

# Safeguarding the rights of child suspects and accused in criminal proceedings

Compendium of good practices across the European Union

June 2026

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## I. Introduction

Children who come into contact with the criminal justice system as suspects or accused persons often face serious violations of their human rights, including, in the first place, of their right to effective participation in criminal proceedings.<sup>1</sup> The risk of human rights violations for children purportedly in conflict with the law who come into contact with the criminal justice system as suspects or accused persons can be even greater for children from disadvantaged or otherwise marginalized backgrounds, as language barriers, limited access to legal assistance, and discriminatory practices, among other things, compound their plight.

Ensuring that children who are suspects or accused persons may meaningfully engage in criminal proceedings is critical to guaranteeing their right to a fair trial.<sup>2</sup> While numerous international and regional human rights law instruments, such as the United Nations (UN) Convention on the Rights of the Child (CRC),<sup>3</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>4</sup> the European Convention on Human Rights (ECHR),<sup>5</sup> the Guidelines of the Council of Europe on child-friendly justice,<sup>6</sup> and European Union (EU) Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings,<sup>7</sup> exist, their effective implementation remains a challenge across EU Member States. Indeed, despite the instruments, children, particularly those from disadvantaged or otherwise marginalized backgrounds, continue to face systemic obstacles to the exercise of their right to a fair trial and other rights when they come into contact with the criminal justice system as suspects or accused persons.

As part of the project [\*Access to Justice for Children Accused and Suspect in Criminal Proceedings \(ACCESS\)\*](#), national baseline studies were conducted in six participating countries: Belgium, Bulgaria, the Czech Republic, The Netherlands, Poland and Slovakia.<sup>8</sup> These studies examined both the legal frameworks and the practical enjoyment of the right

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<sup>1</sup> European Union Agency for Fundamental Rights (FRA). 2022. *Children as suspects or accused persons in criminal proceedings*. [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2022-children-procedural-safeguards\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-children-procedural-safeguards_en.pdf), p. 1.

<sup>2</sup> Organisation for Economic Co-operation and Development (OECD), 2023. *Child-Friendly Justice Framework: Building a People-Centred Justice System*. [https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/11/oecd-child-friendly-justice-framework\\_40b81cd7/6a60970e-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/11/oecd-child-friendly-justice-framework_40b81cd7/6a60970e-en.pdf), p. 9.

<sup>3</sup> United Nations [Convention on the Rights of the Child \(CRC\)](#), Adopted by the General Assembly as part of Resolution 44/25, UN Doc. A/RES/44/25 (20 November 1989).

<sup>4</sup> United Nations [International Covenant on Civil and Political Rights \(ICCPR\)](#) Adopted by the General Assembly as part of Resolution 2200A(XX1) on 16 December 1966.

<sup>5</sup> Council of Europe, [European Convention on Human Rights \(ECHR\)](#), ETS No. 5 (4 November 1950).

<sup>6</sup> Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum (Guidelines on child-friendly justice, 2010).

<sup>7</sup> 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 \(Directive \(EU\) 2016/800\)](#), OJ L 132, 21 May 2016.

<sup>8</sup> Baseline studies were prepared by national partners with expertise in and awareness of the respective national contexts, ensuring relevance and accuracy in reflecting local legal and procedural frameworks. DEI Belgique, BHC, FORUM, NJCM, HFHR. 2025. *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 (ACCESS Baseline studies)*.

to a fair trial of children who come into contact with the criminal justice system as suspects or accused persons in each national context. The findings identified several critical concerns,<sup>9</sup> which were further explored during the [Transnational Exchange Roundtable](#) and in a series of follow-up online workshops<sup>10</sup> designed for four professional groups: (1) lawyers; (2) judges; (3) social workers and probation officers; (4) and prosecutors and law enforcement personnel.

This **Compendium of Good Practices** brings together insights gathered through transnational exchanges among the professionals working in the criminal justice sector. It presents key concerns, including the risks of violations of children's rights identified across the six abovementioned EU countries, and highlights promising practices that may be adapted and replicated across diverse jurisdictions to protect children's human rights when they come into contact with the criminal justice system as suspects or accused persons.

The Compendium examines the human rights of child suspects and accused persons in criminal proceedings, focusing primarily on the right to a fair trial; the right to liberty and security of person; the right to freedom from discrimination; and the right to equality before the law and equal protection of the law, pursuant to both international human rights law and relevant EU law instruments. The Compendium is intended as a resource for EU Member States; it provides a clear, consolidated reference to international and EU standards and practices with a view to supporting their consistent implementation and stronger protection of children's human rights in criminal justice systems.

In addition to drawing on national experiences documented in the above-mentioned national baseline studies, this Compendium provides an overview of relevant international and regional legal standards and addresses key cross-cutting issues that impact children's right to a fair trial in the context of criminal proceedings. Specifically, it focuses on five core areas:

- 1) the right to a lawyer, as a key entitlement of the right to a defence;
- 2) the right to information about charges and rights;
- 3) safeguards related to deprivation of liberty;
- 4) discriminatory practices; and

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<sup>9</sup> These include inequalities in the treatment of children from vulnerable groups (particularly children from minorities, children with disabilities and children from socio-economically disadvantaged backgrounds); the problematic overlap between family law and criminal law measures, especially in cases involving children below the age of criminal responsibility; structural features of certain child justice systems in which welfare-based or paternalistic approaches may lead to children being treated primarily as subjects of protection or intervention rather than rights-holders entitled to full procedural safeguards; deficiencies in legal frameworks that limit the application of safeguards at early stages of proceedings; and significant budgetary and capacity constraints affecting training, legal aid, specialized services and infrastructure. The studies further highlight shortcomings in the practical enjoyment of key procedural rights, including the right to legal assistance, the right to information, the quality and purpose of individual assessments, and the inconsistent application of deprivation of liberty as a measure of last resort.

<sup>10</sup> Online workshops for lawyers, 22 and 29 April 2025. <https://www.icj.org/eu-access-to-a-lawyer-in-juvenile-justice-proceedings-remains-a-key-concern-in-several-eu-member-states/>; Online workshops for social workers and probation officers, 28 April and 5 May 2025. <https://www.icj.org/eu-better-support-structures-for-children-in-conflict-with-the-law-are-needed/>; Online workshops for judges, 14 and 21 May 2025. <https://www.icj.org/eu-judges-discuss-the-need-for-stronger-individual-assessments-and-alternatives-to-detention-for-children-in-conflict-with-the-law/>. Webinar for prosecutors and law enforcement personnel, 27 October 2025. <https://www.icj.org/eu-experts-highlight-the-need-to-address-inequality-and-expand-alternatives-to-child-pre-trial-detention-in-criminal-proceedings/>.

- 5) the treatment of children who are suspected or accused of committing an offence, but who are below the age of criminal responsibility.

For each of these core areas, the Compendium outlines the applicable legal standards, identifies the difficulties that the six abovementioned EU countries face in implementing and complying with those standards and with their obligations under international law, and highlights good practices developed in seeking to address those difficulties. These examples offer practical guidance and inspiration for legal and justice professionals across the EU seeking to enhance compliance with children's right to a fair trial, including through implementation of procedural safeguards, and to ensure non-discriminatory access to justice for all children who come into contact with the criminal justice system either as suspects or accused persons.

## II. Procedural rights

### 1. Right to a lawyer

#### 1.1. International and EU legal standards

Children suspected or accused in criminal proceedings have a **right to legal assistance**, part and parcel of the right to a defence, a substantive right and a key component of the right to a fair trial in the context of the criminal proceedings, recognized across multiple international and regional human rights law instruments.<sup>11</sup> These include the ICCPR (Article 14), CRC (Articles 12, 37 and 40), the ECHR (Article 6), and the Charter of Fundamental Rights of the EU (EU Charter, Articles 24, 47 and 48). These instruments, along with EU Directive 2016/800 on procedural safeguards for children in criminal proceedings, guarantee the right of the child to a fair trial, and establish essential standards on legal assistance, and procedural safeguards that ensure and protect the human rights of children who come into contact with the criminal justice system either as suspects or accused persons. Directive 2016/800 establishes procedural safeguards intended to ensure that children who are suspects or accused persons in criminal proceedings can understand and effectively participate in those proceedings,

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<sup>11</sup> ICCPR, article 14(3)(d): "*In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it*"; CRC, Article 37 (d): "*every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance*", Article 40(2)(b)(ii): "*to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence*"; ECHR, article 6(3); Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Section 2. Legal counsel and representation, para. 37: "*children should have the right to their own legal counsel and representation*"; *Blokhin v. Russia*, European Court of Human Rights (ECtHR), Application No. 47152/06, Judgment of 23 March 2016, para. 199; *Salduz v. Turkey*, ECtHR, Application No. 36391/02, Judgment of 27 November 2008, para. 62; Directive (EU) 2016/800, article 6(1), (2) "*Member States shall ensure that children are assisted by a lawyer ... in order to allow them to exercise the rights of defence effectively*".

exercise their right to a fair trial, and avoid reoffending through enhanced social integration, if indeed they have committed a criminal offence in the first place.<sup>12</sup>

The jurisprudence of the European Court of Human Rights (ECtHR) has also recognized the child's right to a lawyer, notably in cases such as *Blokhin v. Russia*<sup>13</sup> and *Salduz v. Turkey*.<sup>14</sup> The right to legal assistance applies not only to children who are arrested or detained, but also to those who are suspected or accused persons in the context of criminal proceedings, even if they are not deprived of liberty.<sup>15</sup> This right must be guaranteed **from the earliest stage of proceedings**.<sup>16</sup> In particular, children must have access to a lawyer "before they are questioned by the police or any other law enforcement or judicial authority; when investigative or other evidence-gathering acts are carried out by competent authorities; without undue delay after deprivation of liberty; and in due time before they appear before a court having jurisdiction in criminal matters".<sup>17</sup>

The ECtHR has repeatedly emphasized the importance of early access to a lawyer to safeguard the child's rights and ensure their effective participation in proceedings.<sup>18</sup> While much of the case-law concerns children in custody, the right itself applies equally to all children suspected or accused of an offence who are at liberty. The ECtHR has further held that, to ensure that the right to a fair trial be "practical and effective," statements made without access to legal counsel should not be admitted as evidence, as their use may irreparably prejudice the rights of the defence.<sup>19</sup> To remove barriers to justice and to guarantee the right to a fair trial, including the right to a defence, **legal assistance must be provided free of charge where a child cannot afford it**.<sup>20</sup> This applies to all children, including those from disadvantaged or marginalized backgrounds, but is not limited to them.<sup>21</sup> The Council of Europe recommends that, "*children should have access to free legal aid, under the same or more lenient conditions*

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<sup>12</sup> Directive (EU) 2016/800, preamble para. 1.

<sup>13</sup> *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Grand Chamber Judgment of 23 March 2016, para. 199: "in view of the particular vulnerability of children, and taking into account their level of maturity and intellectual and emotional capacities, the Court stresses in particular the fundamental importance of providing access to a lawyer where the person in custody is a minor."

<sup>14</sup> *Salduz v. Turkey*, ECtHR, Application No. 36391/02, Grand Chamber Judgment of 27 November 2008, para. 62 "the Court stresses the fundamental importance of providing access to a lawyer where the person in custody is a minor... the absence of a lawyer while he was in police custody irretrievably affected his defence rights."

<sup>15</sup> Amnesty International, 2014. *Fair Trial Manual – Second Edition (Fair Trial Manual, 2014)*, <https://www.amnesty.org/fr/documents/pol30/002/2014/en/>, p. 43.

<sup>16</sup> CRC Committee, [General Comment No. 24 \(2019\) on children's rights in the child justice system](#) (CRC Committee, GC No 24), 18 September 2019, CRC/C/GC/24, para. 49.

<sup>17</sup> Directive (EU) 2016/800, article 6(3).

<sup>18</sup> *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Grand Chamber Judgment of 23 March 2016, para. 198: "Article 6 section 1 requires that, as a rule, access to a lawyer should be provided as soon as a suspect is questioned by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict that right". The Court also held that, "the particular vulnerability of the accused at the initial stages of police questioning can only be properly compensated for by the assistance of a lawyer, whose task is, among other things, to help ensure respect of the right of an accused not to incriminate himself."

<sup>19</sup> *Salduz v. Turkey*, ECtHR, Application No. 36391/02, Grand Chamber Judgment of 27 November 2008, para. 55.

<sup>20</sup> Fair Trial Manual, 2014, p. 46

<sup>21</sup> United Nations Office on Drugs and Crime. 2013. [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems \(UN Principles and Guidelines on Access to Legal Aid\)](#). Resolution 67/187 adopted by the General Assembly on 20 December 2012, Principles 10 and 11.

as adults.”<sup>22</sup> EU Directive 2016/800 requires Member States to “ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer.”<sup>23</sup>

The CRC Committee recommends that, “States provide effective legal representation, **free of charge**, for all children who are facing criminal charges before judicial, administrative or other public authorities.”<sup>24</sup> The Committee further requires that children be provided with assistance in preparing and presenting their defence.<sup>25</sup> While States have some discretion in determining how such assistance is delivered, it should always be free of charge, ensuring that no child is prevented from exercising their rights.<sup>26</sup>

Another fundamental safeguard of a child’s right to effective access to a lawyer is the ability to communicate effectively with counsel. In turn, this encompasses the right to confidential communication. In addition, the child has a right to adequate time and facilities to prepare a defence, and access to competent counsel of choice or appointed by the State.<sup>27</sup> The ICCPR guarantees all defendants the right to “adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”<sup>28</sup> Similarly, the CRC Committee urges that there be “no restriction on the child’s ability to communicate confidentially and at any time with his or her lawyer.”<sup>29</sup>

The ECtHR has affirmed that confidential communication with a lawyer is an essential element of a fair trial.<sup>30</sup> The Court has consistently upheld this safeguard, affirming that “the lawyer must be able to confer with his or her client in private and receive confidential instructions.”<sup>31</sup> In the same spirit, the Council of Europe has established that untried detainees must be allowed to receive visits from legal advisers and exchange confidential instructions, stating that such interviews “may be within sight but not within hearing, either direct or indirect, of a police or institution official.”<sup>32</sup> EU Directive 2016/800 reinforces this right, requiring Member States to ensure that children can meet privately with their lawyer and that the confidentiality of such communication be respected.<sup>33</sup> These safeguards are crucial to ensuring that the child can participate effectively in their defence and that their right to a fair trial, among other rights, be fully protected.

