



Children in contact with the law in Europe:

Trends & Opportunities

by Terre des hommes – Europe Region



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Disclaimer

This report is the result of a desk-based research and provides for a general overview of the law which is not deemed to be exhaustive. Our researchers, whose names and contact details are listed in the introduction of the report, have endeavoured to access the most up to date versions of legislation accessible online. As such this publication is intended and should be understood as a general overview. It should not be construed as legal advice to the reader and should not be used as a substitute for the expertise of suitably qualified local counsel. DLA Piper UK LLP will accept no responsibility for any actions taken or not taken on the basis of this report.

Acronyms & Definitions

Acronyms

| | |
|-------------------|--|
| CEP | Confederation of European Probation |
| CRC | 1989 United Nations Convention on the Rights of the Child |
| DG Justice | Department of Justice of the European Commission |
| EC | European Commission |
| EU | European Union |
| IAYFJM | International Association of Youth and Family Judges and Magistrates |
| LGBTQI+ | Lesbian, Gay, Bisexual, Transgender, Queer, Intersex |
| MACR | Minimum age of criminal responsibility |
| Tdh | Terre des hommes |
| UNCRC | United Nations Committee on the Rights of the Child |

Definitions

Child: A person below the age of 18 years old.

Child in conflict with the law: A person below the age of 18 who is a suspect or accused person in criminal proceedings. A child in conflict with the law may also be referred to as a child suspect or accused.

Child in contact with the law: A person below the age of 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence, or as a victim or witness of a criminal offence.

Child suspect or accused: A person below the age of 18 who is a suspect or accused person in criminal proceedings. Child suspects or accused may also be referred to as children in conflict with the law.

Child victim: A person below the age of 18 who has suffered harm as a consequence of a criminal offence.

Child witness: A person below the age of 18 who has witnessed a criminal offence.

Deprivation of Liberty: Any form of detention or imprisonment from which a person is not permitted to leave at will. Deprivation of liberty can occur within the administration of justice, for migration-related reasons, in places of detention with or without parents, in institutions, in the context of armed conflict and/or on national security grounds.¹

Diversion: The conditional channelling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable many to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record.²

Minimum age of criminal responsibility: The minimum age below which the law determines that children do not have the capacity to infringe the criminal law.³

¹ UN Global Study on Children Deprived of Liberty (2019).

² UNICEF, (2010, October 18).

³ General comment No. 24 (2019) on children's rights in the child justice system (see Paragraph 8).

Procedural Rights Directive (2016/800/EU): Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

Proceedings: all references to proceedings shall mean criminal proceedings involving children. Civil and administrative proceedings are not included within the scope of this report.

Restorative Justice: An approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.⁴

Status Offence: An act or behaviour that is only considered criminal if the person committing it is, or is believed to be, under the age of eighteen (i.e. it is an 'offence' due to their 'status' as a child). Typical status offences include truancy, running away from home, being out after dark or being 'beyond parental control'. Children living on the streets are particularly vulnerable to being apprehended by police on the grounds of status offences. International guidelines call for status offences to be decriminalised.⁵

Victims' Rights Directive (2012/29/EU): Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

⁴ European Forum for Restorative Justice, <https://www.euforumj.org/en>

⁵ UNICEF Toolkit on Diversion and Alternatives to Detention; Riyadh Guidelines, Guideline 56 (GA Res 45/112 of 14th December 1990): "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."

Executive Summary

According to the European Commission, approximately 1 million children face criminal justice proceedings in the European Union each year (thus representing 12% of the estimated 9 million people facing criminal proceedings in the EU).⁶ The 1989 Convention on the Rights of the Child⁷ is the international treaty which provides for children's rights, including the rights of those in conflict with the law. At an European level, the Council of Europe Guidelines on Child-Friendly Justice⁸ offers guidance on the treatment of children in conflict with the law.

