November 7, 2024, on determining the templates of written instructions on the rights and duties of the suspect, the victim, and the witness (Journal of Laws, item 1658)

[231] Helsinki Foundation for Human Rights, Opinion on the draft regulation determing the templates of written instructions on the rights and duties of the suspect, the victim, and the witness, available: https://legislacja.rcl.gov.pl/docs//517/12387900/13073258/13073261/dokument678511.pdf

[232] Regulation of the Minister of Justice of November 7, 2024, on determining the templates of written statements for the suspect, the victim, and the witness regarding the scope of their rights and obligations, as well as the manner and conditions of interrogation (Journal of Laws, item 1659).

in 2021 found that the manner of orally informing suspects under the age of 18 does not differ from the manner used for informing adults[233].

3. Access to legal assistance and procedural rights

- **How is children's right to legal assistance ensured? If the child does not have a lawyer, is one always provided? At what stage of the proceedings?**

The Code of Criminal Procedure provides that a suspect must be interrogated with the participation of their appointed defence lawyer upon request. However, the absence of the defence lawyer does not prevent the interrogation from proceeding. Despite the mandatory nature of these provisions, suspects are still sometimes interrogated during proceedings without the presence of a lawyer. This issue seems to occur less frequently for minor suspects.

According to the Supreme Court's jurisprudence, "the absence of a defence lawyer during the first interrogation of a suspect in preparatory proceedings (...) does not in itself – under Article 6(1) in conjunction with Article 6(3)(c) of the European Convention on Human Rights of 1950 – preclude the use of statements made in such circumstances during trial, provided there was no objectively existing vulnerability of the suspect to harm (...).[234]" Thus, the minority of a suspect may, in light of the Supreme Court's jurisprudence, serve as a reason to disqualify their statements. However, the outcome in this regard often depends on the circumstances of the case and the court's approach.

In practice, this means that a suspect who does not request an interrogation in the presence of a defence lawyer may be interrogated without their participation, even if they are under 18 years old. While the Code of Criminal Procedure stipulates that defence is mandatory in such cases, it does not prohibit the use of statements made under such conditions (although such a prohibition is included in the currently proposed amendment to the Code). The Code also does not require the annulment of a ruling based on evidence obtained from a suspect subject to mandatory defence who was not provided with legal counsel in a timely manner.

- **Do children in practice have the opportunity and adequate time and space to privately consult with their lawyer before investigative steps take place?**

A significant issue remains the lack of an efficient system for appointing court-appointed legal counsel. In practice, the appointment of a defence lawyer often occurs after the first interrogation, placing individuals in a particularly challenging procedural situation[235]. The awareness of procedural authorities plays a crucial role in this context, as they have the ability to ensure that a defence lawyer is provided to a minor before the first interrogation.

For minors with privately retained defence lawyers, it is common practice to allow such lawyers to participate in the interrogation. However, a problematic aspect is the delay in interrogation until the lawyer arrives. Due to the lack of clear rules in the Code of Criminal Procedure, this issue largely depends on the discretion of law enforcement authorities.

The Code does not specify any rules regarding the length of contact between the suspect and their lawyer. In practice, this contact lasts as long as necessary. Concerns arise, however, from the

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[233] M. Kalisz, M. Szuleka, M. Wolny, Procedural safeguards for children who are suspects or accused persons in criminal proceedings, Poland 2021 (dostęp w dniu 31.12.2024).
[234] Poland, Judgment of the Supreme Court of April 5, 2013, III KK 327/12, OSNKW 2013, No. 7, item 60.
[235] M. Kalisz, M. Szuleka, M. Wolny, Procedural safeguards for children who are suspects or accused persons in criminal proceedings, Poland 2021 (dostęp w dniu 31.12.2024).

inadequacy of prosecution and police facilities in ensuring privacy for communication between the lawyer and the client, as there is often a lack of appropriate infrastructure for this purpose.

Additionally, the provisions of the Code of Criminal Procedure allowing the law enforcement officers to restrict private communication between a detained person and their lawyer are problematic. This includes allowing a third party to be present during a conversation between defence counsel and the detainee. Similar authorisations apply to contact between a temporarily detained person and his defence counsel (both visits and correspondence), and can last for as long as the initial 14 days after pre-trial detention.

- **Do lawyers have sufficient time, capacity and resources to provide legal assistance in a way that is adapted to children? Are lawyers trained in working with children and in children's rights?**

The way lawyers are trained to work with children may raise concerns. In a 2017 report, HFHR highlighted the insufficient integration of child-related issues into the training programs for law studies, legal apprenticeships, and the training of judges and prosecutors[236].

National regulations do not require professional bodies to include these topics in continuing education or initial training programs.

However, the situation has been changing in recent years. Some training sessions on children's rights and the representation of minors are also organized by regional bar councils and the National Bar Council. A particularly good practice example is the inclusion of multidisciplinary training on legal assistance for children in the training program for legal apprentices by the Warsaw Bar Association. This program covers topics such as defence in criminal proceedings, proceedings in juvenile cases, and representing victims who are minor[237].

- **Under what circumstances are children questioned or interviewed? Are the circumstances adapted to children?**

The Code of Criminal Procedure does not include specific requirements for interrogating minor suspects in conditions adapted to their needs. Such rules apply only to minor victims.

- **Are personnel conducting interviews and questioning children trained to work with children and in children's rights?**

Polish law does not contain specific provisions requiring that procedural actions involving minor suspects be conducted only by officers trained in working with children and children's rights.

- **Are interviews with children audio-visually recorded? Under what circumstances are they not audio-visually recorded? If they are not filmed, how are interviews recorded (e.g. through notes)?**

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[236] Wiśniewska, K., Wolny, M. (2017), Mój prawnik, moje prawa. Dostęp dzieci do pomocy obrońcy. Raport krajowy (Polska), Warsaw, pp. 53-54.

[237] Warsaw Bar Association, Training plan for legal apprentices in 2025, available: https://www.ora-warszawa.com.pl/wp-content/uploads/2024/01/2-rok_2024.pdf

The Code of Criminal Procedure does not require law enforcement officers to record interrogations of suspects using audio-visual equipment. This applies to both adult and minor suspects. As a result, the recording of procedural actions by law enforcement authorities depends solely on the goodwill of police officers and, in practice, is rarely implemented.

- **How is the child's right to be accompanied by the holder of parental responsibility ensured and regulated?**

The regulation allows a legal representative (or a person under whose care the minor is placed) to be present during all procedural actions involving the suspect. This applies not only to interrogations but also to investigative activities such as experimental procedures, confrontations, and identifications. The exception occurs when the presence of these individuals could violate the rights or interests of the suspect, is unnecessary for the suspect's well-being, or prevents or significantly hinders the proceedings. If the suspect does not have a legal representative or a caregiver, or if these individuals cannot participate in the proceedings, the suspect can choose another adult person. The grounds for excluding this person from participating in the action are the same as those for excluding the legal representative of a minor.

A slightly different legal situation applies regarding the participation of a legal representative during a court trial. The participation of such an individual in the trial is dependent on a request from the minor defendant. If the defendant does not have a legal representative or a caregiver, or if the presiding judge believes their participation could violate the defendant's rights or interests, the defendant can choose another adult. Similar rights are granted when the presiding judge deems the participation of a legal representative unnecessary for the minor defendant's well-being or when their presence would prevent or significantly hinder the trial or hearing.

If the suspect has not indicated such a person, or if the presiding judge has prevented their participation for the reasons mentioned above, the presiding judge appoints a family assistant—an entity functioning within the social welfare system, whose task is to provide ongoing support to the family.

This solution raises justified concerns regarding compliance with the provisions and functions of the rights outlined in Article 15 of Directive 2016/800. In essence, it deprives the minor suspect of the ability to choose a companion during the court proceedings, which contradicts the protective function of the right to have a supporting person present.

- **Do children have access to an effective remedy under national law in the event of a breach of their rights?**

In cases specified by the Code of Criminal Procedure, minors may file appeals against actions that violate their rights. This right is granted, for example, in the case of a refusal to provide a minor with the right to legal aid or the deprivation of the minor's liberty (both in the form of apprehension and pre-trial detention).

However, the vast majority of rights granted to minors under the provisions of Directive 2016/800 are not covered by this regime. As a result, minors cannot file an appeal against a court decision not excluding the public from a trial, against the refusal to allow their legal representative to participate in procedural actions or hearings, or against the failure to provide them with a medical examination.