In addition to guaranteeing access, the **competence and effectiveness** of legal representation are equally crucial. The CRC Committee stresses that, “continuous and

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<sup>22</sup> Guidelines on child-friendly justice, 2010. Section 2. Legal counsel and representation, para. 38.

<sup>23</sup> Directive (EU) 2016/800, article 18.

<sup>24</sup> CRC Committee, GC No 24, para. 51.

<sup>25</sup> CRC Committee, [General Comment No. 10 \(2007\) Children’s rights in juvenile justice](#) (CRC Committee, GC No 10), 25 April 2007, CRC/C/GC/10, para. 49.

<sup>26</sup> *Ibid*, para. 49.

<sup>27</sup> Fair Trial Manual, 2014, pp. 149, 152.

<sup>28</sup> ICCPR, article 14, para. 3 (b).

<sup>29</sup> CRC Committee, GC No 24, para. 95(e).

<sup>30</sup> *S. v. Switzerland*, ECtHR, Application No. 12629/87 and 13965/88, Judgment of 28 November 1991, para. 48.

<sup>31</sup> *Beuze v. Belgium*, ECtHR, Application No. 71409/10, Grand Chamber Judgment of 9 November 2018, para. 133.

<sup>32</sup> Council of Europe, [Standard Minimum Rules for the Treatment of Prisoners](#), Resolution (73) 5 of the Committee of Ministers, rule 93.

<sup>33</sup> Directive (EU) 2016/800 article 6(4)(a), (5).

*systematic training of professionals in the child justice system is crucial to uphold those guarantees of fair treatment and trial.*"<sup>34</sup>

The Council of Europe echoes this obligation, recommending that, within the justice system, "all professionals working with and for children receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them."<sup>35</sup> EU Directive 2016/800 further requires Member States to ensure that lawyers involved in criminal proceedings concerning children possess "specific competence in that field, effective access to specific training, or both."<sup>36</sup> Together, these standards underscore the importance of specialized, child-sensitive legal representation as a cornerstone of the right to a fair trial of children who are suspects or accused in criminal proceedings.

## 1.2. Rights violations and gaps in implementation

In the countries under consideration, the baseline studies by national partners, discussions with professionals, and exchanges over practices show that, despite the existence of comprehensive international and regional legal frameworks, certain gaps persist in ensuring children's access to legal assistance, particularly at the critical early stages of the criminal justice process. These gaps amount to violations of children's right to timely and effective legal representation.

In some jurisdictions, gaps in the relevant legal framework persist. In both *Bulgaria* and *Slovakia*, the law does not guarantee access to legal counsel prior to a child's interrogation as a criminal suspect. In *Bulgaria*, this omission stems largely from the absence of a formal "suspect" category in criminal law.<sup>37</sup> As a result, children, whether in detention or at liberty, are not entitled to legal representation until they are formally charged with a criminal offence, a point that often occurs after the first interrogation.<sup>38</sup> In *Slovakia*, similar concerns arise. Children may be interrogated as criminal law suspects before formal charges are brought against them, yet, the law does not guarantee the presence of a lawyer during such pre-charge questioning.<sup>39</sup> With respect to this, the CRC Committee has expressed concern in its 2016 Concluding Observations on Slovakia, noting that, "children can undergo initial questioning without the presence of their lawyers, parents or other trusted persons."<sup>40</sup>

In other countries, the legal framework is adequate on paper but undermined by implementation gaps. In *Poland*, for example, the Code of Criminal Procedure requires that

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<sup>34</sup> CRC Committee, GC No 24, para. 39.

<sup>35</sup> Guidelines on child-friendly justice, 2010. Section 4, para 14.

<sup>36</sup> Directive (EU) 2016/800, article 20, para 1, 2.

<sup>37</sup> A 2023 preliminary ruling by the Court of Justice of the European Union (CJEU) clarified that the applicability of the EU law (specifically Directives 2012/13 and 2013/48) does not depend on whether a national legal system formally recognizes the concept of a "suspect." CJEU, Judgment C-209/22, Criminal proceedings against AB, EU:C:2023:634, 7 September 2023, paras. 39-40, 44.

<sup>38</sup> Article 145 of the (Bulgarian) Judiciary Act. See also ACCESS Baseline studies, p. 25.

<sup>39</sup> Slovakia Criminal Procedure Code, section 336. See also ACCESS Baseline studies, p. 64.

<sup>40</sup> CRC Committee, Concluding Observations on the combined third to fifth periodic reports of Slovakia, 20 July 2016, CRC/C/SVK/CO/3-5, para. 56 (d).

suspects be interrogated in the presence of their defence lawyer, if requested or appointed.<sup>41</sup> However, interrogations may still proceed without a lawyer present, and this occurs in practice for both adults and children, though reportedly less for children.<sup>42</sup> Legal counsel is frequently appointed only after the first interrogation has taken place, which means that, often, a child suspect will be questioned in the absence of a lawyer.<sup>43</sup> Even more concerning, Supreme Court jurisprudence permits the admissibility of statements made during such interrogations, provided it is determined that there was “*no objectively existing vulnerability of the suspect to harm.*”<sup>44</sup> However, when the suspect is a child, vulnerability should in principle be presumed by virtue of age alone. This issue was also highlighted in the *Adamkiewicz v. Poland* case, where the ECtHR found that questioning child suspects without access to a lawyer, particularly where they are isolated from their family and lack the maturity or understanding to appreciate the consequences of such questioning violated Article 6(1) read with Article 6(3)(c) of the ECHR.<sup>45</sup>

Financial constraints also hinder access to legal assistance for many children. In *the Netherlands*, for example, although children are legally entitled to free legal assistance,<sup>46</sup> low remuneration under the legal aid system discourages lawyers from representing children suspected or accused of criminal offences. As a result, concern has been expressed about the availability, quality and sustainability of legal assistance for children purportedly in conflict with the law, despite the country’s strong legal framework.<sup>47</sup>

In *the Czech Republic*, children must formally apply for free or reduced-fee legal aid based on financial need.<sup>48</sup> However, studies indicate that children are not always informed of this possibility, and that lawyers<sup>49</sup> and the relevant authorities do not consistently fulfil their obligation to ensure that children understand their right to legal aid.<sup>50</sup> Although prosecutors and judges may grant assistance without children formally applying,<sup>51</sup> such a grant is discretionary and inconsistently applied.<sup>52</sup> Moreover, if a child is not granted free or reduced-

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<sup>41</sup> ACCESS Baseline studies, p. 51.

<sup>42</sup> *Ibid.*

<sup>43</sup> M. Kalisz, M. Szuleka, M. Wolny, *Procedural safeguards for children who are suspects or accused persons in criminal proceedings*, Poland 2021. [https://fra.europa.eu/sites/default/files/fra\\_uploads/pl\\_ccp-country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/pl_ccp-country_report.pdf). See also ACCESS Baseline studies, p. 51.

<sup>44</sup> Poland, Judgment of the Supreme Court of April 5, 2013, III KK 327/12, OSNKW 2013, No. 7, item 60.

<sup>45</sup> *Adamkiewicz v. Poland*, ECtHR, Application No. 54729/00, Judgment of 2 March 2010, para. 89.

<sup>46</sup> Council of State (Afdeling bestuursrechtspraak van de Raad van State), 31 July 2024, ECLI:NL:RVS:2024:3083, and Supreme Court of the Netherlands (Hoge Raad), 9 April 2024, ECLI:NL:HR:2024:555.

See also ACCESS Baseline studies, p. 43.

<sup>47</sup> ACCESS Baseline studies, p. 43; Netherlands Bar Association, 2026. *Bar in Focus 2026: Strongest Growth of the Bar in Ten Years, Social Legal Aid Remains Under Pressure*. <https://www.advocatenorde.nl/nieuws/balie-beeld-sterkste-groei-van-de-balie-tien-jaar-sociale-advocatuur-verder-onder-druk>.

<sup>48</sup> 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). See also ACCESS Baseline studies, p. 34.

<sup>49</sup> Večerka, K., Hulmáková, J., Štěchová, M., 2019. *Juveniles in the Process of Disrupted Socialisation*. Prague: Institute for Criminology and Social Prevention, <https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf>, p. 79.

<sup>50</sup> ACCESS Baseline studies, p. 34.

<sup>51</sup> Criminal Procedure Code, section 33 (2). See also ACCESS Baseline studies, p. 34.

<sup>52</sup> ACCESS Baseline studies, p. 34, fn. 104: “This was the case of a seventeen-year-old boy addressed in the decision of the Constitutional Court dated September 1, 2020, case No. II. ÚS 1411/2020. The courts rejected the request,

fee legal aid during criminal proceedings and is subsequently convicted, they may be required to reimburse the State for the costs of their lawyer's services.<sup>53</sup>

The right of children purportedly in conflict with the law to effective access to a lawyer is not always respected. For example, in *Belgium*, the meeting time between a child and a lawyer is limited to 30 minutes before a hearing,<sup>54</sup> and an additional 15 minutes during the hearing, if necessary,<sup>55</sup> which may not allow the child to prepare their defence adequately.

The right to confidential communication between children in custody pursuant to the operation of the criminal law and their lawyers is also not always upheld. In *Poland*, for example, whether for adults or children, the Code of Criminal Procedure allows a third party to be present during conversations between defence counsel and detainees,<sup>56</sup> and often the facilities are inadequate to ensure privacy of communication between lawyer and client.<sup>57</sup> As a result, confidentiality is not guaranteed, compromising both the fairness of proceedings and the child's ability to build trust with their legal representative.<sup>58</sup>

Training deficiencies among legal professionals working with children remain a common challenge across all countries considered in this project. Many lawyers lack specialized knowledge in youth criminal justice, as well as the skills to communicate effectively with children, understand their vulnerabilities, and apply child-sensitive practices.<sup>59</sup> One key concern is the general lack of criminal defence lawyers specializing in youth criminal justice, which significantly reduces the number of legal practitioners of required competence who can offer effective legal representation to children purportedly in conflict with the law.<sup>60</sup> In *Bulgaria, the Czech Republic, Poland* and *Slovakia*, lawyers who represent children are not required to have specific qualifications or experience in youth criminal justice, and there are few incentives or structural support for developing such specialization.

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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, No. III. ÚS 1071/20. 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 defence (Paragraph 12 of the decision). The Constitutional Court's approach is therefore also ambiguous."

<sup>53</sup> Criminal Procedure Code, section 152 (1) (b), section 155 (1). See also ACCESS Baseline studies, p. 34.

<sup>54</sup> Art. 2bis §2, Law on Pretrial Detention; ACCESS Baseline studies, p. 16.

<sup>55</sup> Art. 2bis §5, para. 2, Law on Pretrial Detention; ACCESS Baseline studies, p. 16.

<sup>56</sup> ACCESS Baseline studies, p.52.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid*, pp. 11, 52.

<sup>59</sup> ICJ. *Online workshops for lawyers, 22 and 29 April 2025* (ACCESS Online workshops for lawyers, 22 and 29 April 2025). <https://www.icj.org/eu-access-to-a-lawyer-in-juvenile-justice-proceedings-remains-a-key-concern-in-several-eu-member-states/>.

<sup>60</sup> ACCESS Online workshops for lawyers, 22 and 29 April 2025.

In the *Czech Republic* and *Poland*, it is generally recognized that justice actors, including lawyers, should possess specific knowledge of child rights or youth justice. While lawyers are required to hold a general legal qualification or specialization to practise law, there is no formal obligation for them to obtain an additional or child-specific qualification in order to represent children. For example, in *the Czech Republic*, although justice professionals working with children are expected to have child-specific expertise, there are no formal training requirements, certification processes, or systems of verification in place to ensure that this expertise be consistently required and verified in practice.<sup>61</sup> In *Poland*, the legal framework formally requires lawyers to have specialized knowledge of children's rights, when appointed to represent a child in place of their legal guardian, for instance in situations involving a conflict of interest between the child and a parent. However, no comparable requirement exists for defence lawyers representing children, either in child justice proceedings or in proceedings where children are tried under rules applicable to adults.

Beyond the lack of specialization, broader gaps in training and education further hinder the quality of legal assistance provided to children. In many cases, the responsibility for acquiring relevant expertise falls largely on self-study and personal motivation, rather than being supported through mandatory or structured training.<sup>62</sup> This state of affairs concerns not only child-specific knowledge, but also training related to disability rights, cultural competence, and the specific needs of marginalized or minority children.