In 2019, Terre des hommes Foundation collaborated with the law firm of DLA Piper to complete research on child justice processes in selected European countries. In particular, the research aims to determine the status of implementation of the EU Directive 2016/800 on Procedural safeguards for children who are suspects or accused persons in criminal proceedings, and the EU Directive 2012 on Victim's Rights. This report presents the results of the research, which details the situation of children in contact with the law (child victims, witnesses, suspects or accused) in seventeen EU and two non-EU countries.⁹ While the world is facing a global COVID-19 pandemic affecting millions of children, and the European Union is preparing to launch its new Strategy on the Rights of the child (2021-2024), it is a crucial time to focus on more effective and efficient solutions for children in contact with the law.

The report and eighteen country factsheets highlight: the specialization of child justice systems; legal gaps and challenges which exist for children to have effective access to justice; procedural safeguards enacted in national legislations for children in contact with the law; legislation to address the needs of children in criminal proceedings; and the inclusivity of legislative and policy frameworks.

Key trends identified demonstrate the need to pursue efforts to make justice systems more child friendly. Children continue to be addressed through the criminal justice system for status offences such as begging, school truancy, or romantic relationships with peers. There are still 33% of countries where children above the minimum age of criminal responsibility can be prosecuted for offences that they committed while below the minimum age of criminal responsibility. Individual needs assessments of children involved in criminal proceedings are not systematically conducted. In relation to the level of specialisation of the justice systems reviewed, among the 19 countries studied, the large majority (68%) did not offer specialised training to lawyers representing children. Only 6 countries had specialised child lawyers and only 10 of the countries had specialised judges. Furthermore, children with disabilities remain invisible in the legislation of 4 European countries, evidencing the lack of equal access to justice. Only 3 countries indicated that there were specific provisions in the legislation to protect the needs of children at risk of facing discrimination.

The analysis of responses led to the formulation of key trends and gaps in child justice observed in the countries selected, as well as four sets of recommendations for further action to improve access to justice for children in contact with the law in Europe. The recommendations suggest the following:

- Build stronger skills for professionals working with children in criminal proceedings
- Create child-centred policies and legislative frameworks
- Invest in robust monitoring of the situation of children in criminal proceedings
- Improve the knowledge of professionals about the needs of children in criminal proceedings

The current analysis includes a synthetic analysis report, as well as a set of eighteen country factsheets, which highlight the main specificities for each country concerned.

⁶ European Commission, (2013).

⁷ Convention on the Rights of the Child. Accessible at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁸ Council of Europe Guidelines of 17 November 2010 on child-friendly justice. Accessible at <https://rm.coe.int/16804b2cf3>

⁹ EU Countries: Austria, Belgium, Czech Republic, Finland, France, Germany Greece, Hungary, Italy, Lithuania, Luxembourg, Poland, Romania, Slovakia, Spain, Sweden, and the Netherlands. Non-EU Countries: Russia and Ukraine.

Introduction

According to the European Commission, approximately 1 million children face criminal justice proceedings in the European Union each year (thus representing 12% of the estimated 9 million people facing criminal proceedings in the EU)¹⁰. The 1989 United Nations Convention on the Rights of the Child¹¹ is the international treaty establishing rights for children, including those in conflict with the law. At an European level, the [Council of Europe Guidelines of 17 November 2010 on child-friendly justice](#)¹² offers guidance for situations involving children in contact with the law.

In Europe, children face many challenges when attempting to access justice. Such challenges include the excessive length of judicial procedures, the failure of the state to bring charges or obtain quick resolutions, multiple interviews during criminal proceedings, and children not being clearly informed of their rights. While provisions for the protection of children in contact with the law are improving, and the number of children in conflict with the law is continuously decreasing in Europe, access to justice still remains quite unattainable for children who come from marginalised communities.¹³ Although the large majority of European countries comply with international and European standards,¹⁴ too many children still encounter challenges in accessing legal assistance and finding a specialised lawyer who is skilled in dealing with cases involving children. The information available to children about their rights is not always provided in a clear and accessible language.¹⁵ The language barriers add extra difficulties for specific groups of children, such as children with disabilities, children from minority groups, migrant and asylum-seeking children. Recent studies in Europe¹⁶ found that children/youth offenders and victims were vulnerable in the justice system, and that processes were not child friendly. Moreover, too often, systems of reform are not sufficiently accompanied by human and financial resources to effectively protect the rights of children. Systems require a higher degree of integration to ensure a comprehensive child-centred approach.