Minors may raise objections regarding violations of provisions guaranteeing these rights during appellate proceedings. In such cases, however, they must demonstrate the impact of these violations on

the content of the judgment. While it is generally possible to prove such violations when a defence lawyer is excluded from procedural actions or when the minor is denied participation in the proceedings, it may be significantly more difficult, or even impossible, to do so for other violations of procedural rights. As a result, it is difficult to argue that in such cases minors have access to effective remedies, as stipulated in Directive 2016/800.

4. Right to an individual assessment

- **How is the right to an individual assessment ensured? Is an individual assessment required by law?**

The right to an individual assessment for minors, as outlined in Article 7 of Directive 2016/800, includes the obligation for the state to consider the specific needs of children in terms of protection, education, training, and social integration. This obligation is typically implemented through the conduct of a community interview and the appointment of experts to provide opinions.

According to the provisions of the Code of Criminal Procedure, during the proceedings, the authorities should establish the family and financial situation of the defendant, their education, occupation, and prior criminal record. If necessary, particularly when it is crucial to determine the personal circumstances and previous lifestyle of the accused, the authorities should order a community interview. Such an interview is mandatory, for example, in the case of accused minors who have not reached the age of 18.

Additionally, the court should seek the assistance of experts whenever determining a particular fact, which is essential for the final decision, requires special knowledge. In the case of minors, the circumstances examined by the experts may concern their health, especially mental health, sanity, degree of development, or addiction issues.

The decision to conduct such assessments largely depends on the court's discretion. In cases involving minors, there are no provisions that oblige the court to conduct mandatory psychological or psychiatric evaluations of the minor. Therefore, it can be concluded that the Polish criminal procedure does not guarantee that the court's assessment of the minor's individual needs will be multidisciplinary. This lack of an obligation means that the court's evaluation may not necessarily encompass all relevant professional perspectives, such as psychological or psychiatric expertise, which could be crucial in determining the minor's needs and circumstances.

- **When, how and by whom is the individual assessment carried out? Are the persons carrying out the assessment specifically trained to conduct such assessments and on children's rights?**

Community interviews are conducted by probation officers, who have established expertise in this area. In the case of expert opinions, a decision to conduct an community interview must be issued by the judicial authority each time.

The Code of Criminal Procedure does not precisely regulate the timing of when the community interview and expert opinions should be conducted. As a general rule, such documents should be collected during the preparatory proceedings, before the indictment is sent to the court.

- **What aspects of the child's individual situation are assessed and how are they taken into account?**

The report from the community interview should contain a concise description of the accused's life so far and detailed information about the accused's community, including their family, school, or work environment. Additionally, the report should include information about their financial situation, sources of income, and health status. It should also address any abuse of alcohol, drugs, or psychotropic substances. The interview should also include observations and conclusions made by the person conducting the interview, especially regarding the characteristics and personal conditions of the accused, as well as their past lifestyle.

- **What specific measures to benefit the child's experience during the proceedings may be put in place based on the individual assessment? When are such measures used in practice?**

Unlike the situation with some minor victims (those under 15 years of age), the Code of Criminal Procedure does not provide specific measures aimed at improving the experience of suspects whose cases are heard by criminal courts. These suspects do not benefit from solutions designed to minimize the number of interrogations or require them to be questioned in specially adapted rooms.

As a result, the only adaptive measures available are those already mentioned: the right of the suspect to be accompanied by a person with parental responsibility and the requirement that the instructions about their rights be tailored to their age, health, and mental development.

In addition to these provisions, there are also those related to the powers of the presiding judge, who is responsible for managing the trial. Within these powers, the judge may decide to shorten the trial time or order more frequent breaks. However, none of the provisions in the Code of Criminal Procedure obligates the judge to take such actions. This matter is entirely dependent on the awareness and good will of the presiding judge.

- **How is the child's right to participate and to be heard ensured in the individual assessment?**

A suspect in criminal proceedings has the right to make statements regarding each piece of evidence presented. Within the scope of this right, the suspect may also respond to the results of the community inquiry report and the opinions of appointed experts. Such statements are subject to evaluation by the court hearing the case.

The authorities conducting the social inquiry and preparing expert opinions are not legally obligated to interview the suspect, nor are they required to consider the suspect's views during the preparation of the inquiry report or the drafting of the expert opinion. This matter is solely dependent on the methodology chosen by these authorities.

5. Deprivation of liberty

- **How is the deprivation of liberty of children regulated? May it only be used as a last resort, for the shortest appropriate period of time and with due account taken to the individual situation of the child and their best interests?**

The axiology of the Code of Criminal Procedure is built on the principle of treating deprivation of liberty as a last resort. As a result, the Code requires that the use of detention and temporary arrest should be exceptional. According to the provisions of the Code, temporary arrest is not applied if another preventive measure would be sufficient to ensure the proper course of the proceedings.

However, none of the grounds for applying temporary arrest explicitly refer to the age of the suspect. Suspects between the ages of 17 and 18 are therefore treated by the courts in the same manner as adults.

In the case of individuals under 17 years of age, whose cases have been transferred to criminal courts by family courts, the provisions of the Act on Supporting and Rehabilitation of Minors apply. This introduces an additional condition for applying pre-trial detention. According to this provision pre-trial detention can only be applied to such minors if placement in a juvenile shelter (an educational facility designed for pre-trial detention of minors in the juvenile justice system) would be insufficient.

The principles governing the application of deprivation of liberty are also outlined in the Penal Code, which is particularly significant in the case of minors who have been found guilty of violating criminal law. In this context, the Code emphasizes the need for the court to focus on the education of the minor or young adult when determining the appropriate penalty. It also mandates that, whenever there is an option to choose a punishment, imprisonment should only be applied if other penalties would not be able to achieve the intended purposes of punishment.

- **Is any deprivation of liberty subject to effective and periodic judicial review?**

In the case of apprehension, the detained person has the right to file an appeal to the court to examine the legality, correctness, and justification of the detention.

As a rule, the use of a preventive measure in the form of temporary detention may be ordered for a period not exceeding 3 months. To extend the temporary detention beyond this period, a new order from the court is required. In the case of long-term temporary detentions, the procedure for extending the detention changes (decisions are made by higher courts), and its extension is subject to additional conditions.

- **Is any deprivation of liberty carried out in conditions adapted to children in general and to the individual situation and needs of the child in particular, including the right to health and development, education, family life and freedom of religion?**

Children under 17 years of age who are detained should be placed in a Police Juvenile Detention Centre. These centres are operated by the police as institutions providing temporary care for children who have come into conflict with the law. The centres should be equipped with facilities such as a common room and outdoor recreational areas. The common rooms should have audio-visual equipment, gaming equipment, and a small library[238]. The police officers working in these centres undergo specialized training, which includes psychological aspects of working in a juvenile detention centre and human rights issues[239].

The situation is different when it comes to temporary detention. Juveniles who are 17 but not yet 18 years old are treated as adults. They serve their temporary detention in penitentiary institutions under the same conditions as adult offenders.

[238] Regulation of the Minister of the Interior of June 4, 2012, on rooms designated for individuals detained or brought in for sobriety checks, transitional rooms, temporary transitional rooms, and police juvenile detention centres, the rules of stay in these rooms, and the procedure for handling video recordings from these rooms, rooms, and cells (consolidated text, Journal of Laws, 2023, item 2672, as amended)

[239] Decision No. 415 of the Chief Commander of the Police of December 31, 2015, regarding the curriculum for the specialized course on service in rooms for individuals detained or brought in for sobriety checks, as well as in police juvenile detention centres (Official Journal of the Chief Commander of the Police, 2016, item 1, as amended).

For suspects under the age of 17, the primary means of securing the proceedings is placing the juvenile in a juvenile shelter. These facilities operate under the Juvenile Assistance and Rehabilitation Act and are intended to serve as an equivalent to temporary detention, with the difference being that the juvenile resides in an institution specifically for children, equipped with a school and staff trained in pedagogy and resocialization.

- **Are children detained separately from adults at all stages of the process?**

Juveniles placed in juvenile shelters and police juvenile detention centres are separated from adults. However, this standard is not met for juveniles who are temporarily detained or convicted. Juveniles who are convicted serve their sentences in correctional facilities for young offenders, i.e., individuals who have not yet reached the age of 21. Moreover, in justified cases, individuals who have reached the age of 21 may also serve their sentences in such facilities.