Another concern is that, while training opportunities for legal professionals exist, they remain limited in scope and effectiveness.<sup>63</sup> Opportunities include courses offered by law schools, bar associations, or continuing professional development programmes, but they frequently do not cover the specific skills and knowledge required for legal representation within the youth criminal justice system or for working with children with additional vulnerabilities. For instance, in *Belgium*, training for court-appointed lawyers is limited and often insufficient to prepare them to represent children from disadvantaged or vulnerable backgrounds, including LGBTQ+ children, children with disabilities, or those from cultural minorities.<sup>64</sup> In *Poland*, although some targeted training initiatives have been developed,<sup>65</sup> training programmes for

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<sup>61</sup> ACCESS Online workshops for lawyers, 22 and 29 April 2025.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> ACCESS Baseline studies, pp. 11, 21-22. In Belgium, lawyers are required to demonstrate compliance with continuing legal education obligations (post-graduate training). This may take the form of attending or participating in conferences, seminars, or online courses, or engaging in legal work requiring additional professional training. However, this system is general in nature and is not specifically focused on child-friendly justice. As a result, it is often insufficient to equip lawyers to adequately represent children, especially from disadvantaged or vulnerable backgrounds.

<sup>65</sup> For example, for several years the Warsaw Bar Association required trainee lawyers to complete a course of several hours dedicated to child representation. The course covered the methodology of working as a child's representative, as well as the role of defence counsel in juvenile proceedings and before criminal courts, and included international children's rights standards. However, this course was discontinued and was no longer included in the training programme in 2026.

lawyers generally inadequately address youth criminal justice issues,<sup>66</sup> and courses often lack material specifically dedicated to children from marginalized groups.<sup>67</sup>

### 1.3. Good practices

Despite the concerns identified above, several promising practices demonstrate how countries can better protect the right to a fair trial of children purportedly in conflict with the law.

**Prompt access to legal representation** is fundamental to ensure children's fair trial rights.

- In *the Czech Republic*, children in conflict with the law are entitled to a mandatory legal defence from the moment they provide a statement as a suspect or when any investigative action is initiated against them.<sup>68</sup>
- In *Bulgaria*, investigative authorities are prohibited from conducting any investigative actions or other procedural activities concerning a child formally accused until they have been informed of their right to a lawyer and given the opportunity to contact one immediately.<sup>69</sup> While this practice helps in safeguarding access to counsel, this protection does not extend to children who have not yet been formally accused, and further efforts are needed to ensure that all children purportedly in conflict with the law, including child suspects, receive effective legal assistance from the earliest stages of criminal proceedings.
- In *Belgium*, *ex officio* lawyers, who are officially appointed and trained in youth justice, must be present in all proceedings involving children, ensuring that cases cannot proceed without qualified legal representation.<sup>70</sup>

### Access to legal aid

- To ensure that **financial constraints** do not inhibit children from exercising their right to legal assistance of their choosing, some jurisdictions make the appointment of a public defence lawyer mandatory when the accused is a minor, irrespective of the child's finances, as is the case in *Bulgaria*. The competent authority appoints a public defender to act as the child's criminal defence representative. That said, the child retains the right to appoint another lawyer to represent and advise them, if they so wish, in which case the public defence lawyer continues to participate in the proceedings as a substitute defence lawyer.<sup>71</sup> However, this applies only after the

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<sup>66</sup> Wiśniewska, K., Wolny, M., 2017. *My Lawyer, My Rights: Children's Access to Legal Assistance. National Report (Poland)*. pp. 53–54. <https://hfhr.pl/upload/2022/01/mo-j-prawnik-moje-prawa-doste-p-dzieci-do-pomocy-obroncy.pdf>, pp. 53–54. See also ACCESS Baseline studies, p. 52.

<sup>67</sup> Jagura, J., Pudzianowska, D., 2016. *Equal Treatment of Participants in Proceedings: A Guide for Judges and Prosecutors*.

<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>. See also ACCESS Baseline studies, pp. 58–59.

<sup>68</sup> Act No. 218/2003 on the Responsibility of Minors for Criminal Acts and Juvenile Justice, section 42a(1)(a). See also ACCESS Baseline studies, p. 64.

<sup>69</sup> ACCESS Baseline studies, p. 25.

<sup>70</sup> ACCESS Online workshops for lawyers, 22 and 29 April 2025.

<sup>71</sup> ACCESS Baseline studies, p. 25.

minor has been formally accused, and not beforehand, such as during police questioning. As a result, there is still a gap insofar as complying with the requirement that legal assistance be available to all children purportedly in conflict with the law at every stage of proceedings, including during initial police questioning.

**Ensuring private and unrestricted communication** between children and their lawyers is vital.

- In *Bulgaria*, correspondence between lawyers and their child clients is not subject to review, copying, inspection or seizure and cannot be used as evidence. Moreover, tapping or surveillance of conversations between a child and their lawyer is strictly forbidden, giving effect to the right to confidential communication with legal counsel.<sup>72</sup>

**Specialized training** is an essential component of effective legal assistance.

- Ideally, Bar Association membership and actual legal practice in child criminal justice should require mandatory, youth criminal justice-specific training. Some countries have taken concrete steps towards institutionalising this approach.<sup>73</sup>
- In *the Netherlands*, legal aid lawyers working in child justice are required to complete a specialized training programme, which mandates qualification in both criminal child justice and civil proceedings involving children. This requirement is featured in the Dutch Bar Association's membership rules, the disciplinary law for lawyers, and the Legal Aid Bureau's registration requirements.<sup>74</sup> Lawyers must satisfy not only the entry requirements to qualify as child justice specialists but also ongoing professional development obligations, including an annual refresher training.<sup>75</sup> A minimum of 10 hours per year is mandatory, ensuring that legal practitioners remain up to date on child-specific procedures and legal standards.
- In the Flanders region in *Belgium*, a similar model exists under which any lawyer assisting a child in the context of criminal proceedings must be a recognized specialist who has completed a dedicated youth justice training course.<sup>76</sup> This is now a legislative requirement. Prior to it, some Dutch-speaking Bar Associations had already established internal rules requiring such training. A specialized curriculum, covering all relevant subjects, including on children in conflict with the law, prepares lawyers for

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<sup>72</sup> ACCESS Baseline studies, p. 25.

<sup>73</sup> For example, Belgium, the Netherlands, and Poland. ACCESS Online workshops for lawyers, 22 and 29 April 2025.

<sup>74</sup> Raad voor Rechtsbijstand. *Overzicht van deskundigheidseisen voor inschrijving specialisaties*. <https://www.rvr.org/advocaten/ingeschreven/specialisaties/eisen-inschrijving/>. The requirements for youth criminal law are:

(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 achieved, in the course of the three years prior to their request for registration, a minimum of 12 training points in the area of child justice. See also ACCESS Baseline studies, p. 43.

<sup>75</sup> ACCESS Online workshops for lawyers, 22 and 29 April 2025.

<sup>76</sup> Flemish Government, Decreet betreffende het jeugddelinquentierecht "Youth Delinquency Decree", 15 February 2019, 2019011711, article 3.

designation as *ex officio* youth criminal defence lawyers.<sup>77</sup> This designation ensures that the presence of a lawyer is mandatory in any proceedings involving a child, and only lawyers who have completed the required course are eligible to act in this role.

## 2. Right to information about charges and rights

### 2.1. International and EU legal standards

International human rights law requires that: "*When anyone is arrested or detained, they must be notified of the reasons for their arrest or detention and of their rights, including their right to counsel. They must be informed promptly of any charges against them. This information is essential to allow the person to challenge the lawfulness of their arrest or detention and, if they are charged, to start preparing their defence.*"<sup>78</sup>

The ICCPR guarantees the right of every accused person to be informed promptly and in detail of the nature and cause of the charges against them.<sup>79</sup> It also explicitly includes the right "[t]o have the **free assistance of an interpreter** if [the accused] cannot understand or speak the language used in court".<sup>80</sup>

The **child's right to information** is enshrined in several sources of international law. The CRC confers the right of every accused child to be "*informed promptly and directly of the charges against him or her (or where appropriate through his or her parent or guardian)*"<sup>81</sup> and to "*have the free assistance of an interpreter if the child cannot understand or speak the language used.*"<sup>82</sup> The CRC Committee has clarified in a General Comment that promptly means "*as soon as possible after the first contact of the child with the justice system.*"<sup>83</sup> Crucially, it is not sufficient for authorities to merely communicate information; they must also ensure that the child genuinely understands the charges, options, and procedures.<sup>84</sup> As the CRC Committee emphasizes, "*providing the child with an official document is insufficient and an oral explanation is necessary.*"<sup>85</sup> Accordingly, ensuring the child's understanding and

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<sup>77</sup> ACCESS Online workshops for lawyers, 22 and 29 April 2025.

<sup>78</sup> Fair Trial Manual, 2014, p. 37. See, also, UN Principles and Guidelines on Access to Legal Aid, guideline 3, para. 43. "States should introduce measures: (a) To promptly inform every person detained, arrested, suspected or accused of, or charged with a criminal offence of his or her right to remain silent; his or her right to consult with counsel or, if eligible, with a legal aid provider at any stage of the proceedings, especially before being interviewed by the authorities; and his or her right to be assisted by an independent counsel or legal aid provider while being interviewed and during other procedural actions". Other rights include, "the right to notify a third person, the right to medical assistance, the right to challenge the lawfulness of detention, the right not to incriminate oneself, including the right to remain silent, and the right to complain and recourse for complaints about ill-treatment or conditions", Fair Trial Manual, 2014, p. 39.

<sup>79</sup> ICCPR, article 14(3)(a).

<sup>80</sup> *Ibid*, article 14(3)(f).

<sup>81</sup> CRC, article 40, para 2(b)(ii).

<sup>82</sup> *Ibid*, article 40, para 2(b)(vi).

<sup>83</sup> CRC Committee, GC No. 24, para. 47.

<sup>84</sup> CRC Committee, GC No. 24, para. 48.

<sup>85</sup> *Ibid*, para. 48.

effective participation requires that information be provided in a form allowing them to genuinely understand and engage with the process.

The Council of Europe calls on Member States to **provide information in a manner adapted to the child's age and maturity**, using language that is understandable, and sensitive to the child's gender and cultural background.<sup>86</sup> It further encourages the use of child-friendly materials, such as accessible brochures, websites, and helplines, to support children's understanding of legal proceedings.<sup>87</sup> The ECtHR has held that it is "*essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities,*" and that effective measures must be taken to promote the child's ability to understand and participate in the proceedings.<sup>88</sup> The Council of Europe also stresses the importance of procedural accommodations related to the right to information and advice on the availability of services such as health, psychological, social, interpretation and translation support.<sup>89</sup>

Ensuring **effective communication** is also an important means of promoting non-discriminatory treatment. According to CRC General Comment No. 24, proceedings must be conducted in a language the child fully understands, or an interpreter must be provided free of charge.<sup>90</sup> The General Comment further calls for reasonable accommodations for children with disabilities, such as assistance with communication and understanding written materials.<sup>91</sup>

The obligation to ensure child-friendly communication is echoed in EU Directive 2016/800, which requires that information be provided "*in writing, orally, or both, in simple and accessible language,*" taking into account the individual needs and capacities of each child.<sup>92</sup> In addition, Directive 2010/64/EU on interpretation and translation in criminal proceedings requires that suspects or accused persons who do not understand or speak the language of the proceedings must receive interpretation services promptly at all stages, including during police questioning, court hearings, and interim hearings.<sup>93</sup> This right extends to persons with hearing or speech impairment, thereby ensuring that communication is inclusive and accessible to all.<sup>94</sup>

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<sup>86</sup> Guidelines on child-friendly justice, 2010. Section IV. A. 1, 2.

<sup>87</sup> *Ibid*, sections IV, A, 1, 4.

<sup>88</sup> *V. v. the United Kingdom*, ECtHR, Application No. 24888/94, Judgment of 16 December 1999, para. 86. See also *T. v the United Kingdom*, ECtHR, Application No. 24724/ 94, Judgment of 16 December 1999, para. 84; *Blokhin v. Russia*, ECtHR, Application No. 47152/06, Grand Chamber Judgment of 23 March 2016, para. 195.

<sup>89</sup> Guidelines on child-friendly justice, section IV, A, 1(k).

<sup>90</sup> CRC Committee, GC No. 24, para. 46.

<sup>91</sup> *Ibid*, para. 24.

<sup>92</sup> Directive (EU) 2016/800, article 4(2).

<sup>93</sup> European Union, [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings](#), article 2(1).

<sup>94</sup> *Ibid*, article 2(3).

## 2.2. Rights violations and gaps in implementation

Despite clear international legal obligations, four of the six countries lack specific procedures for how to convey legal information to children, leaving the effectiveness of communication largely to the discretion of law enforcement officials and judicial actors.

In *Slovakia*, for example, there are no binding regulations on how to inform children who are suspects or accused persons in criminal proceedings of their rights, resulting in each investigator and judge adopting their own approach. When professionals opt for formalistic or overly technical language, children often struggle to express confusion or ask questions.<sup>95</sup> This is particularly concerning given that research shows that children are less likely to engage with adults who use formal and incomprehensible language.<sup>96</sup>

Similar concerns arise in *Poland*, where the Code of Criminal Procedure does not enshrine safeguards for ensuring that children have understood the information provided to them.<sup>97</sup> Further, a 2021 study in *Poland* found that, despite legal obligations to inform children of their rights,<sup>98</sup> law enforcement officers rarely adapt their explanations to the needs of children, using the same language and methods as with adults.<sup>99</sup> In particular, there is a notable lack of use of modern, child-appropriate forms of communication, especially those commonly used by children themselves. As a result, standard approaches such as providing a written notice of rights, even when drafted in plain language, are generally insufficient to ensure that children effectively understand the information conveyed. In *Belgium*, children receive the same formal summons documents as adults - official written notifications requiring their presence in court - which are standardized and not adapted to their age or specific needs.<sup>100</sup> The legal framework is also inadequate in *Bulgaria*, where, due to the absence of a formal "suspect" category, children are informed of their rights only when formally charged with a criminal offence.<sup>101</sup>

In other countries, a stronger legal framework exists, but implementation remains inconsistent. In *the Czech Republic*, although child-specific procedural adjustments are codified in law, they are frequently ignored in practice. Often, the need for specific procedural accommodations is neglected, resulting in children facing difficulties in understanding formal

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<sup>95</sup> ACCESS Baseline studies, p. 65.