Since the adoption of the Council of Europe Guidelines on Child-friendly Justice.¹⁷ in 2010, the European Commission made significant steps in attempting to regulate and harmonise children's rights and child justice systems in Europe. After its 2011 EU Agenda on the Rights of the Child.¹⁸ the EC is preparing to launch its Strategy on the Rights of the child (2021-2024) and adopted in June 2020 its first strategy on victims' rights.¹⁹ Terre des hommes Foundation, in

¹⁰ European Commission, (2019).

¹¹ Convention on the Rights of the Child.

¹² Council of Europe (2010).

¹³ Goldson, B. and Chigwada-Bailey, R. (1999) '(What) Justice for Black Children and Young People?', in B. Goldson, (ed.) *Youth Justice: Contemporary Policy and Practice*. Aldershot, Ashgate, pp. 51-74; Lareau, A. (2011) *Unequal Childhoods: class, race, and family life*, University of California Press; Cunneen, C. Goldson, B. and Russell, S. (2016) 'Juvenile Justice, Young People and Human Rights in Australia', *Current Issues in Criminal Justice*, 28(2): 173-189; Cunneen, C. Goldson, B. and Russell, S. (2018) 'Human rights and youth justice reform in England and Wales: A systemic analysis', *Criminology and Criminal Justice*, 18(4): 405-430

¹⁴ Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, 1989 UN Convention on the Rights of the Child, 2010 Council of Europe Guidelines on Child-Friendly Justice, 2007 Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention).

¹⁵ See Policy brief "JUST with children. Child-friendly justice for all children in Europe" developed by Terre des hommes, in consultation with 40 children and partners in Europe, in response to the Consultation on the EU Strategy on the Rights of the Child (2021-2024). Accessible at <http://tdh-europe.org/library/policy-brief-just-with-children-child-friendly-justice-for-all-children-in-europe/7293>.

¹⁶ Liefwaard, T. and Kilkelly, U., *Child-friendly justice: past, present and future*, in Goldson, B. (ed.), *Juvenile Justice in Europe. Past, present and future*, Routledge, 2019, pp. 57-73; Kennan, N. and Kilkelly, U., *Children's involvement in criminal, civil and administrative judicial proceedings in the 28 member states of the EU: policy brief*, European Commission, 2015; European Commission, *Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 member states of the EU*, Publication office for the European Union, 2014; FRA Reports on "Child Friendly Justice, available at <https://fra.europa.eu/en/publication/2017/child-friendly-justice-childrens-view>. See also the Joint report of the OHCHR, UNODC and SRSG on Violence Against Children on Prevention of and responses to violence against children within the juvenile justice system," 2012; The Lammy Review - An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, 2017, <https://www.gov.uk/government/publications/lammy-review-final-report>; Bell, E., *Juvenile (in)justice and neoliberal austerity*, in Goldson, B. (ed.), *Juvenile Justice in Europe. Past, present and future*, Routledge, 2019; Webster, C., 'Race', Ethnicity, Social Class and Juvenile Justice in Europe, in Goldson, B. (ed) *Juvenile Justice in Europe: Past, Present and Future*, Routledge, 2019; White, R., *Juvenile Justice and Youth Vulnerabilities*, in Riele, K., and Radhika, G. (eds), *Interrogating conceptions of "Vulnerable youth" in Theory, policy and practice*, Sense Publishers, 2015; Webster, C. (2015) "'Race, Youth Crime and Youth Justice', in Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*, 2nd edition, London: Sage; Kilkelly, U., *Measures of deprivation of liberty for young offenders: how to enrich international standards in juvenile justice and promote alternatives to detention in Europe?*, IJJO, 2011.

¹⁷ Council of Europe (2010).

¹⁸ EU Agenda on the Rights of the Child (2011). Accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0060>.