- **What alternatives to detention are available and how are they used?**

The Criminal Procedure Code provides a wide range of alternative measures to temporary detention (placement in a juvenile shelter). For suspects, the following measures may be applied: the obligation to report periodically to a police unit, notifying about travel dates, restraining orders, prohibition of staying in a specific location, eviction orders, prohibition of leaving the country (combined with passport confiscation), prohibition of performing a specific job or function, an order to refrain from a certain activity, and prohibition of driving vehicles.

These preventive measures are applied based on the same criteria as pre-trial detention. They can be imposed not only by court rulings but also by prosecutor's decisions. There is no requirement for periodic review of the necessity of their continued application.

6. Right to privacy

- **How is the child's right to privacy protected in the context of criminal proceedings against them?**

The provisions of the Criminal Procedure Code allow the court to exclude the public from a court hearing or trial. The court may exclude the public whenever, among other reasons, the public nature of the proceedings would violate a significant private interest, or in cases where at least one defendant has not reached the age of 18. This decision, however, is entirely at the discretion of the court. Additionally, the provisions specify that if the prosecutor objects to the exclusion of the public, the court must proceed with the trial in an open session.

If the public is excluded, the parties to the proceedings may designate two individuals to be present in the courtroom despite the exclusion of the public. The court may also allow other individuals to be present.

This rule primarily applies to defendants who committed the crime after reaching the age of 17. In the case of defendants whose cases were transferred from the family court to the criminal court, the regulations of the Act on Supporting and Rehabilitation of Juveniles apply. According to these, the court hearings in such cases take place "behind closed doors," meaning that only summoned individuals are allowed to attend.

- **For instance, are hearings conducted in private? How does the media publicize information concerning children and the proceedings against them?**

According to the Act on press law[240], it is prohibited to express opinions in the media regarding the outcome of judicial proceedings before a ruling is issued by the first-instance court. Journalists are also not allowed to publish in the press the image and personal data of individuals against whom criminal proceedings are being conducted, unless these individuals consent to such publication. At the same time, the competent prosecutor may issue an order allowing the publication of personal data of individuals involved in preparatory or judicial proceedings, if there is an important public interest. An appeal can be lodged with the district court against this order.

In practice, the media often circumvent press law regulations by publishing information that allows for the identification of individuals involved in criminal proceedings, such as by disclosing their familial or professional affiliations.

7. Potentially vulnerable/marginalized children

- **How are the relevant authorities dealing with children in criminal justice processes, including staff of law enforcement authorities and detention facilities as well as judges and lawyers, trained in children's rights, appropriate questioning techniques, child psychology, and child-adapted communication?**

Proceedings in juvenile cases and criminal proceedings are subjects taught in judicial apprenticeships[241]. As part of these courses and family law classes, judicial trainees learn, among other things, the appropriate methods for conducting hearings with children, as well as simulations of questioning minor witnesses involving a psychologist. Separate classes focus on techniques for conducting proceedings in juvenile cases, including hearing a juvenile. In addition to theoretical and practical courses, trainees also complete a 3-week internship in the family court divisions, which includes two-day visits to juvenile correctional facilities and juvenile shelters.

The training methods for lawyer trainees were discussed in the section on legal assistance.

The practical functioning of courts, in terms of knowledge of appropriate child questioning techniques, varies. It seems that judges in family courts, where the presence of children in court proceedings and the need to hear them occurs more frequently, are generally better equipped in this regard than criminal court judges. However, in 2022, media reported a case in a family court in which a child's hearing was conducted in an atmosphere of fear and intimidation[242].

- **Does such training include specific training on ensuring the rights of children belonging to marginalized or potentially vulnerable groups, such as minority children, children with disabilities, LGBTQ+ children, and children from socio-economically disadvantaged backgrounds?**

The training programs for both the bar apprenticeship and judicial apprenticeship lack courses specifically dedicated to children from marginalized groups.

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[240] The Act of January 26, 1984, Press Law (consolidated text, Journal of Laws, 2018, item 1914).
[241] National School of Judiciary and Prosecution, Programme of judicial apprenticeship, available at: https://www.kssip.gov.pl/sites/default/files/program_aplikacji_sedziowskiej_21.01.2020.pdf
[242] D.Wantuch, Sędzia do 7-latka w niebieskim pokoju: "Nie musisz tak ryczeć. Takiego niegrzecznego chłopca jak ty nie widziałam, dostęp: https://krakow.wyborcza.pl/krakow/7,44425,29140831,sedzia-do-7-letniego-chlopca-nie-musisz-tak-ryczec.html

- **For instance, are relevant staff members trained in intercultural skills and cultural diversity, in adapting their work to children with disabilities etc.?**

The judicial training program includes classes dedicated to managing court proceedings, "with particular emphasis on courtroom etiquette and managing emotions during hearings." These classes are conducted with the participation of an expert in social communication. However, there is no detailed information regarding the specific course content, including whether it addresses cultural diversity issues. The issue of equal treatment of participants in court proceedings has been thoroughly discussed in a manual published by the HFHR[243].

- **What, if any, measures or support mechanisms are in place to ensure that children have equal opportunity to receive information in a format they understand, participate in their procedure, be heard and have their procedural rights upheld in criminal proceedings against them?**

Both the instructions and written explanations provided to juvenile participants in criminal proceedings are prepared in a way that facilitates their understanding. They are written in the personal form, using simplified language and incorporating a graphic division of the text.

- **For instance, are interpreters always available where needed? Are they trained to communicate with children and in a child-friendly manner?**

In the case of a suspect who does not sufficiently understand Polish, they have the right to the assistance of a sworn translator. The translator should be called to participate in activities involving the suspect. At the request of the suspect or their defence attorney, the translator must also be summoned to facilitate communication between the suspect and their attorney. The Code of Criminal Procedure provides that certain documents should be delivered to the suspect immediately with a translation. These documents include, among others, the decision to present charges, the indictment, and any judgment subject to appeal. Court rulings also indicate other types of documents that should be translated into the language the suspect understands[244].

A translator can be a person registered as a sworn translator or anyone known to have the necessary expertise in the specific field, regardless of the nature or location of their professional activities, and regardless of whether they are listed as a sworn translator. Interpreters are not required to undergo any specific training.

- **Are children with disabilities provided information in a way they understand and necessary support to allow them to participate and be heard?**

In criminal proceedings, no additional measures have been adopted to adjust the proceedings to the needs of children with disabilities. These children receive instructions and explanations prepared for other children. The same instructions are also used for adults with disabilities.

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[243] J. Jagura, D. Pudzianowska, Równe traktowanie uczestników postępowań. Przewodnik dla sędziów i prokuratorów, available at: https://bip.brpo.gov.pl/sites/default/files/R%C3%B3wne%20traktowanie%20uczestnik%C3%B3w%20post%C4%99powa%C5%84.%20Przewodnik%20dla%20s%C4%99dzi%C3%B3w%20i%20prokurator%C3%B3w.pdf

[244] Poland, Judgment of the Supreme Court of October 8, 2009, V KK 99/09, OSNKW 2010, No. 3, item 26.

8. Children under the age of criminal responsibility

- **What is the age of criminal responsibility?**

In Poland, the minimum age of criminal responsibility is set at 17 years. However, there is a possibility to hold children under 15 years of age criminally responsible for certain serious offenses (e.g., murder, ca using grievous bodily harm, rape, participation in an organized criminal group, and robbery). Furthermore, for criminal responsibility to be applied to a child under 15, certain conditions must be additionally met. This includes a need to recognise defendants cases as an adult resulting from the circumstances of the case and the offender's development, characteristics, and personal situation. Such a situation typically applies to instances where previous educational or corrective measures have proven ineffective.

Moreover, since 2022, a provision has been introduced that allows for the criminal responsibility of children over 14 years of age in specific cases of aggravated murder (such as murder with particular cruelty or murder motivated by reasons that deserve special condemnation). In such cases, under certain conditions, the child can be held criminally responsible as an adult. This is possible if the circumstances of the case, the development of the offender, their characteristics, and personal situation support it, and if there is a reasonable assumption that educational or corrective measures cannot ensure the child's rehabilitation.

In all exceptions, the decision whether a juvenile will be treated as an adult is made by the family court. The decision to transfer the case to a criminal court is made after a hearing and the collection of evidence regarding the case and the juvenile's situation.

According to data provided by the Ministry of Justice under the public information access regime, between the beginning of 2019 and mid-2024, district courts examined 14 juvenile cases referred to them for consideration based on the rules applicable to adults by family courts[245]. In 8 of these cases, during the proceedings, temporary detention was applied to the juveniles. Of the cases examined, 12 ended with the conviction of the juveniles, while two cases resulted in acquittals. In 11 of the convictions, the sentence imposed was a prison sentence. In six of these cases, the imposed sentence exceeded 8 years of imprisonment (three of them were for the maximum possible sentence of 25 years in prison).