<sup>96</sup> Janneke Christiaens, Professor of Criminology and Youth Penology, Vrije Universiteit Brussels at Transnational Exchange Roundtable in Brussels, 18-19 March 2025. ICJ. 2025. *EU: Advancing access to justice for children in criminal proceedings*. <https://www.icj.org/eu-advancing-access-to-justice-for-children-in-criminal-proceedings/>.

<sup>97</sup> ACCESS Baseline studies, p. 50.

<sup>98</sup> *Ibid.*

<sup>99</sup> M. Kalisz, M. Szuleka, M. Wolny, 2021. *Procedural safeguards for children who are suspects or accused persons in criminal proceedings*, Poland. [https://fra.europa.eu/sites/default/files/fra\\_uploads/pl\\_ccp-country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/pl_ccp-country_report.pdf), See also ACCESS Baseline studies, p. 51.

<sup>100</sup> Interview with INPP Specialist from the Brussels Police Zone. See also ACCESS Baseline studies, p. 15.

<sup>101</sup> ACCESS Baseline studies, p. 24.

legal language.<sup>102</sup> Child defendants in *the Czech Republic* have reported leaving legal proceedings confused and uncertain about their rights or next steps.<sup>103</sup>

The challenge of ensuring accessible information is further compounded for children from **marginalized groups, including those with disabilities, language barriers, or from disadvantaged socioeconomic backgrounds** (see *Chapter III, section 1.2*).

Inadequate training of justice professionals further undermines the child's right to be properly informed. In *Belgium*, for example, police officers often lack training in specialized child-interview techniques, such as the TAM method (a specialized methodology for interviewing minors),<sup>104</sup> and training programmes tend to focus more on legal standards than on communication strategies adapted to children.<sup>105</sup> However, the underlying reasons for this gap are not clearly established and may relate to limited training availability, a lack of institutional incentives, or insufficient interest among officers in pursuing this type of specialized training. In *Poland*, there are no legal provisions requiring officers involved in child proceedings to receive specialized training<sup>106</sup> and, as a result, knowledge of child-sensitive procedures varies.<sup>107</sup> Training for police officers in *the Netherlands* is also increasingly generalist due to staffing and capacity constraints, failing to respond to the need for child-specific expertise.<sup>108</sup>

### 2.3 Good practices

Despite the gaps in implementation, several promising practices, which aim to **enhance children's understanding of legal processes** and strengthen the capacity of professionals to communicate with children effectively, have emerged.

- In *Belgium*, the *Services Droit des Jeunes* (Youth Rights Services) offers a valuable model. This initiative provides free, confidential legal assistance to children and helps ensure that they understand their rights and procedural options.<sup>109</sup>
- In *the Netherlands* technology-based solutions have been integrated, including videos that explain criminal procedures in child-friendly formats, and mobile applications that allow police or legal professionals to connect quickly with interpreters, thereby, enhancing communication with non-native speakers.<sup>110</sup>

<sup>102</sup> ACCESS Baseline studies, pp. 29-30.

<sup>103</sup> 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. See also ACCESS Baseline studies, p. 30.

<sup>104</sup> De Bondt, W., Vercruyse, 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](https://fra.europa.eu/sites/default/files/fra_uploads/be_ccp-country_report.pdf), pp. 31-32. See also ACCESS Baseline studies, p. 17.

<sup>105</sup> ACCESS Baseline studies, p. 22.

<sup>106</sup> *Ibid*, p. 52.

<sup>107</sup> *Ibid*, p. 58.

<sup>108</sup> *Ibid*.

<sup>109</sup> <http://www.sdj.be/>. See also ACCESS Baseline studies, p. 22.

<sup>110</sup> From the discussions during the Online workshops with social workers and probation officers. Held on 28 April and 5 May 2025 (ACCESS Online workshops with social workers and probation officers, 28 April and 5 May 2025). ICJ.

Some countries have introduced **standardized templates to facilitate child-friendly communication**.

- For example, in *Poland* the Ministry of Justice has developed an annex to its regulations with a template for written communication with children.<sup>111</sup> These materials are well-regarded for their personal tone, clear and simple language, and effective use of pictograms and visual cues to highlight key information.<sup>112</sup>

In terms of **training and capacity-building to strengthen child-sensitive communication**, some countries are making noteworthy progress.

- In *Poland*, judicial apprenticeships now include a specialized component on child proceedings. Among other things, this module: (i) provides training on child-sensitive interview techniques; (ii) includes simulated hearings conducted with psychologists; and (iii) includes site visits to juvenile detention centres and shelters.<sup>113</sup> However, as noted in Section 2.2, the impact of this training is uneven across the judiciary, and further efforts are needed to ensure consistency in practice.<sup>114</sup>

### 3. Safeguards in relation to deprivation of liberty

#### 3.1. International and EU legal standards

##### 3.1.1. *Deprivation of liberty as a measure of last resort*

International, including regional, human rights law and standards unequivocally mandate that **the deprivation of a child's liberty must be used only as a measure of last resort<sup>115</sup> and for the shortest appropriate period of time.<sup>116</sup> The ICCPR guarantees the right to**

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2025. EU: *Better support structures for children in conflict with the law are needed*. <https://www.icj.org/eu-better-support-structures-for-children-in-conflict-with-the-law-are-needed/> .

<sup>111</sup> 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). See also ACCESS Baseline studies, p. 50.

<sup>112</sup> Helsinki Foundation for Human Rights, Opinion on the draft regulation determining the templates of written instructions on the rights and duties of the suspect, the victim, and the witness, <https://legislacja.rcl.gov.pl/docs//517/12387900/13073258/13073261/dokument678511.pdf>; see also ACCESS Baseline studies, p. 50.

<sup>113</sup> 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](https://www.kssip.gov.pl/sites/default/files/program_aplikacji_sedziowskiej_21.01.2020.pdf).

<sup>114</sup> ACCESS Baseline studies, p. 58.

<sup>115</sup> The deprivation of liberty means "any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority". [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#), GA Res 45/113, 14 December 1990, art. 11(b).

<sup>116</sup> CRC, article 37 (b); See also Guidelines on child-friendly justice, 2010: "any form of deprivation of liberty should be a measure of last resort and be for the shortest appropriate period of time." (Section 6 para. 19); Directive (EU) 2016/800, article 10: "Member States shall ensure that deprivation of liberty of a child at any stage of the proceedings is limited to the shortest appropriate period of time" and "Member States shall ensure that deprivation of liberty, in particular detention, shall be imposed on children only as a measure of last resort"; *Korneykova v. Ukraine*, ECtHR, Application No. 3988405, Judgment of 19 January 2012 section 43-44.

liberty and security of person, requiring that any deprivation of liberty must be lawful and non-arbitrary; it also guarantees that anyone arrested or detained on a criminal charge be brought promptly before a judge to avoid arbitrary detention.<sup>117</sup> The CRC Committee has recommended that no child be deprived of liberty, unless there are genuine public safety or public health concerns".<sup>118</sup> It further encourages States to set a minimum age below which children cannot be legally deprived of liberty, such as 16 years of age.<sup>119</sup> The Committee has also called on States to ensure that all persons under the age of 18 at the time of the offence are treated within the child justice system, without exceptions allowing for their treatment as adult offenders,<sup>120</sup> as such practices may expose children to harsher sentencing frameworks and, in practice, result in more frequent or prolonged use of detention.

When detention is deemed necessary, it must be applied for the shortest possible duration and in conditions that uphold the child's dignity and best interests. Any measure imposed must also be proportionate, both to the circumstances and gravity of the offence and to the needs of the child.<sup>121</sup> **Children must be held separately from adults**, in line with the CRC requirement that "*every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.*"<sup>122</sup> The CRC Committee has authoritatively held that States should establish dedicated facilities for children, staffed by appropriately trained personnel and operating according to child-friendly policies and practices.<sup>123</sup>

Beyond separation from adults, international standards also require differentiation within children deprived of liberty according to their legal status and specific needs. In particular, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has emphasized that children must be appropriately separated in detention, including between children awaiting trial and those who have been convicted, as well as along other relevant criteria such as age, gender, vulnerability, and disability.<sup>124</sup> The Special Rapporteur further underlined that children in conflict with the law should be held in specialized, child-appropriate facilities, offering non-prison-like environments, individualized accommodation, and care provided by trained personnel, with the "best interests" exception to separation from adults interpreted strictly and not for reasons of administrative convenience.<sup>125</sup>

According to the Council of Europe too, children should, as a rule, be detained separately from adults, and joint detention should occur only in exceptional cases and when demonstrably in the best interests of the child.<sup>126</sup> The jurisprudence of the ECtHR further confirms that children

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<sup>117</sup> ICCPR, article 9(3).

<sup>118</sup> CRC Committee, GC No 24, para. 89

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*, para. 30.

<sup>121</sup> Article 40(4) of the CRC and CRC Committee General Comment No. 24, paragraphs 73-74.

<sup>122</sup> CRC, article 37(c).

<sup>123</sup> CRC Committee, GC No 24, para. 92.

<sup>124</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, para. 76.

<sup>125</sup> *Ibid.*

<sup>126</sup> Guidelines on child-friendly justice, 2010. IV, Section 6, para 20.

in pre-trial detention must be kept apart from adults.<sup>127</sup> Similarly, EU Directive 2016/800 requires Member States to "*ensure that children who are detained are held separately from adults,*" unless separation would conflict with the child's best interests.<sup>128</sup>

Importantly, **youth detention facilities must be adapted to the specific developmental needs of children.** The CRC Committee stresses that detained children have the right to education suited to their needs and abilities, along with the right to health care and medical assessments.<sup>129</sup> The Council of Europe's Guidelines on child-friendly justice further provide that detained children must have access to appropriate education, vocational guidance, medical care, spiritual and religious practice, and recreational activities, including physical exercise and sport.<sup>130</sup> Girls must receive **equal levels of care, protection, assistance and access to activities**, including sport and recreation.<sup>131</sup> EU Directive 2016/800 also obliges Member States to provide services that ensure the physical and mental development of detained children, including access to education and training adapted to individual capacities and needs, particularly for children with disabilities or learning difficulties.<sup>132</sup>

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has emphasized that children in detention must be supported in maintaining **regular contact with their family**, including through visits, correspondence, and, where appropriate, temporary leave for family, educational or other important reasons.<sup>133</sup> Children should, as far as possible, be held in facilities close to their family environment, and contact with the outside world must never be restricted as a disciplinary measure.<sup>134</sup>

The CRC guarantees that every child deprived of liberty has the right to prompt access to legal and other appropriate assistance, and the right to challenge the legality of their detention before a competent, independent, and impartial authority, with a prompt decision.<sup>135</sup> To prevent arbitrary or prolonged deprivation of liberty, international standards require **periodic review of detention decisions.** The ICCPR guarantees the right of anyone deprived of liberty to challenge the lawfulness of their detention before a court without delay, and to obtain release if the detention is unlawful.<sup>136</sup>

The CRC Committee encourages the introduction of **automatic review mechanisms**, particularly in cases that may result in criminal records or long-term deprivation of liberty, whereby every child has the right to have any finding of guilt or sanction reviewed by a higher competent, independent and impartial authority without being required to initiate an

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<sup>127</sup> *Nart v. Turkey*, ECtHR, Application No. 20817/04, Judgment of 6 May 2008 para. 33, 35.

<sup>128</sup> Directive (EU) 2016/800, article 12(1).

<sup>129</sup> CRC Committee, GC No 24, paras. 95(c),(d).

<sup>130</sup> Guidelines on child-friendly justice, 2010. IV, Section 6, para. 21(b)

<sup>131</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, para. 78.

<sup>132</sup> Directive (EU) 2016/800, article 12(5).

<sup>133</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, para. 77.

<sup>134</sup> *Ibid.*

<sup>135</sup> CRC, article 37(d).

<sup>136</sup> ICCPR, article 9(4).

appeal.<sup>137</sup> EU Directive 2016/800 similarly requires that decisions to detain a child be reviewed at reasonable intervals, either *ex officio* or upon the request of the child, their lawyer, or a competent judicial authority.<sup>138</sup>

### 3.1.2. Diversion and alternatives to detention

International human rights law and standards strongly emphasize that **diversion from the criminal justice system and from detention should be the primary response to children in conflict with the law**. Diversion generally refers to measures that allow children to be dealt with without resorting to formal judicial proceedings, by channelling them towards appropriate community-based programmes, services or interventions.<sup>139</sup> In practice, this means avoiding or suspending criminal proceedings in favour of responses that support the child's development, responsibility and reintegration.<sup>140</sup>

According to General Comment No. 24 of the CRC Committee, "*diversion should be the preferred manner of dealing with children in the majority of cases.*"<sup>141</sup> States are encouraged to "*continually extend the range of offences for which diversion is possible, including serious offences where appropriate.*"<sup>142</sup> Similarly, the Council of Europe calls for "*alternatives to judicial proceedings such as mediation, diversion, and alternative dispute resolution*" to be promoted whenever these best serve the child's best interests.<sup>143</sup> EU Directive 2016/800 also requires that Member States ensure that competent authorities have recourse to "*measures alternative to detention wherever possible.*"<sup>144</sup>

Opportunities for diversion from the criminal justice system should be **made available from the earliest possible moment** after a child comes into contact with the justice system, and at all subsequent stages of proceedings.<sup>145</sup> Diversion should be framed not as punishment but as an opportunity: a way to suspend formal judicial processes, which may be fully terminated upon the satisfactory completion of a diversion programme.<sup>146</sup> Importantly, children must provide their free and informed consent, and must be afforded access to legal and other

<sup>137</sup> CRC Committee, GC No 24, para. 62.