¹⁹ The *JUST with children* policy brief has been developed by Terre des hommes Foundation, in close collaboration with, in alphabetical order: Bureau International Catholique pour l'Enfance (BICE), Center za prava deteta – Serbia, Défense des Enfants International – Belgique, Defence for Children The Netherlands,

close collaboration with its partners in Europe and 40 children and young people, published the Policy brief "JUST with children. Child-friendly justice for all children in Europe" in response to the Consultation on the EU Strategy on the Rights of the Child (2021-2024).²⁰ This document highlights the four key priorities areas that the Strategy should focus on in relation to child-friendly justice, namely: equality and non-discrimination of all children; fair and appropriate justice to meet the needs and capabilities of the children involved; the application of justice in the case of children deprived of liberty; and building resilient, future-proof child-friendly justice systems for all children in Europe.

The two key European Directives on procedural safeguards for children in contact with the law and for victims of crime,²¹ introduce a package of measures to safeguard children's rights in a manner consistent with the European Court of Human Rights' decisions and the Council of Europe Guidelines on Child-friendly Justice. EU Member States were required to transpose Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings, into national legislation by the 11 June 2019. By January 2021, all Member States had communicated the measures of national law which they had adopted to comply with the Directive. EU member states were required to transpose Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime into national legislation by 16 November 2015. Directive 2012/29/EU makes the best interests of the child a primary consideration in all actions affecting children.

This report aims to describe child justice in selected European countries, with a focus on the implementation of EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, and EU Directive 2012 establishing minimum standards on the rights, support and protection of victims of crime. Key recommendations and conclusions for child-friendly justice systems conclude the presentation of the highlighted results.

About Terre des hommes in Europe

Terre des hommes Foundation (Tdh) is the leading Swiss organisation for children's aid, focusing on child health, child protection and emergency relief. Since its establishment in 1960, it has helped build a better future for vulnerable children and their communities, making an impact with innovative and sustainable solutions. Active in around 45 countries, the organisation works with its teams, as well as local and international partners to develop and implement field projects. In 2019, Tdh contributed significantly to the improvement of the daily lives of over four million children and other community members.

Tdh in Europe focuses on 3 of the 4 main pillars of its Theory of Change: Promoting Alternatives to Detention and Restorative Justice; Improving Dignity of Children in Detention; and Enhanced Prevention and Rehabilitation for children in contact with the law. In 2020, the "Access to Justice" programme of [Tdh in Europe](#) was running a total of 8 projects in 7 countries (Albania, Kosovo, Greece, Romania, Hungary, The Netherlands, Serbia), reaching over 2,460 beneficiaries (children, legal and child protection professionals) from direct services, capacity building activities and awareness raising campaigns and advocacy actions. Together with valuable partners, Tdh implements a series of projects that address specific areas of child justice, strongly interlinked with child protection:

- The EU-funded [i-RESTORE project](#) encourages the application of restorative justice in cases involving child victims in Albania, Greece, and Romania as a way for better protection of children.

European Forum for Restorative Justice (EFRJ), International Association of Youth and Family Judges and Magistrates (IAYFJM), Leiden Law School, Ludwig Boltzmann Institute of Fundamental and Human Rights (BIM), Penal Reform International (PRI), Restorative Justice Netherlands (RJN), Social Activities and Practice Institute (SAPI) – Bulgaria. This brief is supported by the [Global Initiative on Justice with Children](#) and the [Child-friendly justice Network](#), with the pro bono support of Baker McKenzie. Available at : <http://tdh-europe.org/library/policy-brief-just-with-children-child-friendly-justice-for-all-children-in-europe/7293>.

²⁰ Ibid.