For the district courts, the numbers were as follows: during the examined period, these courts examined 8 juvenile cases transferred to them by family courts[246]. In 7 cases, convictions were issued, with only one involving a sentence of 2 years in prison, the execution of which was conditionally suspended. In 1 case, the proceedings were discontinued. Only one juvenile was temporarily detained during the criminal proceedings.

For comparison, statistical data provided by the Ministry of Justice[247] shows that in 2020, over 17,000 children appeared before family courts due to signs of demoralization and committing criminal acts. 7,000 of them were before the family court for violating criminal law provisions. In 779 cases, family courts decided to place the juvenile in a youth correctional centre. In 86 cases, the court's ruling concerned placing the juvenile in a reform school. In a further 51 cases, the decision to place the child in a reform school was suspended.

[245] Poland, Ministry of Justice, an answer to the motion for public information as of 3 October 2024.
[246] Poland, Ministry of Justice, an answer to the motion for public information as of 3 October 2024.
[247] Poland, Ministry of Justice, Nieletni wg orzeczonych środków – prawomocne orzeczenia w latach 2003-2020, available at: https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,32.html

- **What systems are in place to respond to crimes allegedly committed by children below the age of criminal responsibility? What sanctions/measures can be adopted in regard to such children?**

Children who commit criminal offenses before reaching the minimum age of criminal responsibility, as well as those exhibiting signs of demoralization (e.g., skipping school, using alcohol, engaging in sexual activity), are subject to family court proceedings under the Act on the Support and Resocialization of Juveniles. The minimum age for responsibility for signs of demoralization is 10 years old. For younger children, the court can apply measures provided in the Family and Guardianship Code related to the protection of the child's well-being. However, these measures are addressed to the child's parents.

Between the ages of 10 and 13, the law considers violations of criminal law as an indication of demoralization. After the age of 13, a violation of criminal law becomes a separate category of behaviour and may lead to the application of stricter corrective measures or placement in a reform school. Juveniles exhibiting signs of demoralization or violating criminal law are held accountable before the family court. The family court can impose educational, therapeutic, and corrective measures on them.

The catalogue of educational measures is extensive and includes, among others, warnings, probation supervision, placement in foster care, in a youth rehabilitation centre, or in a regional educational centre. Therapeutic measures allow for psychiatric treatment or addiction therapy. The corrective measure involves placement in a reform school. These measures may be applied until their further use is no longer necessary or until the juvenile reaches a certain age. The maximum age for applying each measure varies. The longest duration applies to placement in reform schools, where juveniles may stay until the age of 21, and in some cases, even until the age of 24. In extreme cases, this means that the deprivation of their liberty can last for more than 10 years.

- **What safeguards are in place to protect children's rights, including their procedural rights, right to individual assessment, right to be heard etc. in such proceedings?**

The Act on the Support and Resocialization of Juveniles regulates proceedings in juvenile cases separately from the Code of Criminal Procedure. Additionally, the provisions of the Code of Civil Procedure apply subsidiarily to matters covered by this act. This results in a situation where the procedure based on this act does not always provide the same guarantees for juveniles as the criminal procedure does for children or adult offenders. A key drawback of not referring to the subsidiary application of the provisions of the Code of Criminal Procedure is the inability to apply all criminal procedure principles in this context, including, for example, regulations regarding the presumption of innocence or guarantees for juveniles regarding the lack of negative consequences from being incorrectly informed about their procedural rights.

Despite this, juveniles in juvenile proceedings can benefit from procedural guarantees such as the right to refuse to give explanations, the right to make statements, and the right to defence, including the right to have a defence attorney. However, there is no obligation to ensure the juvenile's right to contact the defence attorney before the first questioning in the case. As a result, there are situations where a juvenile may be questioned without the presence of a defence attorney, and the evidence obtained in this way may later be submitted to the criminal court as the basis for issuing a conviction.

Another problematic issue is the quality of written instructions provided to the juvenile. The provisions of the act do not grant the Minister of Justice the authority to issue an official template for instructions. Consequently, this issue remains completely unregulated, leading to complete discretion in the way

juveniles are informed about their procedural rights, the language used, and the form of these instructions.

The most important decisions of the family court must be made after a hearing in which the court is obliged to listen to the juvenile. Moreover, the proceedings are strongly focused on the individual assessment of the juvenile.

Family court decisions are subject to appellate review. The act minimizes the procedural requirements that the appeal lodged by the juvenile must meet. Additionally, the appeal automatically triggers the appellate court's obligation to conduct a full review of the challenged decision, not just within the scope of the raised objections.

VI. SLOVAKIA

1. Introduction

The adoption of Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (hereinafter "Directive 2016/800") did not initially lead to significant legislative changes in Slovakia. Essentially, the only change introduced in connection with the obligation to transpose Directive 2016/800 into Slovak law was the requirement to create an audio-visual record of the interrogation of a defendant under 18 years old. However, this is not a requirement that applies universally. The law states that an audio-visual record of the interrogation of a defendant under 18 years old is to be made if it is deemed appropriate given the circumstances of the case, especially if there is doubt about whether the individual can understand the content of the interrogation, considering their best interests, and if there are no serious technical reasons that would prevent it, which the authorities must specify in the minutes.[248] Otherwise, it was considered that the Slovak legal system complies with the requirements of Directive 2016/800.

A very telling example in this regard is the Compliance Table prepared by the Slovak government and presented to the National Council of the Slovak Republic. This table links the provisions of Directive 2016/800 with often long-standing and somewhat unrelated provisions of Slovak law.[249] This was particularly evident in the case of a child's right to an individual assessment according to Article 7 of Directive 2016/800, where the Slovak government referred to legislation that has traditionally been part of Slovak law, reflecting an approach to children based more on social care (welfare) than on rights.[250] This legislation applies individual assessment only when choosing the measure to be imposed on the child[251] or in the question of the child's criminal responsibility.[252] It completely overlooks the purpose of assessing the broader context of a minor's responsibility and the procedural significance of individual assessment in terms of the necessary procedural accommodations that a minor needs for proceedings to be accessible, effective, and understandable.[253] It also overlooks the active role of the minor, or individuals exercising parental responsibility towards them, in the process of individual assessment.

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[248] Act No. 301/2005 Coll. Criminal Procedure Code, new section 121 (5) as enacted by the amendment No. 161/2018 Coll.
[249] The Compliance Table is available at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=527170.
[250] These two approaches have been confronted, for example, by the UN Committee on the Rights of the Child in its General Comment No. 21, which focuses on the rights of children in street situations. – General Comment of the UN Committee on the Rights of the Child No. 21 (2017) on children in street situations, CRC/C/GC/21, para. 5. The General Comment is available at:
https://digitallibrary.un.org/record/1304490?ln=en.
[251] Primarily Section 337 of the Criminal Procedure Code and Section 97 of Act No. 300/2005 Coll. the Criminal Code (hereinafter "Criminal Code"), which regulates sentencing rules.
[252] Section 338 of the Criminal Procedure Code.
[253] Article 7(4)(c) of Directive 2016/800.

The European Commission initiated an infringement procedure against Slovakia in October 2023 [INFR(2023)2108].[254] Following this procedure, the Slovak government prepared an amendment to the Criminal Code and the Criminal Procedure Code, which came into effect on August 6, 2024 (Act No. 40/2024 Coll.). It should be added that this amendment did not only address the insufficient implementation of Directive 2016/800, but also introduced a number of other reform measures for the Slovak criminal justice system, some of which may be seen positively, while others may turn out to be problematic, particularly in terms of human rights protection (see below in section 5, which deals with the status of children with mental and/or psychosocial disabilities).

This amendment clarified several provisions of the Criminal Procedure Code in line with Directive 2016/800. Specifically, the following clarifications were made:

- Explicitly stating the obligation of the authorities involved in criminal proceedings and the court to inform the defendant about their rights in the case of a minor defendant, including their parent or guardian [Section 34(5) of the Criminal Procedure Code];[255]
- Explicitly stating that the parent or guardian of a minor defendant has all the rights previously granted to the guardian of a person with limited legal capacity, and granting the right to the minor defendant to choose a person who will exercise the rights of the parent or guardian if the parent or guardian cannot do so [Article 35(3) of the Criminal Procedure Code];
- Explicitly stating the obligation of the authorities involved in criminal proceedings, the court, and relevant persons to respect the dignity and human rights, as well as the health condition of the affected person [Article 55(1) of the Criminal Procedure Code]; [256]
- Explicitly stating that the individual assessment of the minor should be processed without delay and, if necessary, repeated (Article 337 of the Criminal Procedure Code);
- Introducing a rebuttable legal presumption that the defendant is a minor if there is reason to believe they are under 18 years old (Section 338 of the Criminal Procedure Code).