<sup>138</sup> Directive (EU) 2016/800, article 10(2)

<sup>139</sup> CRC, article 40(3)(b).

<sup>140</sup> UNICEF, 2022. *Diversion of Children in Conflict with the Law from Formal Judicial Proceedings in Europe and Central Asia*.

<https://www.unicef.org/eca/media/27691/file/Five%20Advocacy%20Briefs%20on%20Child%20Justice%20&%20Child%20Friendly%20Justice:%20Diversion%20measures.pdf>, p. 2.

<sup>141</sup> CRC Committee, GC No 24, para. 16.

<sup>142</sup> *Ibid*, para. 16.

<sup>143</sup> Guidelines on child-friendly justice, 2010. IV, Section B, para. 24.

<sup>144</sup> Directive (EU) 2016/800, article 11.

<sup>145</sup> CRC Committee, GC No 24, para. 16.

<sup>146</sup> *Ibid*, para. 72. However, diversion may only be applied to children above the minimum age of criminal responsibility, as children below that age cannot be held criminally responsible and therefore cannot be diverted from proceedings that cannot legally be initiated. UNICEF, 2022. *Diversion of Children in Conflict with the Law from Formal Judicial Proceedings in Europe and Central Asia*.  
<https://www.unicef.org/eca/media/27691/file/Five%20Advocacy%20Briefs%20on%20Child%20Justice%20&%20Child%20Friendly%20Justice:%20Diversion%20measures.pdf>.

assistance to evaluate whether a proposed diversion measure is appropriate and in their best interests.<sup>147</sup>

### 3.2. Rights violations and gaps in implementation

Despite international human rights law and standards requiring that deprivation of liberty be used only as a measure of last resort, for the shortest appropriate period, subject to strict procedural safeguards and appropriate standards regarding conditions of detention all six reviewed States consistently fall short of these obligations.

#### ***Deprivation of liberty in the context of criminal proceedings***

The following concerns relate to the deprivation of liberty of children within the criminal justice system, whether as suspects held on remand or as persons convicted of criminal offences.

In *the Netherlands*, while children aged 12–17 may be sentenced to youth detention limited to one year for those aged 12–15 and two years for those aged 16–17, courts may also impose on children a PIJ measure (placement in a youth protection and custody institution) where a child is deemed to require intensive treatment, including in cases involving behavioural disorders or serious offences.<sup>148</sup> This measure entails deprivation of liberty for a minimum of three years and may be extended up to seven years. Importantly, upon request of the Public Prosecution Service, a PIJ measure may be converted into an adult treatment order (terbeschikkingstelling, TBS-maatregel) by placing children into a closed psychiatric treatment facility for adults in cases involving serious offences and individuals considered dangerous.<sup>149</sup> As this measure has no fixed maximum duration, it creates a risk that children may be subjected to very long, potentially indefinite, deprivation of liberty.<sup>150</sup>

More broadly, the practice of transferring children to adult courts or subjecting them to adult sentencing constitutes a further concern across several researched countries, as it runs counter to international child rights standards.<sup>151</sup> In *the Netherlands*, courts may apply adult sentencing to children aged 16–17 where justified by the gravity of the offence, the character of the offender, or the circumstances of the case.<sup>152</sup> This may expose children to significantly harsher sentencing, including a prison sentence of up to 30 years and adult psychiatric measures such as TBS.<sup>153</sup> Similarly, in *Belgium*, through the legal mechanism of “*dessaisissement*” (uithandengeving), minors aged 16 or older may be transferred to adult

<sup>147</sup> CRC Committee, [General Comment No. 12 \(2009\) on the right of the child to be heard](#), CRC/C/GC/12, 20 July 2009, para. 59.

<sup>148</sup> Government of the Netherlands. *Penalties for juvenile offenders*. <https://www.government.nl/topics/sentences-and-non-punitive-orders/penalties-juvenile-offenders> (Accessed 15 April 2026); Joost Richards, Sanne Hillege, Lieke van Domburgh. 2020. *De PIJ-maatregel*. <https://www.tijdschriftdepsycholoog.nl/wetenschap/de-pij-maatregel/>; ACCESS Baseline studies, p. 46.

<sup>149</sup> Article 77tc of the Dutch Criminal Code; ACCESS Baseline studies, p. 46.

<sup>150</sup> ACCESS Baseline studies, p. 46; Schmidt, E. P., Rap, S. E., and Liefwaard, T., “Young Adults in the Justice System: The Interplay between Scientific Insights, Legal Reform and Implementation in Practice in The Netherlands”, in *Youth Justice*, Volume 21(2), 2021, pp. 172-191, p. 181.

<sup>151</sup> CRC Committee, GC No 24, para. 30.

<sup>152</sup> Article 77b of the Dutch Criminal Code.

<sup>153</sup> ACCESS Baseline studies, p. 46.

criminal courts if they are accused of serious offences and if protective measures are deemed inadequate.<sup>154</sup> These frameworks create a risk that children may be subjected to adult sanctions and regimes, including prolonged deprivation of liberty, thereby undermining the child-specific safeguards that should apply in juvenile justice systems.

Another persistent concern across three jurisdictions is the failure to ensure separation of children from adults in detention. In *Poland*, children held in pre-trial detention are often not separated from adult detainees on remand.<sup>155</sup> In *the Netherlands*, children can be detained in the same facilities as adults, during police custody, immediately after arrest.<sup>156</sup> *The Czech Republic* lacks a legal prohibition against placing children alongside adults in psychiatric institutions.<sup>157</sup>

In *the Netherlands*, systemic staff shortages, high sickness absenteeism, and closures of youth justice institutions since 2021 have led to reduced supervision and guidance for young offenders, some of whom are confined to their cells instead of being able to participate in education, therapy, and reintegration activities.<sup>158</sup> Moreover, due to a shortage of placements in community-based alternatives, there is a risk that children in detention will not be granted leave in time, will miss out on the support they need to reintegrate into society, and will have to remain in a closed youth institution for longer than necessary.<sup>159</sup>

Budgetary and efficiency constraints often undermine a country's commitment to alternatives to detention. In *the Czech Republic*, although the Juvenile Justice Act formally incorporates restorative justice principles, restorative justice is rarely used in practice as an alternative to the detention of children.<sup>160</sup> Similarly, in *Belgium*, resource limitations and the lack of standardized individual assessments of children who are suspects or accused persons,<sup>161</sup>

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<sup>154</sup> Decree of the French Community of January 18, 2018, on the Code of Prevention, Youth Assistance, and Child Protection, article 125.

<sup>155</sup> ACCESS Baseline studies, p. 57.

<sup>156</sup> *Ibid*, p. 46.

<sup>157</sup> Office of the Public Defender of Rights, 2024. *Vulnerable Groups in Protective Treatment*, [https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ\\_ochrana\\_lecba\\_vyzkumna\\_zprava.pdf](https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ_ochrana_lecba_vyzkumna_zprava.pdf), pp. 5, 10.

<sup>158</sup> Inspectorate of Justice and Security, 2021. *Inspectorates call for swift solutions to problems in juvenile detention institutions (JJI's)*. <https://www.inspectie-jenv.nl/actueel/nieuws/2021/10/28/inspecties-dringen-aan-op-snelle-oplossing-voor-problemen-jjis>. See also ACCESS Baseline Studies p. 47.

<sup>159</sup> From discussions during the Online workshops for social worker and probation officers. Held on 28 April and 5 May 2025.

<sup>160</sup> Večerka, K., Hulmáková, J., Štěchová, M., 2019. *Juveniles in the Process of Disrupted Socialisation*. Prague: Institute for Criminology and Social Prevention, <https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf>, p. 58. In relation to children below the age of criminal responsibility, the low use of restorative techniques is mentioned by Hulmáková, J. et al., 2024. *Children under Fifteen in the Juvenile Justice System* Prague: Institute for Criminology and Social Prevention, <https://www.iksp.cz/deti-mladsi-patnacti-let-v-systemu-soudnictvi-ve-vecech-mladeze>, p. 33. 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. See also ACCESS Baseline studies, p. 31.

<sup>161</sup> Article 7 of Directive (EU) 2016/800 requires Member States to ensure that an individual assessment is carried out for each child who is a suspect or accused person in criminal proceedings, taking into account their personality, maturity, economic, social and family background, and any specific vulnerabilities, in order to determine appropriate measures and procedural safeguards. See also: ICJ. 2021. *Recommendations on the Main Principles Governing the Individual Assessment of Children in Conflict with the Law*. <https://www.ici.org/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf>

designed to guide prosecutorial and judicial decisions on appropriate measures, hinder the broader use of alternatives to detention, such as educational placements or mediation.<sup>162</sup> In *the Netherlands*, policy guidelines state that restorative interventions should be available for all youth cases.<sup>163</sup> However, in practice, victim-offender mediation and mediation in penal cases are applied only in a small number of cases.

Finally, a further systemic challenge lies in the unequal accessibility of diversionary measures, which disproportionately affects marginalized and economically disadvantaged groups. For example, in *Slovakia*, the General Prosecutor's Office has reported that a significant proportion of youth offences involve theft by children from economically vulnerable backgrounds.<sup>164</sup> These children often lack access to legal assistance, before they are formally charged, and are disproportionately subjected to custodial measures, with few effective alternatives available.<sup>165</sup> The limited use of diversion not only perpetuates inequality but also contributes to the overrepresentation of vulnerable children in detention settings.

### ***De facto deprivation of liberty outside criminal proceedings***

In several of the countries reviewed, children suspected or accused of criminal offences may be channelled into non-criminal pathways - including family law measures, protective measures, and educational or institutional placements - that result in *de facto* deprivation of liberty without the procedural safeguards that criminal proceedings would afford.

A recurring concern across countries is that children in conflict with the law may be sent to institutions formally labelled as educational or correctional in nature where their stay often amounts to *de facto* deprivation of liberty.<sup>166</sup> Such placements typically involve comparable levels of restrictions on movement, surveillance, and isolation from family and society, imposed under the guise of family law and protective measures.<sup>167</sup>

One of the key contributing factors is the overlap between family law and criminal law frameworks, as observed in countries such as the *Czech Republic and Slovakia*. The core issue lies in the use of family law measures as quasi-criminal tools, thereby circumventing the procedural safeguards that would otherwise be guaranteed under criminal law and

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<sup>162</sup> ACCESS Baseline studies, p. 20; De Bondt, W., Vercruysse, L., 2021. *Procedural Safeguards for Children Who Are Suspects or Accused Persons in Criminal Proceedings: Belgium*. Social Fieldwork Research (FRANET), [https://fra.europa.eu/sites/default/files/fra\\_uploads/be\\_ccp-country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/be_ccp-country_report.pdf), pp. 53-55.

<sup>163</sup> Dutch Government, 2019. *Policy Framework for Restorative Justice Facilities during Criminal Proceedings* (Beleidskader herstelrechtvoorzieningen gedurende het strafproces), Parliamentary Papers II 2018/19, 43775 VI, no. 115.

<sup>164</sup> ACCESS Baseline studies, p. 66.

<sup>165</sup> *Ibid*, p. 66.

<sup>166</sup> *Ibid*, pp. 7,10.

<sup>167</sup> Welfare sanctions are: "legal coercive measures applied against the individual not for the purpose of their punishment but with the aim to correct their abnormalities". David Garland, "The Birth of the Welfare Sanction", in *British Journal of Law and Society*, Volume 8(1), 1981, pp. 29-45, 40. "Typical examples of welfare sanctions are the placement of a child in various types of institutions other than prison (educational, social care, or health care), where the stay is not thematised as punishment but as protection, either of the child or of society." Anna Sležková, "Making assessment truly individual: the importance of the philosophical concept of objectification of man for the interpretation of the right of children in conflict with the law to individual assessment", in *EJLS*, Volume 16(2), 2025, pp. 27-76, fn. 80.

undermining children's fair trial rights.<sup>168</sup> This is especially the case for children below the criminal age of responsibility (*see Chapter III, section 2*).

In the *Czech Republic* and *Slovakia*, for example, children are frequently placed in closed or semi-closed educational facilities under family law measures, often prioritised over non-custodial or community-based alternatives.<sup>169</sup> In the *Czech Republic*, a child's suspected or alleged violation of criminal law is often simultaneously perceived as a behavioural issue, and addressed through family law measures leading to placement in institutional care.<sup>170</sup> These placements may occur in the same types of facilities used for children in conflict with the law,<sup>171</sup> including closed residential educational institutions with strict regimes and rigid schedules.<sup>172</sup> These placements disproportionately affect structurally disadvantaged children, those facing poverty, social exclusion, or psychosocial disabilities,<sup>173</sup> while children from more stable families are more likely to benefit from community-based alternatives.<sup>174</sup>

In *Slovakia*, children may also be placed in re-education centres through civil law mechanisms, such as interim measures,<sup>175</sup> education measure,<sup>176</sup> or institutional care,<sup>177</sup> sometimes based merely on suspicion rather than proven criminal conduct.<sup>178</sup> Although the law provides for a review of placement decisions every six months,<sup>179</sup> these reviews are often superficial.<sup>180</sup> In practice, once placed, children may remain in these institutions until they reach adulthood or the age of 19,<sup>181</sup> which in some cases is even longer than the maximum custodial sentence permitted for the underlying offence which triggered their placement in the first place.<sup>182</sup> The situation in the *Czech Republic* is largely similar: while the institutions are referred to as "children's homes with schools" or "closed educational institutions," they serve an equivalent

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<sup>168</sup> ACCESS Baseline studies, pp. 6-7.