²¹ Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

- The EU-funded **FOCUS project** aims to develop a practice of multidisciplinary individual assessment of children, that will ensure individualised responses in the best interests of the child. Bulgaria, Greece, Romania, Serbia, and the Netherlands are the main beneficiary countries.
- The EU-funded **CLEAR-Rights project** improves equal access to lawyers for children suspected or accused of crime, through strengthening access to quality and specialised government-funded legal aid and pro bono legal assistance. The project will specifically support Hungary, Romania, France, Belgium and the Netherlands.
- As part of the **European Barnahus Movement** and **PROMISE project**, Tdh supports the creation throughout Europe of a multidisciplinary service called Barnahus. This is a multidisciplinary model which ensures that child victims can receive help from professional interviews and medical services, as well as receive psychological support and therapy in a child-friendly setting that prevents re-traumatisation.
- Several projects at country level in **Romania**, Albania and Kosovo focus on the **psychosocial wellbeing, rehabilitation, and reintegration into society of children and youth who committed an offence**. For example, through the **PRECISION project** in Romania, Tdh helps children and youth in correctional facilities and detention centres to develop their social skills, resilience and self-esteem, as well as to gain digital skills, employability and entrepreneurial skills.

To support this work, based on a Tdh [methodology](#), Child Advisory Boards are set up in each country where projects are implemented. In 2020, 71 Children and young people from Child Advisory Boards in Albania, Greece, Romania, The Netherlands, Serbia and Bulgaria provided monthly feedback to project partners on restorative justice and individual needs assessments for children. They bring together children and young people who are interested in the justice system or might have experience with it.

The Global Initiative on Justice with Children

In 2019, to commemorate the 30th anniversary of the UN Convention on the Rights of the Child, Terre des hommes Foundation, in partnership with the International Association of Judges and Magistrates for Youth and Family and Penal Reform International, launched the Global Initiative on Justice with Children.²² The Global Initiative is composed of two main areas of activities: World Congresses on Justice with Children²³ and provision of an online global community of practitioners with access to the main international, regional information and documents related to child justice. The initiative also functions as a working tool for advocacy and research purposes. It provides a platform to facilitate interaction between professionals through an online and onsite space for reflection, exchange and constant learning in the field of child justice. This initiative focuses on crime prevention, alternatives to deprivation of liberty with special consideration to restorative justice, and the improvement of conditions of detention for children and young adults. Study of different legal systems, as well as current trends relating to child justice, are at the core of the Global Initiative. The Global Initiative aims to: make children's rights effective worldwide; promote access to justice and participation of children in formal, and informal justice systems; improve the connection between justice for children and child protection systems; promote non-custodial measures worldwide to reduce the use of deprivation of liberty; exchange practice-oriented strategies to prevent child crime, and propose effective responses to recidivism. The results of this research are available on www.justicewithchildren.org and www.childhub.org. In addition, the results will also be included and presented at the 2021 World Congress on Justice with Children.

²² <https://justicewithchildren.org/>

²³ The next edition is taking place online from 15-21 November 2021. See: www.justicewithchildren.org

Methodology

The Process

In May 2019, Terre des hommes Foundation in Europe approached law firm [DLA Piper](#) to request pro bono support to conduct a review of the legal framework and domestic legislation pertaining to child justice across 23 European countries. The purpose of the research was to highlight gaps in implementation of European standards, particularly the Procedural Rights Directive (2016/800) and the Victims' Rights Directive (2012/29), as well as challenges faced by children in contact with the law in Europe. The intention of the research was also to review the implementation of European norms in each jurisdiction. To compile data for this research, Tdh created an extensive questionnaire including 100 questions, which was then circulated within DLA Piper's network of lawyers across Europe.²⁴ DG Justice-European Commission cooperated with Tdh by providing comments that helped to refine the relevance of the questions.

With the pro bono support of DLA Piper, the International Association of Youth and Family Judges and Magistrates (IAYFJM), the Confederation of European Probation (CEP) and DG Justice-European Commission, Part A of the questionnaire was disseminated among potential respondents in 23 countries in the period October 2019 to June 2020.