From the cited changes, it is clear that this second transposition led to a clarification of the Slovak legal system, but it did not have a fundamental impact on the way Slovak criminal justice approaches minors in conflict with the law. In terms of the classification of models of juvenile justice, this approach can be characterized as a judicial approach with welfare elements.[257] These elements are manifested in the previously mentioned measures of individual assessment (see more in section 3), as well as in measures

[254] October infringement package: key decisions. Evropská komise, 18/10/2023 [accessed 5/12/2024]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_4577.

[255] According to the explanatory report to Act No. 40/2024 Coll., this obligation existed in the Slovak legal system even before, but it was not explicitly stated in relation to juveniles. In this context, the legal system referred to the restriction or deprivation of legal capacity, assuming that juveniles also do not have full legal capacity. However, the government acknowledged in the explanatory report that the gradual acquisition of legal capacity for juveniles is different from its judicial restriction or deprivation.

[256] This obligation also existed in the Slovak legal system according to the explanatory report before the amendment of Act No. 40/2024 Coll., as it was part of the duty to respect dignity, the right to health, and bodily integrity.

[257] The welfare model is understood here in its traditional, paternalistic form, where much more attention is given to the person and their circumstances than to the committed crime. This, among other things, led to the undervaluation of the importance of legal safeguards in favor of social ideas about what is good for the child, often based on the developing positivist sciences about humans at the turn of the 19th and 20th centuries. For characteristics of the welfare model of the justice system for children in conflict with the law, see, for example, DIGNAN, James. Juvenile Justice Systems: A Comparative Analysis [online]. Observatorio Internacional de Justicia Juvenil [accessed 11./12/2024]. Availanle ata: https://www.oijj.org/sites/default/files/documentos/documental_1263_en.pdf. For a general discussion of the disciplinary impact of the use of welfare sanctions in the criminal justice system, see, e.g. Garland, David. The Birth of the Welfare Sanction. *British Journal of Law and Society*, 1981, 8(1), pp. 29–45.

of deprivation of liberty, whose purpose is not to punish the minor but to act preventively, re-educatively (protective upbringing), therapeutically (protective treatment), and also isolatively. Their presence often acts in practice as a basis for strengthening and reinforcing social stigmatization, precisely within the criminal justice system. This is due to the fact that when applying these measures, the person and their circumstances take precedence over the crime committed. The problem is that the minor is treated as a passive object — an object to be assessed by experts — and that the response to the identified needs is coercive, often in the form of deprivation of the minor's personal liberty. This especially affects children facing destabilizing poverty and social exclusion, often of Roma ethnicity (see more in section 4), and children with mental or psychosocial disabilities (see more in section 5). The potential for change that the transposition of Directive (EU) 2016/800 could bring has, however, not yet been fully realized.

2. The situation during interrogation and the right to access legal assistance, information on procedural rights

One area where Slovak law may be in conflict with Directive 2016/800 is ensuring access to legal assistance for minors before their interrogation by the police. The Slovak legal system does not guarantee that a minor suspect will not be "interrogated" by the police before charges are brought (formally, this is an explanatory statement). In such cases, the minor is not necessarily represented by a lawyer, as the obligation to provide a lawyer only applies once charges are brought against the minor.[258] This contrasts with, for example, Czech law, which generally grants the right to "mandatory defence" by a lawyer from the moment charges are brought, but for minors, it stipulates that they must have a lawyer from the moment they provide an explanation as a suspect or when another investigative act is initiated against them.[259] This deficiency was also pointed out by the UN Committee on the Rights of the Child in its Concluding Observations from 2016.[260]

The aforementioned amendment No. 40/2024 Coll., following the infringement procedure against Slovakia related to the inadequate transposition of Directive 2013/48/EU (right to access a lawyer), has addressed the suspect's status in the Criminal Procedure Code (section 33b). However, this does not resolve the issue because while the suspect has the right to defense as an accused person, they do not have the rights explicitly granted to an accused person, specifically the right to mandatory defence, i.e., mandatory representation by a lawyer. Although a minor suspect, against whom charges have not yet been brought, has the right to a lawyer, they do not have the right to have the authorities provide them with a lawyer under all circumstances.

The information provided to a minor defendant is not specially regulated. General provisions apply. This might not be problematic, as the Criminal Procedure Code[261] mandates that the authorities or the court must appropriately explain the information and provide the defendant with full opportunity to exercise their rights. This provision does not prevent the adoption of necessary procedural accommodations to consider the specific needs of the accused minor, but its effectiveness directly depends on the approach of the specific investigators or judge. Due to its general nature, this provision may not prevent a very formalistic approach, which can be dangerous in the case of minors, particularly since minors often may not be able to articulate to the authorities or court what they did not understand or what would help them understand better. Out of respect for authority or embarrassment, they may

[258] Criminal Procedure Code, section 336.
[259] Act No. 218/2003 on the Responsibility of Minors for Criminal Acts and Juvenile Justice, section 42a(1)(a).
[260] See The Concluding Observations of the UN Committee on the Rights of the Child on the combined third to fifth periodic reports of Slovakia, 20/7/2016, CRC/C/SVK/CO/3–5, para. 56 (d). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSVK%2FCO%2F3-5&Lang=en.
[261] Criminal Procedure Code, Section 34(5).

passively agree that they understood, hesitating to express the need for further clarification. They are thus largely dependent on an active and accommodating approach by the authorities or the court. Particularly vulnerable in this regard may be children facing destabilizing poverty and social exclusion, children for whom Slovak is not their native language, even though they are Slovak citizens and can communicate in Slovak to some extent (e.g., Roma children from settlements, [262] members of the Hungarian minority), and children with mental and/or social disabilities. [263]

Children below the age of criminal responsibility are not guaranteed mandatory legal assistance during police interrogation, despite the fact that after violating criminal law, a child may be deprived of their personal liberty in a closed, regime-based facility based on protective upbringing, which is a criminal law measure (more about this below in section 4).

3. Individual assessment

Individual assessment is one of the institutes where the paternalistic and welfare approach most clearly manifests itself in the Slovak criminal justice system as it relates to minors. According to this approach, individual assessment is primarily conceived as a report about the juvenile, including expert reports, or as an expert diagnosis of the juvenile. The juvenile is not actively involved in this process but is rather treated as an object to be evaluated. The consequences of this approach to expert involvement were described in the outputs of the previous PRACTICE project, including those directly related to Slovakia.[264]

Individual assessment, which in the Slovak context is most closely associated with the traditional institute of assessing the juvenile's circumstances (Criminal Procedure Code, section 337),[265] is closely linked to the measure of protective upbringing, a clearly welfare element of the entire system. According to the Criminal Procedure Code (section 337), the purpose of assessing the juvenile’s circumstances is important for selecting appropriate corrective measures, particularly for evaluating whether protective upbringing should be ordered. This connection clearly demonstrates the disciplinary nature of individual assessment. It is not only related to the absence of active participation of the juvenile as a

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[262] The case of the Roma boy, who did not understand Slovak well, was addressed, for example, in the judgment of the District Court in Rimavská Sobota of September 2, 2024, case no. 19T/107/2024. The report from the re-education centre mentions that the juvenile had difficulty "communicating in Slovak." In the educational group, he found friends with whom he could communicate in Romani. However, the reasoning of the judgment does not clarify how this issue was addressed during the criminal proceedings. It can be assumed that no special measures were taken to make the proceedings more understandable for the juvenile.
Similarly, a Roma girl from a settlement was the subject of the decision of the District Court in Bardejov of October 22, 2024, case no. 16P/111/2024. It was a civil interim measure placing the girl in a re-education centre (see section 4), partly because she "committed criminal and misdemeanant activity" (sections 1, 11).
A similar case involving a Roma girl from a settlement was addressed in the judgment of the District Court in Poprad of May 20, 2024, case no. 26P/46/2024. This judgment also concerned a civil legal measure—institutional upbringing, and the girl was placed in a re-education centre primarily because she committed a criminal offense. Prior to this, she had been placed in a diagnostic facility based on a civil interim measure, which is also a closed, regime-based facility.