<sup>169</sup> *Ibid*, p. 10.

<sup>170</sup> *Ibid*, pp. 35-36.

<sup>171</sup> *Ibid*, p. 36.

<sup>172</sup> *Ibid*, p. 30.

<sup>173</sup> This reflects a tendency to interpret children's unlawful behaviour as stemming from deficiencies in their social environment, particularly where they are perceived to come from "dysfunctional" families, which is even the legal condition for ordering those measures. In practice, children already facing structural disadvantages, such as poverty, social exclusion, discrimination (including many Romani children), or educational difficulties, are more likely to be considered beyond parental control, with such factors often treated as the decisive trigger for removal from the family and placement in institutional care. ACCESS Baseline studies, pp. 35-36.

<sup>174</sup> From discussions during the Online workshop for judges. Held on 14 and 21 May 2025.

<sup>175</sup> Act No. 161/2015 Coll., the Code of Non-Dispute Procedure, section 367.

<sup>176</sup> Act No. 36/2005 Coll., on Family, section 37 (3).

<sup>177</sup> Act No. 36/2005 Coll., on Family, section 54.

<sup>178</sup> ACCESS Baseline studies, p. 67.

<sup>179</sup> 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.

<sup>180</sup> 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. General Prosecutor's Office of the Slovak Republic, 2024. *Assessment of the State of Legality in Re-education Centres*, The report is available in Slovak at: <https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratura-sr-pre-zistenia-o-zavaznom-porusovani-pravdeti-v-reedukacnych-centrach-zvolava-generalny-prokurator-sr-multilateralne-pracovne-stretnutie/>, p. 7.

<sup>181</sup> An extension until 19 is possible for protective upbringing pursuant to the Criminal Code, section 103 (2).

<sup>182</sup> ACCESS Baseline studies, p. 68.

function and raise comparable concerns regarding prolonged and inadequately reviewed deprivation of liberty.

The use of deprivation of liberty in the *Czech Republic* raises particular concerns in relation to children subjected to so-called protective measures, including “protective treatment,”<sup>183</sup> which may involve placement in psychiatric hospitals. These measures are particularly concerning for children with mental and/or psychosocial disabilities. Such placements may be ordered not only for serious offences but for minor acts such as theft, hooliganism, or property damage.<sup>184</sup>

While the law in *the Czech Republic* limits the duration of imprisonment for juveniles<sup>185</sup>, generally to half of the sentence that could be imposed by a court on adults, and not exceeding five years, or ten years in exceptional cases, “protective treatment” measures often lack clear statutory time limits.<sup>186</sup> Such indefinite or open-ended measures, or those without a clearly defined maximum duration, are incompatible with the right to liberty and with the requirement that detention be imposed only for the shortest appropriate period of time.<sup>187</sup>

Further, educational, physical, and psychological development of children deprived of liberty whether under criminal justice measures or placements ordered under family or protective frameworks is often inadequately supported. In *Slovakia*, serious concerns have been raised about the compliance with legal standards and the overall conditions in re-education centres, which have been described as inhumane, and where there have been reports of sexual abuse against children.<sup>188</sup> In *the Czech Republic*, similar concerns arise in cases where children in conflict with the law are placed in psychiatric hospitals under “protective treatment”. In such settings, access to education is often not ensured,<sup>189</sup> and children may be unnecessarily isolated, with restricted contact with their peers.<sup>190</sup>

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<sup>183</sup> Section 99 of the Criminal Code; “Protective treatment is imposed by the court as an outpatient measure, or is served as an inpatient measure in a healthcare facility. It may also be served in prison if it has been imposed by the court together with a prison sentence.” CPT. 2025. [Report to the Czech Government on the visit to Czechia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 16 to 26 April 2024](#), CPT/Inf (2025) 1, fn. 43.

<sup>184</sup> Office of the Public Defender of Rights, 2024. *Vulnerable Groups of People in Protective Treatment*. Brno: Office of the Public Defender of Rights, [https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ\\_ochrana\\_lecba\\_vyzkumna\\_zprava.pdf](https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ_ochrana_lecba_vyzkumna_zprava.pdf), p. 7. See also ACCESS Baseline studies, p. 41.

<sup>185</sup> “A juvenile means a person who has reached the age of 15 by the time they committed a criminal offence (referred to as a ‘transgression’ [provinění] in the case of juveniles) but is not yet 18”. European justice. 2024. *Rights of minors in court proceedings: Czechia*. [https://e-justice.europa.eu/topics/your-rights/rights-minors-court-proceedings/cz\\_en](https://e-justice.europa.eu/topics/your-rights/rights-minors-court-proceedings/cz_en).

<sup>186</sup> From discussions during the Online workshop for judges. Held on 14 and 21 May 2025.

<sup>187</sup> CRC, article 37(b).

<sup>188</sup> General Prosecutor’s Office of the Slovak Republic, 2024. *Assessment of the State of Legality in Re-education Centres*, <https://www.genpro.gov.sk/informacie/spravy/detail/generalna-prokuratúra-sr-pre-zistenia-o-zavaznom-porusovani-prav-deti-v-reedukacnych-centrach-zvolava-generalny-prokurátor-sr-multilaterálne-pracovné-stretnutie/>. See also ACCESS Baseline Studies p. 68.

<sup>189</sup> Office of the Public Defender of Rights, 2019. *Protective Treatment, Coercive Measures and Other Issues: Report from Systematic Visits*, p. 30. See also ACCESS Baseline page 40.

<sup>190</sup> Páv, M., Švarc, J., 2018. *Current State and Recommendations for the Further Development of the Network of Protective Treatment*. Prague: Ministry of Health, 2018, [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](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)

In *Bulgaria*, children below the age of criminal responsibility (under 14) cannot be prosecuted or punished under criminal law. Nevertheless, when such children are alleged to have engaged in acts that would constitute a criminal offence if committed by an older person, they may still be subjected to proceedings that resemble criminal processes. These proceedings are carried out under the Act on Combating Juvenile Delinquency, rather than the Criminal Code, and can lead a court to order the child's placement in social-educational or correctional boarding schools.<sup>191</sup> The children and their legal guardians do not have the possibility to address a request to the court to review their placement to those schools where they are deprived of their liberty. This practice appears incompatible with *habeas corpus* guarantees under ICCPR Article 9.4 and ECHR Article 5.4 as well as CRC Article 37(d).

### 3.3. Good practices

Some countries have taken important steps to align national practices with international safeguards and reduce the harmful impact of deprivation of liberty on children. Several jurisdictions have developed structured approaches to ensure that deprivation of liberty is used only as a measure of last resort.

#### Alternatives to detention

- In *Belgium*, national laws codify that detention in the context of criminal proceedings against children can only be used as a last resort for the shortest possible duration,<sup>192</sup> and that deprivation of liberty must be preceded by systematic consideration of alternative measures, including restorative, educational or supervisory in nature (such as professional support, conditional stays within the family, or placements in non-custodial residential settings).<sup>193</sup>
- In *the Netherlands*, within criminal proceedings, children may be released from pretrial detention subject to specific conditions. These conditions may include participation in

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[%C3%ADmu%20rozvoji%20s%C3%ADt%C4%9B%20ochrann%C3%A9ho%20l%C3%A9C4%8Den%C3%AD%2C%20anal%C3%BDza.pdf](#), pp. 28–29. ACCESS Baseline studies, p. 41.

<sup>191</sup> From discussions during the Online workshop for judges. Held on 14 and 21 May 2025; ACCESS Baseline studies, p. 27.

<sup>192</sup> 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 behaviour 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.

<sup>193</sup> Defence for Children International Belgium, 2015. *A practical guide for lawyers representing children in conflict with the law*. [https://lchild.eu/wp-content/uploads/2016/05/Guide\\_Avocats\\_FR-web.pdf](https://lchild.eu/wp-content/uploads/2016/05/Guide_Avocats_FR-web.pdf), p. 54, 97-98. See also ACCESS Baseline studies, p. 21.

counselling, mandatory reporting, restrictions on certain areas or substances, and requirements to attend school or maintain a structured daily routine.<sup>194</sup>

- In *Bulgaria*, authorities apply measures alternative to detention wherever possible. These may include parental or guardian supervision, supervision by school administration, supervision by staff at the correctional school where 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.<sup>195</sup>
- In *the Czech Republic*, the Probation and Mediation Service has piloted and promotes the use of family group conferences, which bring together the child, family, and other parties to discuss and identify constructive solutions adapted to the child’s needs.<sup>196</sup> While not formally regulated and sometimes requiring prosecutorial approval, their outcomes may inform court or prosecutor decisions, including on alternatives to detention.

### Child-sensitive detention conditions

- Even where deprivation of liberty becomes necessary, certain countries have taken meaningful steps to reduce its harm and align practice with child rights standards. In *the Netherlands*, children who would otherwise be placed in pretrial detention may instead remain at home, with a foster family, or be detained in small-scale youth justice facilities.<sup>197</sup> These small-scale facilities, of which there are currently only five nationwide, are typically located closer to the child's home and are designed to allow continued school attendance and the preservation of private and family life.<sup>198</sup>
- A key safeguard is the **strict separation of children from adults** in detention to protect their safety and well-being. In *the Czech Republic*, children must be kept separate from adults in custody, including both pre-trial detention (remand) and post-conviction detention, even beyond the age of 18 when justified by their circumstances and the best interests of all juveniles involved.<sup>199</sup>
- In *Belgium*, strict separation between children and adults is enforced at all stages of the process; even when a child’s case is referred to an adult court, they remain in a dedicated youth facility until the age of 18, after which they may be transferred to the adult system.<sup>200</sup>

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<sup>194</sup> Dutch Code of Criminal Procedure, article 493(1) (article 493 lid 1 Sv); Decree on the Implementation of Criminal Law Decisions (Besluit tenuitvoerlegging strafrechtelijke beslissingen), article 2.6. See also ACCESS Baseline studies, p. 45.

<sup>195</sup> ACCESS Baseline studies, p. 26.

<sup>196</sup> From discussions during the Online workshop for judges. Held on 14 and 21 May 2025.

<sup>197</sup> Dutch Code of Criminal Procedure, Article 493(3) (Article 493 lid 3 Sv). See also ACCESS Baseline studies, p. 45.

<sup>198</sup> ACCESS Baseline studies, p. 46.

<sup>199</sup> Act No. 293/1993 Coll., on pretrial detention, section 26 (1); Act No. 218/2003 Coll., the Juvenile Justice Act, section 79(1). See also ACCESS Baseline studies, p. 28.

<sup>200</sup> De Bondt, W., Vercruyssen, L., 2021. *Procedural Safeguards for Children Who Are Suspects or Accused Persons in Criminal Proceedings: Belgium*. Social Fieldwork Research (FRANET), [https://fra.europa.eu/sites/default/files/fra\\_uploads/be\\_ccp-country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/be_ccp-country_report.pdf), p. 63. 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,

Beyond separation from adults, several jurisdictions have taken additional steps to **support the development and well-being of detained children**. The following examples illustrate good practices in ensuring adequate conditions and support within detention settings, albeit they do not imply that detention should ever be preferable where non-custodial or community-based alternatives could be applied.

- In *Belgium*, children deprived of liberty, within the criminal justice system, are placed in Public Youth Protection Institutions (IPPJ), where they have greater access to education, healthcare, continued contact with their family, and freedom of religion.<sup>201</sup>
- In *Poland*, juvenile detention centres are equipped with recreational spaces, libraries, and audio-visual tools, and staff are trained to understand the psychological needs of children in custody.<sup>202</sup>

**Oversight and accountability** mechanisms play a critical role in protecting children in detention.

- In *Slovakia*, recent legislative reforms have granted the Ombudsperson the authority to monitor prisons and other places where children may be deprived of their liberty, helping to ensure humane treatment and transparency in practice.<sup>203</sup>

## Expungement of Criminal Records

Minimizing long-term harm to children in conflict with the law is strongly emphasized in international child rights standards. This goes beyond diverting children from detention and formal criminal proceedings to include careful management of their criminal records after contact with the justice system.

The CRC Committee recommends that States "*introduce rules permitting the removal of children's criminal records upon reaching the age of 18, either automatically or, in exceptional cases, following independent review.*"<sup>204</sup> Similarly, the Council of Europe emphasizes that, to support reintegration, children's criminal records should be kept

<https://lchild.eu/wp-content/uploads/2016/05/RAPPORT-MLMR-COMPLET.pdf>, p. 55. See also ACCESS Baseline studies, p. 21.

<sup>201</sup> Defence for Children International Belgium, 2015. *A practical guide for lawyers representing children in conflict with the law*. [https://lchild.eu/wp-content/uploads/2016/05/Guide\\_Avocats\\_FR-web.pdf](https://lchild.eu/wp-content/uploads/2016/05/Guide_Avocats_FR-web.pdf), pp. 55, 97-98. De Schutter, O., Ringelheim, J., Dhetz, N., Van Keirsbilck, B. (eds.), 2015. *Education of Children Deprived of Liberty: They Also Have a Right to Education Behind Bars*. Educational Tool No. 5. [https://www.brudoc.be/opac\\_css/doc\\_num.php?explnum\\_id=1434](https://www.brudoc.be/opac_css/doc_num.php?explnum_id=1434). See also ACCESS Baseline studies, p. 21.

<sup>202</sup> 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). See also ACCESS Baseline studies, p. 56.

<sup>203</sup> Act 110/2023 Coll. Amending Act No. 564/2001 on the Public Defender of Rights, as amended, and amending certain other acts. See also <https://www.ohchr.org/en/treaty-bodies/spt/information-national-preventive-mechanisms>; Act No. 176/2015 Coll., on the Commissioner for Children and the Commissioner for Persons with Disabilities, Section 4(1)(b)(2) in connection with Section 4(2)(h)).