DLA Piper's pro bono lawyers in Europe received the first batch of memos in March/April 2019. As a result, thirty lawyers from DLA Piper expressed their interest to participate, on a pro bono basis, and started working on Part A of the questionnaire for 17 EU countries and 2 non-EU countries (see footnote 9). The lawyers worked on answering the questionnaire from December 2019 through to July 2020. In June/July 2020, Tdh requested the team of lawyers of DLA Piper team to compile country fact sheets, which would constitute an integral part of the final report. The fact sheets were completed by DLA Piper's team in the period July-December 2020. The responses to the questionnaires and the country fact sheets were reviewed by the Access to Justice team members of Tdh, with the support of a lawyer currently studying in the International Children's Rights Master of Laws programme at Leiden Law School, The Netherlands. Part B of the questionnaire is expected to be disseminated (practice-oriented questions) in the second semester of 2022.

The Questionnaire

The United Nations Convention on the Rights of the Child, the Procedural Rights Directive (2016/800), and the Victims' Rights Directive (2012/29) were the guiding documents in creating the questionnaire and formulating these key findings from the responses received. The questionnaire contains two parts:

- Part A – Legal Aspects
- Part B – Practices Assessment

Both parts, complementary to each other, approach child justice in Europe from a broad angle. They are structured into 5 sections covering practice-oriented aspects of child-friendly justice and key legal and policy questions:

- **SECTION 1. Overview of the child justice system in your country**

This section asks respondents about the minimum age of criminal responsibility and imprisonment in their country, their type of legal system, the existence of child-specific legislation, as well as provisions in the law concerning different cases involving children with disabilities, child victims and witnesses, affected by

²⁴ Questionnaire template accessible on request.

hate crimes. It also touches upon the specialisation of child-justice institutions, professionals and those persons who children first come into contact with during their interaction with the criminal justice system.

- **SECTION 2. Children in conflict with the law**

This section contains questions related to diversion, data collection practices, safeguards and rights of children who have allegedly committed an offence. It also covers the applicable rights and safeguards available for children in detention centres.

- **SECTION 3. Child victims and child witnesses of crime**

This section focuses on the rights and safeguards for child victims and witnesses, with particular reference to safeguards aiming to protect such children from discrimination. It also looks at specific initiatives that aim to transpose European directives on child victims and witnesses into national law.

- **SECTION 4. Key stakeholders & experts**

This section focuses on civil society organisations' participation in the child justice system, the existence of child-led advocacy initiatives, universities doing research on child justice and training for child lawyers.

- **SECTION 5. Status offences and the child justice system**

This section seeks to inquire about how countries' national legislation deals with different status offences, i.e. situations and behaviours such as school truancy, running away from home and possessing tobacco and alcohol.

Geographical Scope

From 23 countries, Tdh received answers on Part A of the questionnaire for the following 19 European countries, including 17 Member States of the European Union:

EU countries

1. Austria
2. Belgium
3. Czech Republic
4. Finland
5. France
6. Germany
7. Greece
8. Hungary
9. Italy
10. Lithuania
11. Luxembourg
12. Poland
13. Romania
14. Slovakia
15. Spain
16. Sweden
17. The Netherlands

Non-EU countries

18. Russia
19. Ukraine



The analysis of responses led to the current comparative report, which is comprised of key trends and gaps in child justice observed in the countries selected (Part 1). The study includes 18 country factsheets, which highlight the main specificities for each country concerned (Part 2). The report ends with a set of conclusions and recommendations for further action to improve access to justice for children in contact with the law in Europe (Part 3).

Strengths and limitations of this research

The research was conducted on a 100% voluntary basis. This was a massive achievement given the high demands of the project. Pro bono lawyers and experts from DLA Piper, as well as from the Leiden Law School and individual experts, who participated in with this project generously offering their time in addition to their heavy workload. The results of the survey were therefore received in the period of November 2019 to February 2021. Changes in law and other information contained in this report and the fact sheets may have occurred between the time the first responses were received and the publication of this report. It is therefore essential to plan for periodic updates of the information on an ongoing basis and provide for an annual revision of the data shared.

The following limitations to this research need to be mentioned. While the questionnaire was sent to focal points in 23 countries, Tdh and DLA Piper received 19 questionnaires in return and these responses are considered as part of this Synthesis Report. Nonetheless, due to the specificity of information required for the fact sheets, only 18 fact sheets were generated from the 19 questionnaires. The fact sheet for Greece remains pending for the moment and Tdh hopes to develop this fact sheet further on in 2021.