[263] In this context, it is important to mention that the right to an interpreter in criminal proceedings exists in the Slovak legal system; however, its implementation is largely dependent on the activity of the person concerned, who must declare that they do not understand the language in which the proceedings are conducted, or do not speak it [Criminal Procedure Code, section 2(20) and 28(1)], or again, on the activity of the authorities involved in the criminal proceedings or the court [Criminal Procedure Code, section 28(2)]. Furthermore, the cases we present may largely fall outside the cases to which the right to an interpreter is intended. It is not that these minors do not fully understand the Slovak language; on the contrary. They often have a good command of Slovak, but it is harder for them to express themselves and understand it as compared to their native language. Additionally, it may be harder for minors to understand because formal—official—language is used, which can again be difficult for minors who do not encounter such language in their everyday lives.

[264] See ICJ, Forum for Human RIghts. Recommendations on the Main Principles Governing the Individual Assessment of Children in Conflict with the Law, pp. 29–31, 33–39 [online]. ICJ, 5/12/2021 [accessed 5/12/2024]. Available in English at: https://www.icj.org/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf.

[265] In this form, this institute was practically enshrined in the Czechoslovak legal order as early as in 1956 (Act No. 64/1956 Coll.) and 1961 (Act No. 141/1961 Coll..).

partner in the individual assessment process, but primarily to the fact that the findings are used to justify individual coercion of the juvenile. This is also the case when the individual assessment reveals that the juvenile faces structural failures, particularly destabilizing poverty and social exclusion. These are individualized in the process of assessment, i.e., framed as a deficiency that is either an individual "flaw" of the juvenile (which particularly occurs in cases of health disability—more on this in section 5) or something that, although structural, needs to be addressed individually, either through explicit repression or repression masked as protection (protective upbringing).

This individualization of structural shortcomings in the form of criminal repression is very aptly expressed in the General Prosecutor's Office Annual Report for 2023, which acknowledges that a large part of youth crime consists of theft.[266] Moreover, these crimes are often committed by young people of a low age. [267] The report mentions that these crimes are frequently committed by juveniles whose families are in vulnerable economic situations, who face poor social conditions, and whose motivation for criminal activity is the satisfaction of basic needs. "Often, these are individuals living in large families, where parents have no stable income, the upbringing and nutrition of the minors are neglected, and they regularly consume alcoholic beverages, and sometimes easily accessible narcotic and psychotropic substances, under the influence of which they commit not only property crimes but also other serious violent crimes". [268]

The report acknowledges that "significant attention needs to be paid to identifying the causes of criminal proceedings against minors, from which effective prevention tools can then be developed." [269] However, this prevention probably refers to various individual coercive measures, which are formally declared in the law not as punishments but as "educational" or "protective" measures. The practice would confirm this, as children from the described circumstances very often end up deprived of their personal liberty in regime-based school facilities, where they are placed either based on a criminal law measure of protective upbringing or through family law in the form of interim measure or institutional upbringing (more on this in section 4). Frequently, these are Roma children from marginalized settlements. The judgments do not indicate that prosecutors involved in the proceedings disagreed with this solution.

4. Placement of children and juveniles in educational institutions (rehabilitation centres) and ensuring their rights during their stay

As mentioned earlier, a significant socio-protective element of the Slovak criminal justice system is the measure of protective upbringing, which is formally not intended to punish minors but to protect their development and re-educate them.

The severity of the crime is not decisive for imposing protective upbringing, but rather the environment in which the juvenile grows up and whether their behaviour aligns with societal norms and expectations.[270] Protective upbringing is the only criminal measure that can be imposed on children

[266] 38,4% of total juvenile crime. – Správa Generálneho prokurátora Slovenskej republiky o činnosti prokuratúry a poznatkoch prokuratúry o stave zákonnosti v Slovenskej republike za rok 2023, p. 51 [online]. General Prosecutor's Office of the Slovak Republic, 10/9/2024 [accessed 4/12/2024]. Available at: https://www.genpro.gov.sk/fileadmin/Sprava_o_cinnosti/2023/vlastny_material.pdf.
[267] Up to 35% of theft offences were committed by juveniles under the age of 15. – Ibid., p. 51.
[268] Správa Generálneho prokurátora Slovenskej republiky o činnosti prokuratúry a poznatkoch prokuratúry o stave zákonnosti v Slovenskej republike za rok 2023, pp. 51–52 [online]. General Prosecutor's Office of the Slovak Republic, 10/9/2024 [accessed 4/12/2024]. Available at: https://www.genpro.gov.sk/fileadmin/Sprava_o_cinnosti/2023/vlastny_material.pdf.
[269] Ibid., p. 51.
[270] According to the Criminal Code, section 102(1) a protective upbringing for a juvenile may be ordered if: a) the juvenile's upbringing is not adequately provided, and this deficiency cannot be remedied in the family where the juvenile lives; b) the juvenile's previous upbringing has been neglected; or c) the environment in which the juvenile lives does not guarantee their proper upbringing.

below the age of criminal responsibility (14 years).[271] In this case, it is imposed in civil proceedings, not criminal ones, which also corresponds to a lower level of procedural safeguards for the suspected child. For children below the age of criminal responsibility, protective upbringing takes two forms—mandatory, where it is directly based on the legal qualification of the illegal act the child is supposed to have committed, [272] and discretionary, where the imposition of the measure depends solely on the "need to ensure proper upbringing" or the finding that the child under 15 years old is responsible for a sexual abuse crime.[273]

Except for mandatory protective upbringing for children below the age of criminal responsibility, [274] this measure effectively excludes children from poor socio-economic backgrounds from the application of alternatives to deprivation of liberty, which is not carried out in prisons but in school institutions—re-education centres. [275] This exclusion is reinforced by the fact that a child can be placed in a rehabilitation centre through a civil process—via an interim measure,[276] civil educational measures, [277] or institutional care, [278] all of which are alternative care measures for children deprived of family care in accordance with Article 20 of the UN Convention on the Rights of the Child. It is not uncommon for the suspicion or accusation of a minor committing a crime to be seen by child protection authorities as the decisive factor when deciding on a proposal for placing a child in a re-education centre. Such placement is ordered in civil proceedings, where it is not necessary to prove beyond reasonable doubt that the child or juvenile actually committed the illegal act, and where the child or juvenile is not provided with legal assistance.[279] Typically, the child or minor is represented by a guardian ad litem, who is the very child protection authority that initiated the proceedings and proposed the placement in the re-education centre.[280] In these cases, the measure later decided by the criminal court may not be as

[271] Criminal Code, section 22 (2).
[272] These are the most serious offences otherwise punishable, which, if committed by a criminally responsible person, would allow the imposition of a life sentence. – Criminal Code, section 105.
[273] This is most likely to be consensual sex between peers or children of a close age, the criminalisation of which is increasingly being criticised. See, for example, the General Comment of the UN Committee on the Rights of the Child No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, para. 40. General Comment is available at: https://digitallibrary.un.org/record/855544?ln=en. See also the criticism from the Czech environment, where the legislation is very similar - Hulmáková, Jana et al. Děti mladší patnácti let v systému soudnictví ve věcech mládeže [online]. Prague: Institute for Criminology and Social Prevention, 2024, p. 78. Available at: https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze [accessed 27/12/2024]. – § Criminal Code, section 105.
[274] This regulation should also be considered problematic because the fact that the unlawful act meets the elements of a crime considered extremely serious should not negate the principle of proportionality of punishment (or sanction in general) and the fact that the court and not directly the legislator always decides on the sanction, even within the limits defined by the legislator, based on the specific circumstances of the case. It is worth noting that the explanatory report to Law No. 40/2024 Coll. acknowledges this, as it is precisely for this reason that it abolishes the mandatory penalty of confiscation of property. However, mandatory protective upbringing has not yet been similarly questioned.
[275] Act No. 245/2008 Coll., on upbringing and education (School Act), section 122.
[276] Act No. 161/2015 Coll., the Code of Non-Dispute Procedure, section 367..
[277] Act No. 36/2005 Coll., on Family, section 37 (3).
[278] Act No. 36/2005 Coll., on Family, section 54.
[279] For example, in the case of the judgment of the District Court in Poprad of May 20, 2024, case no. 14P/93/2024, which ordered institutional upbringing (a civil law measure) for a girl from a Roma settlement, the court justified its decision by directly referring to the fact that the girl committed a criminal offense: "In view of the conclusions of the diagnostic centre, as well as the frequent antisocial behavior of the minor, which is on the rise, particularly concerning the nature and type of criminal activity (first misdemeanors, then offenses, and now even a crime), the court concluded that the minor requires continuous professional care without any breaks, which must be provided in a regime-based facility, with precisely established rules, where the minor will also receive the professional and medical assistance that the parents are unable to provide in the home environment." (para. 20).
[280] Such a procedural situation occurred, for example, in the case subject of the decision of the District Court in Galanta of November 4, 2024, case no. 39P/42/2024. In this case, the authority for social and legal protection of children and social guardianship proposed a civil law interim measure, by which the minor was placed in a re-education center, and at the same time, the authority also acted as the minor's guardian ad litem in the proceedings. The authority submitted the motion for the minor's placement in the re-education centre in response to being informed by the prosecutor's office that a criminal charge had been brought against the minor. A similar situation occurred in the case addressed in the decision of the appellate court – the Regional Court in Žilina of September 18, 2024, casse no. 13CoP/158/2024, which concerned a civil law interim measure

severe, but this is mainly because the juvenile is already placed in the re-education centre at that time, thus deprived of personal liberty.