<sup>204</sup> CRC Committee, GC No 24, para. 71.

confidential and non-disclosable outside the justice system once they reach adulthood.<sup>205</sup> Disclosure should only be allowed in exceptional circumstances, such as serious offences, public safety concerns, or situations involving work with children.<sup>206</sup> Importantly, diversion should never result in a criminal record. While confidential records of diversion measures may be retained for administrative or research purposes, the CRC Committee stresses that these must not be treated as convictions or used to create a criminal record.<sup>207</sup> Confidentiality is essential: access to such records should be strictly limited to actors directly involved in the proceedings.<sup>208</sup>

While most of the six reviewed countries have systems to delete children's criminal records after a defined period, challenges remain around consistency and transparency. In some jurisdictions, records may still appear during job applications, sometimes limited to sensitive positions but in others more broadly accessible.

Some countries have developed good practices in this area: diversion in *Belgium* and *the Netherlands* typically leaves no criminal record, and detention in *Polish* juvenile correctional facilities similarly does not result in a criminal record. In *Belgium*, children may petition a judge to remove their records after turning 18, provided five years have passed since the completion of the conviction or sentence that led the record. *Bulgaria* frames rehabilitation as a right: where a child serves their sentence and remains offence-free for two years, the record is automatically removed. In *the Netherlands*, children accused of minor offences can be diverted from the criminal justice system and, if the child does not reoffend, then those minor offences are cleared from the record. On the other hand, criminal records for severe crime and sex offences can be kept indefinitely.

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<sup>205</sup> Guidelines on child-friendly justice, 2010. IV, Section 2 para. 83.

<sup>206</sup> *Ibid*, IV, Section 2 para. 83.

<sup>207</sup> CRC Committee, GC No 24, para. 18 (f).

<sup>208</sup> CRC Committee, GC No 24, para. 67. See also CRC Committee, GC No 10, para 66: "Furthermore, the right to privacy also means that the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender (see the Beijing Rules, rules 21.1 and 21.2), or to enhance such future sentencing."

### III. Common challenges to children's exercise of their rights

#### 1. Discriminatory practices affecting the exercise of procedural rights

##### 1.1. International and EU legal standards

The **principle of non-discrimination** is enshrined in several foundational international and regional human rights instruments, serving as a cornerstone of fair and equal treatment in all legal proceedings, including those involving children. The ICCPR requires States to guarantee rights to all individuals without distinction based on race, sex, language, religion, or other status,<sup>209</sup> ensuring equality before the law and equal protection of the law against discrimination.<sup>210</sup> At the regional level, instruments such as the EU Charter provide a broader set of prohibited grounds: "*any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*"<sup>211</sup>

The CRC requires States Parties to ensure that all children enjoy their rights under the Convention "*without discrimination of any kind*" and to take "*all appropriate measures*" to protect them from such discrimination.<sup>212</sup> Additionally, the CRC obliges States to treat every child accused of an offence "*in a manner consistent with the promotion of the child's sense of dignity and worth.*"<sup>213</sup> The Convention on the Rights of Persons with Disabilities (CRPD) underscores the importance of reasonable accommodations to promote equality and eliminate discrimination, clarifying that measures necessary to achieve *de facto* equality should not be considered discriminatory.<sup>214</sup>

Similarly, the Council of Europe requires that children's rights be protected "*without discrimination on any grounds,*" including but not limited to sex, ethnic origin, socio-economic background, disability, migration status, or association with a minority group.<sup>215</sup> EU Directive 2016/800 reinforces this obligation by requiring Member States to ensure that children are "*always treated in a manner which protects their dignity.*"<sup>216</sup>

Systemic discrimination, however, is often a concern in respect of children purportedly in conflict with the law. It is often pervasive and deeply embedded in social structures, laws, and institutional practices, creating persistent disadvantages for certain groups while privileging

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<sup>209</sup> ICCPR, article 2.

<sup>210</sup> ICCPR, article 26.

<sup>211</sup> European Union, [Charter of Fundamental Rights of the European Union](#), OJ C 326/391, 26 October 2012.

<sup>212</sup> CRC, article 2(1).

<sup>213</sup> CRC, article 40(1).

<sup>214</sup> United Nations [Convention on the Rights of Persons with Disabilities \(CRPD\)](#), adopted 12 December 2006, Sixty-first session of the General Assembly by resolution A/RES/61/106, article 5.

<sup>215</sup> Guidelines on child-friendly justice, 2010. IV, Section D para. 1.

<sup>216</sup> EU Directive 2016/ 800, article 13(2).

others.<sup>217</sup> The UN CRC has emphasized that the right to non-discrimination under the CRC requires not only the prohibition of unequal treatment, but also proactive measures to ensure that all children can enjoy their rights in practice.<sup>218</sup> This entails taking positive steps to address substantive inequalities and to reform the structural and cultural conditions that perpetuate exclusion.<sup>219</sup>

The Council of Europe acknowledges that in certain cases, **affirmative measures may be necessary** to ensure genuine equality. It urges States to provide tailored protection and support for particularly vulnerable children, including migrants, unaccompanied minors, children with disabilities, Roma children, and those living in institutions or on the street.<sup>220</sup>

Finally, preventing discrimination also requires **culturally sensitive, multidisciplinary training** for all professionals involved in child justice. The CRC Committee highlights the need for training grounded in knowledge of child development, the causes of youth offending, the specific vulnerabilities of marginalized groups, and the use of alternatives to detention.<sup>221</sup>

## 1.2. Rights violations and gaps in implementation

Despite clear legal standards, children in conflict with the law across the six examined EU countries continue to face discriminatory treatment in criminal proceedings. These disparities stem from multiple, interrelated factors, including language and communication barriers, inadequate training of professionals, flawed individual assessments, such as insufficient evaluation of the child's age, maturity, mental health, vulnerability, and social background, and systemic biases related to socioeconomic status, disability, and minority background.

One major barrier is the lack of effective communication responsive to children's linguistic, cultural, or cognitive needs. In *Slovakia*, children whose primary language is Romani or Hungarian, often receive procedural information that is not adapted to their language or background.<sup>222</sup> In *Belgium*, interpreters are not reliably available for children who do not speak one of the national languages, and those who are available may lack training in child-friendly communication.<sup>223</sup> In *the Czech Republic*, the needs of children with intellectual or psychosocial disabilities are often overlooked — criminal justice professionals tend to communicate with these children only when obtaining testimony, reducing their participation to interrogation rather than enabling active involvement in proceedings.<sup>224</sup>

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<sup>217</sup> Committee on Economic, Social and Cultural Rights, [General Comment No. 20 on non-discrimination in economic, social and cultural rights](#), E/C.12/GC/20 (2 July 2009), para. 12.

<sup>218</sup> CRC Committee, [General Comment No. 21 \(2017\) on the rights of children in street situations](#), CRC/C/GC/21, 20 June 2017, para. 26.

<sup>219</sup> *Ibid.*

<sup>220</sup> Guidelines on child-friendly justice, 2010. IV, Section D, para. 2.

<sup>221</sup> CRC Committee, GC No 24, para. 112.

<sup>222</sup> ACCESS Baseline studies, pp. 5, 65.

<sup>223</sup> De Bondt, W., Vercruyssen, L., 2021. Procedural Safeguards for Children Who Are Suspects or Accused Persons in Criminal Proceedings: Belgium. Social Fieldwork Research (FRANET), [https://fra.europa.eu/sites/default/files/fra\\_uploads/be\\_ccp-country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/be_ccp-country_report.pdf), pp. 54-55. See also ACCESS Baseline studies, p. 22.

<sup>224</sup> ACCESS Baseline studies, p. 39.

A key driver of such failures is the lack of structured, mandatory training for professionals working with children in the justice system. While certain training courses exist, typically covering basic communication or child psychology, they are often optional and left to the individual motivation of professionals, with few institutional incentives to ensure participation. As a result, critical areas such as disability rights, cultural sensitivity, and non-discrimination are inadequately addressed. For example, in *Belgium*, although judges and prosecutors are required to complete training through the Judicial Training Institute, the curriculum lacks substantive content on intercultural awareness and diversity.<sup>225</sup> Factors such as culture, religion, socioeconomic precarity, and limited language proficiency are often underestimated as sources of vulnerability.<sup>226</sup> As a result, the needs of LGBTQ+ children, children with disabilities, and children from cultural or linguistic minorities are insufficiently addressed. In *Poland*, similarly, training for both bar and judicial apprenticeships do not include dedicated courses on working with children from marginalized groups.<sup>227</sup>

These shortcomings are further reflected in the way individual assessments are conducted.<sup>228</sup> In both *Slovakia* and *the Czech Republic*, children's economic, social, and family backgrounds are frequently framed as individual shortcomings rather than structural disadvantages.<sup>229</sup> In *Slovakia*, assessments are narrowly focused on expert diagnoses, while broader systemic factors such as poverty or social exclusion are reinterpreted as individual risk indicators.<sup>230</sup> Similarly, in *the Czech Republic*, these structural challenges are used to justify coercive interventions rather than being treated as social conditions requiring support.<sup>231</sup> Academic difficulties and school failure are frequently viewed in isolation from key factors like housing instability or discrimination, further skewing assessments.<sup>232</sup> In *Belgium*, a legal provision allows the scope and precision of assessments to be reduced "based on the circumstances of

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<sup>225</sup> Defence for Children International Belgium, 2018. *My Lawyer, My Rights - Enhancing children's rights in criminal proceedings in the EU - Le rôle de l'avocat du mineur dans les procédures protectionnelles et pénales en Belgique*. Rapport national Belgique. <https://lchild.eu/wp-content/uploads/2016/05/RAPPORT-MLMR-COMPLET.pdf>, p. 55. See also ACCESS Baseline studies, p. 22.

<sup>226</sup> De Bondt, W., Vercruyssen, L., 2021. Procedural Safeguards for Children Who Are Suspects or Accused Persons in Criminal Proceedings: Belgium. Social Fieldwork Research (FRANET), [https://fra.europa.eu/sites/default/files/fra\\_uploads/be\\_ccp-country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/be_ccp-country_report.pdf), pp. 54-55. See also ACCESS Baseline studies, pp. 6, 22.

<sup>227</sup> ACCESS Baseline studies, p. 58.

<sup>228</sup> Article 7 of Directive (EU) 2016/800 requires Member States to ensure that an individual assessment is carried out for each child who is a suspect or accused person in criminal proceedings, taking into account their personality, maturity, economic, social and family background, and any specific vulnerabilities, in order to determine appropriate measures and procedural safeguards. See also: ICJ. 2021. *Recommendations on the Main Principles Governing the Individual Assessment of Children in Conflict with the Law*. <https://www.icj.org/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf>.

<sup>229</sup> ACCESS Baseline studies, p. 7.

<sup>230</sup> *Ibid*, p. 12.

<sup>231</sup> *Ibid*, p. 35.

<sup>232</sup> Večerka, K., Hulmáková, J., Štěchová, M., 2019. *Juveniles in the Process of Disrupted Socialisation*. Prague: Institute for Criminology and Social Prevention, <https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf>, pp. 71-72. See also ACCESS Baseline studies, p. 35.

the case,<sup>233</sup> which often undermines the right of children with language or cultural barriers to receive a full and meaningful evaluation.<sup>234</sup>

Discrimination also manifests in the initial stages of criminal proceedings, particularly during police contact, suspicion, registration as a suspect, and pre-trial measures, often along socioeconomic lines. In *the Netherlands*, police and justice policies targeting so-called “vulnerable neighbourhoods” have resulted in disproportionate registration of children as criminal suspects and higher rates of pre-trial detention among children from low-income, migrant, and minority backgrounds.<sup>235</sup> Over half of all child suspects live in just ten per cent of these neighbourhoods, and nearly fifteen per cent live in just one per cent of them.<sup>236</sup> Policies such as the Top600 approach in Amsterdam, a targeted intervention focusing on individuals identified as high-risk repeat offenders based on police and municipal data,<sup>237</sup> is often compared to predictive policing. While intended to reduce recidivism, evaluations have questioned their effectiveness, and they continue to disproportionately affect certain demographic groups.<sup>238</sup>

Similar patterns are evident in *the Czech Republic*, where Roma children are more likely to be removed from their families upon suspicion of a crime.<sup>239</sup> In *Slovakia*, much of the recorded youth crime in the region, particularly property offences such as theft, is closely linked to economic deprivation, yet State responses tend to prioritise punitive measures rather than addressing root causes.<sup>240</sup>

Children with disabilities face some of the most severe forms of discrimination. In *the Czech Republic*, there is a direct correlation between psychosocial or intellectual disabilities and the

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<sup>233</sup> Article 50 section 2 of the Law of 8 April 1965. See also ACCESS Baseline studies, p. 20.

Defence for Children International Belgium, 2015. *A practical guide for lawyers representing children in conflict with the law*. [https://lachild.eu/wp-content/uploads/2016/05/Guide\\_Avocats\\_FR-web.pdf](https://lachild.eu/wp-content/uploads/2016/05/Guide_Avocats_FR-web.pdf), pp. 63-69. See also ACCESS Baseline studies, p. 20.

<sup>235</sup> 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). ACCESS Baseline studies, pp. 47-48.

<sup>236</sup> ACCESS Baseline studies, p. 47.

<sup>237</sup> PILP. *Top400 a top-down crime prevention strategy in Amsterdam*. [https://pilp.nu/wp-content/uploads/2023/10/Top400\\_topdown-crime-prevention-Amsterdam.def\\_.pdf](https://pilp.nu/wp-content/uploads/2023/10/Top400_topdown-crime-prevention-Amsterdam.def_.pdf), p. 10. See also ACCESS Baseline page 48.