Language barriers is another factor to consider as a potential limitation of this research. Even though the fact sheets and the questionnaires were answered by lawyers from the given country, some information could not be verified by Tdh as the original documents or laws were only available in the country's language.

This research does not include the points of views of State actors.

Part 1. Key findings

The overall arching principle is that child-friendly justice is necessary to safeguard the rights of the child. Part 1 of the key findings will review certain aspects of the child justice system in the respondent countries, which will include the examination of: Minimum Ages, Child Specific Legislation, Specialised Professionals, Child Suspects or Accused in Criminal Proceedings, Child Victims and Witnesses in Criminal Proceedings, Status Offences, and Other relevant information. The responses and graphs will provide an overview of how the respondent countries may or may not comply with the provisions of the United Nations Convention on the Rights of the Child, the Procedural Rights Directive (2016/800), and the Victims’ Rights Directive (2012/29).

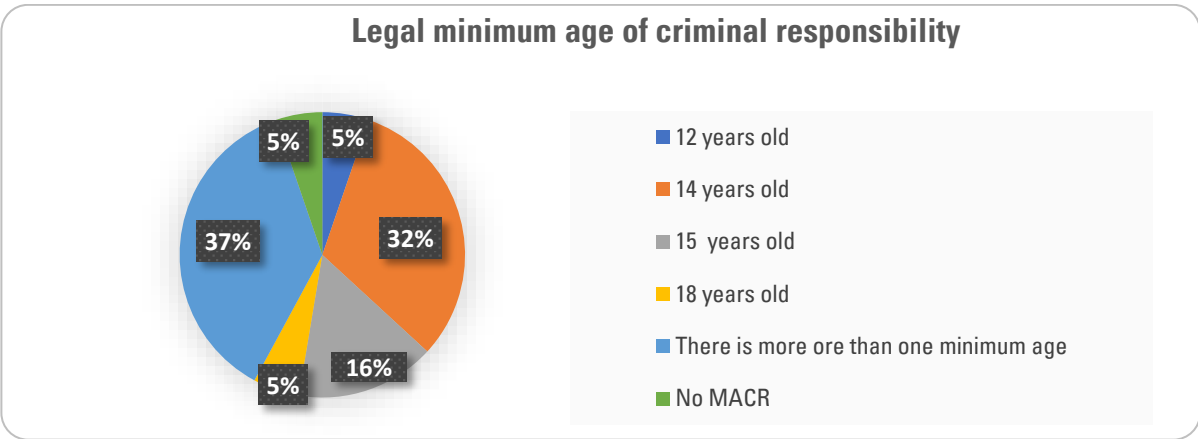
Minimum Ages

The minimum age of criminal responsibility is the minimum age below which the law determines that children do not have the capacity to infringe the criminal law.²⁵ In its General Comment 24, the Committee on the Rights of the Child recommends that States with lower ages should increase the minimum age of criminal responsibility to **14 years old**.²⁶ However, the Procedural Rights Directive (2016/800/EU) is clear that the Directive does not affect national rules determining the minimum age of criminal responsibility.²⁷

The Committee on the Rights of the Child also commends states which allow their child justice system to continue to apply to children over the age of 18. In addition to that, the Procedural Rights Direction (2016/800/EU) urges Member States to apply the procedural safeguards contained in the directive until the person reaches the age of 21 years.