In January 2024, the General Prosecutor's Office issued a damning report on the state of legality in re-education centres.[281] The report describes inhumane conditions in the facilities, daily systematic violations of legal obligations by the institutions, and criminal activity, most often of a sexual nature, with children placed in these centres being the victims. [282] It is emphasized that the findings apply to all re-education centres without exception. The review of the justification for the placement of a child or juvenile, which is supposed to take place every six months, [283] is only formally addressed, [284] and once a child or juvenile is placed, they remain there until they reach adulthood or until the age of 19.[285] Thus, a juvenile can spend much longer in a re-education centre than the maximum penalty permitted by law for the committed crime. In the case of children below the age of criminal responsibility, the time spent in a re-education centre may be even longer.

The General Prosecutor's Office concluded that "the current system of the re-education process and re-education centres cannot be considered functioning, and re-education centres generally do not provide a safe environment for the children placed there." [286] Despite these findings, juveniles were still convicted in 2024 for the criminal offense of obstructing the execution of an official decision, committed by escaping from the re-education, even though they had been placed there for the execution of protective upbringing.[287] This can be seen as evidence of the ineffectiveness of individual assessment and the inability of the criminal justice system to take into account the context in which criminal law norms are violated. Juveniles convicted for this offense were typically sentenced to imprisonment. [288]

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by which the minor was relocated to a corrective-treatment centre (it was a child with a disability, manifesting in difficult behaviour). The social protection and guardianship authority proposed this relocation and also acted as the minor's guardian ad litem in the proceedings. The minor's own opinion on the relocation cannot be determined from the reasoning of the resolution, as neither the court nor the guardian ad litem worked with the minor. In the case addressed in the judgment of the District Court in Lučenec of August 22, 2024, and the decision of the District Court in Lučenec of September 11, 2024, both case no. 17P/132/2024, the social protection and guardianship authority again acted as both the proposer and the guardian ad litem for the minor. This case involved the relocation of the minor from one re-education centre to another. Here too, suspicion of criminal activity played a significant role in the justification for the minor's placement in the re-education centre. Lastly, we can mention the case addressed in the decision of the District Court in Trnava of July 2, 2024, case no. 27/6/2024, in which the social protection and guardianship authority again acted as both the proposer and the guardian ad litem. The case concerned the extension of the minor's stay in the re-education centre until the finalization of a criminal judgment, by which the minor was sentenced to protective upbringing in another re-education centre.

[281] Zhodnotenie Generálnej prokuratúry Slovenskej republiky o stave zákonnosti v reedukačných centrách [online]. General Prosecutor's Office of the Slovak Republic, 15/1/2024 [accessed 5/12/2024]. The report is available in Slovak at: https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/.

[282] Ibid, p. 21.

[283] It should be added that this obligation to regularly review the appropriateness of the duration of a child's placement is explicitly regulated in Slovak law with regard to family law measures, but not in relation to the criminal law measure of protective upbringing.

[284] The report states that the courts uncritically accept the reports of the child protection and social welfare authorities, which claim that re-education should be continued, or the reports of the re-education centre itself.– Zhodnotenie Generálnej prokuratúry Slovenskej republiky o stave zákonnosti v reedukačných centrách [online]. General Prosecutor's Office of the Slovak Republic, 15/1/2024, p. 7 [accessed 5/12/2024]. The report is available in Slovak at: https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/.

[285] An extension until 19 is possible for protective upbringing pursuant to the Criminal Code, section 103 (2)..

[286]Zhodnotenie Generálnej prokuratúry Slovenskej republiky o stave zákonnosti v reedukačných centrách [online]. General Prosecutor's Office of the Slovak Republic, 15/1/2024, p. 22 [accessed 5/12/2024]. The report is available in Slovak at: https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/.

[287] It should be noted that absconding, if the placement is ordered by a civil court, is not a criminal offense.

[288] This occurred, for example, in the case addressed by the decision of the District Court in Rimavská Sobota of September 2, 2024, case no. 19T/107/2024. It was a criminal judgment, and the crimes committed by the juvenile involved escaping from the re-education centre and committing a minor theft (€74.26) while on the run, with the aim of obtaining financial resources

The report demonstrates that re-education centres are certainly not places where the aspects mentioned in Article 12(5) of Directive 2016/800 are addressed.[289] This is well illustrated, for example, by the approach to education, which is organized according to the institution where the child or juvenile is placed. The minor completes a secondary school course that is part of the re-education centre's program, with the choice of centre depending on available capacity, not on the specific secondary school course the juvenile wishes to pursue.[290] Additionally, these are vocational programs with low demands, prestige, and often low employability.[291] The quality of education provided is also very low.[292] If a child or juvenile finds themselves in a re-education centre before reaching 15 years old, after completing primary school, they are transferred to a centre with a secondary school educational program. However, the report notes a case where this transfer did not occur, and a boy, after completing compulsory schooling, could not continue his education. [293]

5. Approach to children with disabilities

The situation of children with disabilities, particularly those with intellectual or psychosocial disabilities, is also highly vulnerable. The Slovak legal system and the prevailing approach of public authorities continue to follow the so-called medical or individual model of disability, which views disability merely as an issue of the individual rather than a question of societal structures. This

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to return home. The juvenile was sentenced to 12 months of imprisonment in a juvenile detention facility. In this case, it is also important to note the way the individual assessment was conducted. The cited decision of the Court quotes reports from the re-education centre, where the centre acknowledges that the juvenile "[at] first had a hard time coping with separation from his family, was anxious, insecure, withdrawn, and had no experience with a structured facility... Upon arrival at the facility, he was sad for an extended period, anxious, and had a reciprocal relationship with his mother, who expressed sincere concern for him." These facts provide a completely understandable context for the juvenile's escape and raise the question of whether the primary cause of the current criminal behavior was the previous decision to place him in protective upbringing. Moreover, the ruling clearly shows that the minor is of Roma ethnicity, and Roma children are often placed in re-education centres more frequently than children from the majority ethnic group, in terms of their proportional representation in the population. In the case of this juvenile, there are significant structural consequences that were not considered in the decision regarding his guilt. In cases addressed by the District Court in Malacky of August 28, 2024, case no. 7T/56/2024, and the District Court in Malacky of July 15, 2024, case no. 1T/25/2024, the decision was made to refrain from punishment, but this was because the juveniles had already been sentenced to imprisonment in other criminal proceedings.

[289]This provision is significant because children are placed in re-education centres, among other reasons, through family law measures, which are ordered based on suspicion or accusation of a child or juvenile violating criminal law norms. In fact, family law preventive measures effectively replace pretrial detention. For example, in the case addressed by the decision of the District Court in Galanta of November 4, 2024, case no. 39P/42/2024, the court ordered a civil interim measure in response to suspicion or accusation of criminal behaviour. Similarly, this practice is also mentioned in the justification of the decision of the District Court in Lučenec of August 22, 2024, case no. 17P/132/2024. This decision involved extending the educational measure by which the minor was placed in a re-education centre and also changing the re-education centre in which the minor was placed. The justification mentions that "the Labor Office, Social Affairs and Family of Lučenec [note: the child protection authority] received a decision on 06/02/2024, concerning the minor, starting criminal proceedings. For this reason, a request was made for an immediate measure and for an educational measure to be ordered, lasting up to six months." Similarly, a civil interim measure in response to criminal charges was proposed by the prosecutor in the case addressed by the decision of the District Court in Prievidza of September 24, 2024, case no. 29P/93/2024. In this case, the court rejected the proposal, arguing that criminal law measures should be used. However, it should be emphasized that the minor's disability played a significant role in the court's decision. The court pointed to specific measures that deprive persons with disabilities of their personal liberty. It can be assumed that, in the absence of the disability, the court's reasoning might have been different, as placing children suspected or accused of criminal behaviour in re-education centres based on civil interim measures is a fairly common practice.