<sup>238</sup> Scientific research and data centre. 2023. *No indications that the Top600 approach leads to less recidivism*. <https://www.wodc.nl/actueel/nieuws/2023/11/16/geen-aanwijzingen-dat-top600-aanpak-leidt-tot-minder-recidive>. See also ACCESS Baseline studies, p. 48.

<sup>239</sup> ACCESS Baseline studies, pp. 5, 38.

<sup>240</sup> Theft accounts for 38.4% of total juvenile crime. The General Prosecutor’s Office has noted that such offences frequently involve children from economically disadvantaged backgrounds, although precise data on the correlation between poverty and offending are not available. General Prosecutor’s Office of the Slovak Republic, 2024. *Report of the Prosecutor General of the Slovak Republic on the Activities of the Prosecution Service and Findings on the State of Legality in the Slovak Republic for 2023*, [https://www.genpro.gov.sk/fileadmin/Sprava\\_o\\_cinnosti/2023/vlastny\\_material.pdf](https://www.genpro.gov.sk/fileadmin/Sprava_o_cinnosti/2023/vlastny_material.pdf), p. 51. See also ACCESS Baseline studies, p. 6.

imposition of coercive measures.<sup>241</sup> In *Slovakia*, safeguards against deprivation of liberty are particularly weak for children with disabilities:<sup>242</sup> psychiatric institutionalization is permitted as a pre-trial (interim) measure even if the child does not pose an immediate danger to themselves or their surroundings. Pre-trial psychiatric institutionalization may be imposed on the child even in cases where the child could not be placed in pre-trial detention or held in a psychiatric hospital upon a civil law order.<sup>243</sup>

### 1.3. Good Practices

While certain rights violations and gaps in implementation persist across the six researched EU counties, several promising practices point to how justice systems could better uphold the rights of children and reduce discriminatory treatment.

**Holistic evaluations** help ground decisions in the child's best interests and reduce the risk of discriminatory or punitive measures.<sup>244</sup>

- In *the Netherlands*, individual assessments of children suspected or accused of criminal offences are conducted by the Child Protection Board. These evaluations follow a multidisciplinary process involving psychologists, educators, and social workers.<sup>245</sup> Guided by a detailed questionnaire, the assessment takes into account the child's social, emotional, and educational background. This collaborative model contrasts with punitive or narrowly diagnostic approaches and ensures that interventions are grounded in the child's best interests, reducing the risk of discrimination or unnecessary coercion.

Efforts to improve **professional training** also offer valuable models.

- In *the Netherlands*, a practice known as "mirror reflections" or "intervision" is used across the judiciary as part of quality management and invites judges to engage in

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<sup>241</sup> Office of the Public Defender of Rights, 2024. *Vulnerable Groups of People in Protective Treatment*. Brno: Office of the Public Defender of Rights, [https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ\\_ochranna\\_lecba\\_vyzkumna\\_zprava.pdf](https://www.ochrance.cz/uploads-import/ESO/10-2023-NZ_ochranna_lecba_vyzkumna_zprava.pdf), p. 10. See also 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, K., Hulmáková, J., Štěchová, M., 2019. *Juveniles in the Process of Disrupted Socialisation*. Prague: Institute for Criminology and Social Prevention, <https://www.iksp.cz/storage/169/458-Mladistvi-v-procesu-poruchove-socializace.pdf>, p. 24. See also ACCESS Baseline studies, pp. 5, 38-39.

<sup>242</sup> The Criminal Code, section 103(1). The placement of protective upbringing 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. See also ACCESS Baseline studies, p. 71.

<sup>243</sup> The Criminal Procedure Code, section 85 (7). <https://www.najpravo.sk/dovodove-spravy/rok-2024/dovodova-sprava-k-zakonu-c-40-2024-z-z.html>. See also ACCESS Baseline studies, p. 5.

<sup>244</sup> However, such assessments can only be considered good practice when they are genuinely participatory, carried out *with* the child rather than *for* the child, and when they are sensitive to structural factors shaping the child's circumstances. Overreliance on expert-driven frameworks risks reinforcing paternalistic or individualising approaches, particularly for children from marginalised groups who may be more vulnerable to profiling or systemic discrimination. Ensuring dialogue with the child and awareness of broader social determinants is therefore essential to prevent the individualisation of structural inequalities.

<sup>245</sup> ACCESS Online workshops for social workers and probation officers, 28 April and 5 May.

interdisciplinary peer discussions about their decision-making.<sup>246</sup> These structured exchanges foster self-awareness, reveal implicit biases, and contribute to more reflective and equitable judicial practices.<sup>247</sup>

- A comparable initiative in *Belgium* brings together professionals from across the child justice system for role-play-based training, allowing participants to better understand diverse perspectives and vulnerabilities in children's cases.<sup>248</sup> This method fosters empathy, improves communication, and helps professionals respond more appropriately to the complex realities children face in the justice system.

## 2. Children below the age of criminal responsibility

### 2.1. International and EU legal standards

While many safeguards, such as those in EU Directive 2016/800, apply specifically to children above the age of criminal responsibility, this does not mean that younger children are excluded from protection. Children below the minimum age may be subjected to formal proceedings or measures, such as placement in closed facilities, that are effectively punitive, and yet do not afford them the same level of procedural safeguards available in criminal proceedings.<sup>249</sup>

The CRC Committee has emphasized that children below the age of criminal responsibility must be ensured **the same fair and just treatment** as those at or above the minimum age.<sup>250</sup> **Establishing a reasonably high minimum age of criminal responsibility** is only one aspect of an effective child justice system.<sup>251</sup> States must also **develop appropriate responses** for children below that threshold. Such children must not be treated as offenders but supported through individualized services and assistance tailored to their developmental needs.<sup>252</sup> The fact that a child has not yet reached the minimum age of criminal responsibility must not deprive them of the safeguards guaranteed to all children alleged, accused, or recognized as having infringed criminal law.<sup>253</sup>

Similarly, the Council of Europe affirms that very young children, or those lacking the full capacity to exercise their rights independently, are nonetheless rights holders.<sup>254</sup> To protect these children from discrimination and prevent them from being overlooked, Member States

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<sup>246</sup> ACCESS Transnational exchange roundtable, 18-19 March 2025.

<sup>247</sup> Rechtspraak. 2008. *Quality of the judicial system in the Netherlands*. <https://www.rechtspraak.nl/binaries/content/assets/rvdr/com/rvdr-com-quality-of-the-judicial-system-in-the-netherlands-en-fr.pdf>, p. 11.

<sup>248</sup> ACCESS Online workshops for lawyers, 22 and 29 April 2025.

<sup>249</sup> ICJ. 2021. *Recommendations on the Main Principles Governing the Individual Assessment of Children in Conflict with the Law*, <https://www.icj.org/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf>, p. 19.

<sup>250</sup> CRC Committee, GC No. 10, para. 33.

<sup>251</sup> CRC Committee, GC No. 24, para. 23.

<sup>252</sup> *Ibid.*

<sup>253</sup> ICJ. 2021. *Recommendations on the Main Principles Governing the Individual Assessment of Children in Conflict with the Law*, <https://www.icj.org/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf>, p. 19.

<sup>254</sup> Guidelines on child-friendly justice, 2010. IV, Section D, para. 44.

must **establish alternative systems of representation and support**.<sup>255</sup> In short, a child's age or capacity should never be a barrier to their exercise of their human rights and protection under the law.

Jurisprudence confirms these standards. The ECtHR has held that the formal classification of proceedings cannot deprive children below the age of criminal responsibility of procedural safeguards when they face severe measures, including deprivation of liberty.<sup>256</sup> The European Committee of Social Rights, in *ICJ v. the Czech Republic*, similarly ruled that children under the age of criminal responsibility must benefit from adequate protection, regardless of whether proceedings are formally civil or criminal, and that protective intentions cannot justify weaker procedural safeguards.<sup>257</sup> The ruling reinforced that protection must not come at the expense of procedural fairness, even for the youngest children.<sup>258</sup>

## 2.2. Rights violations and gaps in implementation

Across six analysed EU countries, children below the age of criminal responsibility often fall into a legal grey zone: they may be subjected by the authorities to coercive measures without the procedural protections afforded to older children or adults. Family law frameworks, originally designed to offer support and protection, are frequently repurposed to impose punitive consequences on these children. However, such measures often lack the due process guarantees provided in criminal proceedings.

In *the Czech Republic*, children below the minimum age of criminal responsibility may be placed in psychiatric hospitals through protective treatment orders, despite significantly weaker procedural safeguards, particularly regarding the duration of such placements, than those required in criminal law (see *Chapter II, section 3.2*).<sup>259</sup> Interim measures can place children in institutional care without adequate privacy protections,<sup>260</sup> mandatory legal representation,<sup>261</sup> or the burden of proof required to establish guilt. Paradoxically, these interventions can result in outcomes more severe than a criminal sentence - children may remain institutionalized longer than adults convicted of the same offence, based on a paternalistic justification to "safeguard their development".<sup>262</sup>

Similar problems exist in *Slovakia*, where "protective upbringing" is imposed through civil, not criminal, proceedings, which entail a lower threshold of procedural protection. A child under 14 may be institutionalized in a psychiatric hospital without meeting the legal criteria for

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<sup>255</sup> Guidelines on child-friendly justice, 2010. IV, Section D, para. 44.

<sup>256</sup> *Blokhin v. Russia*, ECtHR, Application no. 47152/06, Grand Chamber Judgement of 23 March 2016, paras. 175-176.

<sup>257</sup> *International Commission of Jurists (ICJ) v. the Czech Republic*, Decision of the European Committee of Social Rights on the merits, Complaint no. 148/2017, 20 October 2020, para. 85.

<sup>258</sup> ICJ. 2021. *The Czech Republic: ICJ and Forum for Human Rights celebrate landmark European Committee decision upholding procedural rights for children*. <https://www.icj.org/czech-republic-icj-and-forum-for-human-rights-celebrate-landmark-european-committee-decision-upholding-procedural-rights-for-children/>.

<sup>259</sup> Juvenile Justice Act, section 95a (2) and (4). See also ACCESS Baseline studies, pp. 7,33.

<sup>260</sup> Act No. 99/1963 Coll. Civil Procedure Code, section 116 (2). See also ACCESS Baseline studies, p. 38.

<sup>261</sup> Act No. 292/2013 Coll., on Special Court Proceedings, section 469 (1). See also ACCESS Baseline studies, pp. 37-38.

<sup>262</sup> ACCESS Baseline studies, pp. 7, 30.

“protective treatment,” such as posing a danger to others.<sup>263</sup> Even when deprived of liberty, these children are not guaranteed mandatory legal representation during police interrogations.<sup>264</sup> While it is theoretically possible for a child to secure a lawyer, independently or through their family, this is highly improbable for children living in poverty or facing social exclusion, creating an additional discriminatory barrier to their protection.

In *Bulgaria*, children under 14 are not criminally responsible, but may still be subjected to corrective measures, such as placement in boarding or reform schools (see *Chapter II, section 3.2*). Since these are not criminal proceedings, the children are excluded from safeguards guaranteed under EU Directive 2016/800.<sup>265</sup> As a result, younger children become vulnerable to coercive measures without proper legal safeguards.

### 2.3. Good practices

Some jurisdictions are taking steps to extend procedural protections to children below the age of criminal responsibility, closing gaps that leave the youngest children without adequate safeguards.

Ensuring **legal aid for all children, regardless of age**, is central to protecting their rights during police questioning and other proceedings.

- In *the Netherlands*, a legislative proposal is under consideration to guarantee legal assistance for all children interviewed by police, including those below the age of criminal responsibility.<sup>266</sup> In *Slovakia*, the General Prosecutor has submitted a request for clarification to the High Court of Justice regarding the obligation to provide legal assistance to suspects and accused persons, including children below the age of criminal responsibility.<sup>267</sup> While a decision from the High Court is still pending, this development represents a positive recognition of children’s rights, particularly for those currently excluded from legal protections.
- In the *Czech Republic*, following the ICJ v. Czech Republic (2017) decision of the European Committee of Social Rights,<sup>268</sup> a legislative reform was adopted in 2024,<sup>269</sup> extending the right to mandatory legal assistance to children below the age of criminal responsibility. The reform now ensures that children are provided with legal assistance

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<sup>263</sup> ACCESS Baseline studies, pp. 5, 70.

<sup>264</sup> *Ibid*, p. 67.

<sup>265</sup> ACCESS Baseline studies, p. 27. The Criminal Procedure Code, section 85 (7).

<sup>266</sup> Draft Legislation on Strengthening Legal Aid in Criminal Proceedings (Versterking rechtsbijstand in het strafproces), <https://wetgevingskalender.overheid.nl/Regeling/WGK026222>; From discussions during the Online workshop for prosecutors and law enforcement personnel. Held 10 June 2025. See also: *Act of 25 February 2026 Establishing the New Code of Criminal Procedure (Wetboek van Strafvordering)*, <https://www.officiëlebekendmakingen.nl/stb-2026-56.pdf>, Sections 6.1.3. (3) and 6.1.5 (1) and (2).

<sup>267</sup> From discussions during the Online workshop for prosecutors and law enforcement personnel. Held 10 June 2025.

<sup>268</sup> *International Commission of Jurists (ICJ) v. the Czech Republic*, Decision of the European Committee of Social Rights on the merits, Complaint no. 148/2017, 20 October 2020.

<sup>269</sup> Act No. 165/2024 Sb.

from the first contact with law enforcement authorities in the position of a suspect of an unlawful act.<sup>270</sup>

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<sup>270</sup> Juvenile Justice Act, section 89c (1).

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