[290] Zhodnotenie Generálnej prokuratúry Slovenskej republiky o stave zákonnosti v reedukačných centrách [online]. General Prosecutor's Office of the Slovak Republic, 15/1/2024, p. 48 [accessed 5/12/2024]. The report is available in Slovak at: https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/.

[291] A certain overview of these programmes is given by e.g.. Źolnová, Jarmila, Kaleja, Martin. Prevýchova v reedukačných centrách optikou historických zmien na Slovensku [online]. Digitální knihovna UHK, 2021 [accessed. 11/12/2024]. Available at: https://digilib.uhk.cz/bitstream/handle/20.500.12603/610/icipsen_2021-01-033.pdf?sequence=1&isAllowed=y.

[292] Zhodnotenie Generálnej prokuratúry Slovenskej republiky o stave zákonnosti v reedukačných centrách [online]. General Prosecutor's Office of the Slovak Republic, 15/1/2024, p. 49 [accessed 5/12/2024]. The report is available in Slovak at: https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/..

[293] Ibid., pp. 49–50.

significantly limits the effectiveness of individual assessment mechanisms, which fail to identify the structural flaws that contribute to a person with intellectual or psychosocial disabilities being drawn into the criminal justice system.

According to the UN Committee on the Rights of Persons with Disabilities, the medical or individual approach prioritizes a medically determined incapacity.[294] This concept of incapacity heavily influences the approach to children and juveniles in general,[295] but it is even more pronounced for children with intellectual and/or psychosocial disabilities. This manifests in the fact that, while children and juveniles can be deprived of their liberty in a broader range of cases and with fewer procedural safeguards than adults in connection with the violation of criminal norms, the safeguards for children with intellectual and/or psychosocial disabilities are even lower.

This issue is also related to the application of the concept of "insanity," which has been criticized by the UN Committee.[296] Although a finding of insanity leads to the cessation of criminal prosecution,[297] the criminal court can still decide to impose protective treatment, including in its institutional form. Moreover, a 2024 amendment to the Slovak legal code (Act No. 40/2024) established a provisional measure for placing an accused person in a medical (psychiatric) facility.[298] This measure was prompted mainly by court representatives and criminal justice authorities and aims to bridge the period between the cessation of criminal prosecution and the imposition of institutional protective treatment.[299] The consequence of this measure is that, after a suspected violation of criminal norms[300] and in connection with the existence or presumed existence of mental and/or psychosocial disabilities, a person can be deprived of liberty through placement in a psychiatric hospital, even when such a decision would not be possible under civil law (so-called health detention). This is explicitly acknowledged in the explanatory report, which notes that "civil law criteria for such detention in an institutional healthcare facility without the patient's consent are much stricter, requiring that the person either poses a danger to themselves or others or faces a serious deterioration in health. A serious deterioration in health is usually not imminent, and these individuals typically no longer pose a danger to themselves or others because they have already received treatment and medication." [301]

These issues can be demonstrated through a specific example of a juvenile with autism spectrum disorder and likely with an intellectual disability, who exhibited problematic behaviour. The case was

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[294] See the General Comment of the UN Committee on the Rights of Persons with Disabilities No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, para. 8. The General Comment is available at: https://digitallibrary.un.org/record/1626976?ln=en.

[295] This fact was clearly evident in the legal framework until the adoption of Amendment No. 40/2024 Coll., when the legal status of a juveniler's legal representative was derived from provisions specifically related to persons deprived or limited in their capacity to act legally. In the Sixth Periodic Report of the Government of the Slovak Republic presented to the UN Committee on the Rights of the Child in 2020, it is stated that "[a] minor does not have full legal capacity and therefore cannot enter into a legal representation agreement with a lawyer and grant him or her a power of attorney. After the accusing, the minor must have a defender already in the preparatory proceedings, chosen by his or her legal representative or, if this is not possible, another authorized person (direct relative, sibling, adoptive parent …), even against his or her will."– CRC/C/SVK/6, 2020, para. 91. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSVK%2F6&Lang=en.

[296] See Guidelines of the UN Committee on the Rghts of Persons with Disabilities on Article 14 of the Convention on the Rights of Persons with Dosabilities: The right to liberty and security of persons with disabilities, A/72/55, Annex 1, paras. 16, 20. Available at: https://digitallibrary.un.org/record/1298412?ln=ar&v=pdf [accessed 10/12/2024].

[297] Criminal Procedure Code, section 215 (1) (e).

[298] The Criminal Procedure Code, section 85 (7).

[299] See, for example, Šamko, Peter. Ochranné liečenie a jeho problémový výkon – čo ďalej? [online]. Právne listy, 8/7/2023 [accessed 5/12/2024]. Available at: https://www.pravnelisty.sk/clanky/a1249-ochranne-liecenie-a-jeho-problemovy-vykon-co-dalej.

[300] That violation could not be authoritatively found here, as the case had not yet been heard by the court.

[301] The explanatory report is available at: https://www.najpravo.sk/dovodove-spravy/rok-2024/dovodova-sprava-k-zakonu-c-40-2024-z-z.html.

examined by the District Court of Prievidza in its decision of September 24, 2024, under case number 29P/93/2024. [302] The juvenile's family was unable to care for him. Since at least February 2016, the juvenile had been placed in various institutions—psychiatric hospitals, therapeutic-educational centres, or special boarding schools—frequently moving between facilities. According to the reasoning in the cited decision, there were nine stays in six different facilities, ranging from one month to over six months each. The family's situation ultimately deteriorated to the point where, in January 2024, the mother filed a criminal complaint, alleging the juvenile had been threatening them for nearly two years. However, the court's decision did not address the family's situation or the underlying structural issues that contributed to the juvenile's placement in institutions from a young age. Although the court rejected the proposal, it did so with the argument that criminal law mechanisms should be used with respect to the juvenile in order to allow for further hospitalization in a psychiatric facility. The court also mentioned, among other things, a new preliminary measure (see above). [303] The court also considered the juvenile's medical diagnosis as the sole cause of the family's situation. [304]

The court did not address the fact that the juvenile's long-term stay away from his family in institutional settings, particularly psychiatric hospitals, from a young age could have contributed to the deterioration of the situation and may have worsened the relationship between the juvenile and his family, leading to his mother seeking legal intervention. Moreover, this placement and relocation could have been the result of a lack of appropriate social support. On the contrary, the court concluded that "the minor does not need an alternative family environment, does not need social work, psychological assistance, care, or special upbringing. At his age, and after extensive previous diagnosis, he clearly needs specialized psychiatric care, needs isolation from his family, and it cannot be excluded that he also needs isolation from society, integration into a group of similarly affected children with a strict regime, which, however, is not the purpose of placing the child in a centre for children and families." [305]

The reasoning of the court clearly reveals the individualization of structural problems, which is, among other things, made possible by the fact that the juvenile's own perspective—his authentic experience of how his mother treated him and his current situation—was neither assessed nor taken into account.

Finally, it is important to note that the legal protection of children with intellectual and/or psychosocial disabilities may be reduced compared to both adults and children without disabilities.[306] This is particularly evident when protective measures, such as protective upbringing, are applied in psychiatric hospitals. In such cases, a juvenile may be placed in a psychiatric institution even if the legal conditions for protective treatment are not met, particularly the requirement of danger posed by the person's liberty. [307] Furthermore, this legal framework allows for the psychiatric placement of children below the age of criminal responsibility. [308]

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[302] Decision of the District Court Prievidza of 24/9/2024, case no. 29P/93/2024.
[303] Ibid., para. 67.
[304] Ibid., para. 62.
[305] Ibid., para. 63.
[306] The Criminal Code, section 103(1). The placement of protective custody in a psychiatric hospital occurred in a case decided by the District Court Žiar nad Hronom rozsudkom on 12/1/2021, case no. 9P/47/2020.
[307] Criminal Code, sections 73 (1) and (2) a 74 (1).
[308] In the above-quoted case, decided by the District Court Žiar nad Hronom by judgment of 12 January 2021, Case No. 9P/47/2020, it was about the imposition of compulsory protective upbringng on a child below the age of criminal responsibility.