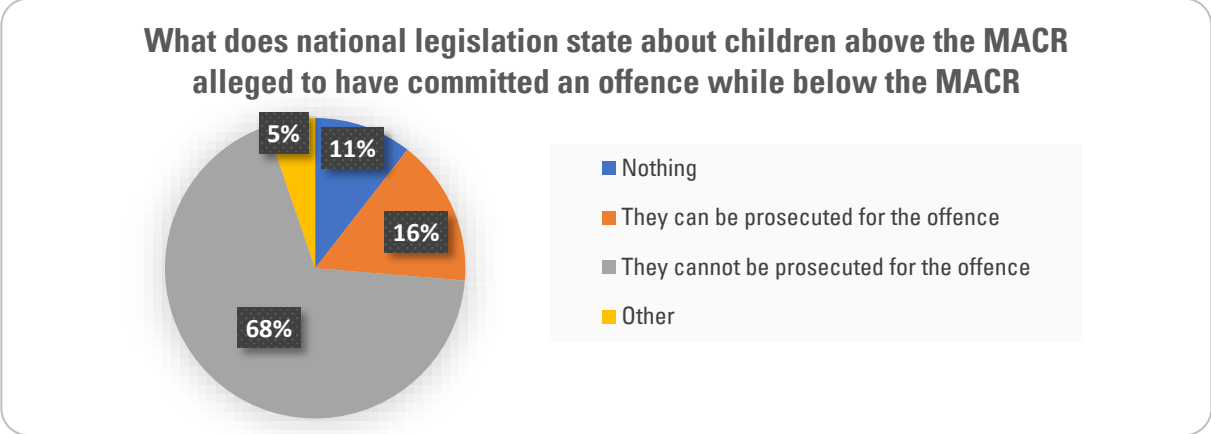
In the questionnaire, respondents were asked to provide the minimum age of criminal responsibility and imprisonment in their assigned countries. The responses show that most States have set minimum ages at 14 years of age or older.

In relation to the **minimum legal age of criminal responsibility (MACR)**, 53% of respondents mentioned an age between 14 and 18 years old. One respondent indicated a MACR of 12 years old (Netherlands) and one respondent (Luxembourg) indicated a MACR of 18 years old. For 7 countries (Czech Republic, Hungary, Poland, Slovak Republic, Lithuania, Ukraine and France), there were multiple ages mentioned, depending on the offence committed and one respondent (Belgium) does not have a MACR, although a child protection system is in place for children under 18:

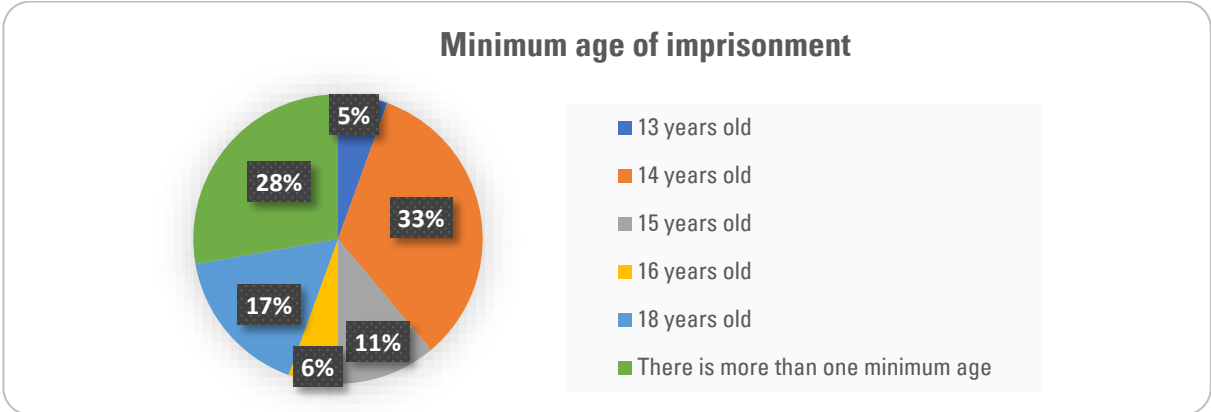


²⁵ General comment No. 24 (2019) on children’s rights in the child justice system (see Paragraph 8).
²⁶ General comment No. 24 (2019) on children’s rights in the child justice system (see Paragraph 24).
²⁷ DIRECTIVE (EU) 2016/800 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. (See Article 2, Paragraph 5).

In 13 countries concerning children at or above the MACR that have allegedly committed an offence while below the MACR, the child cannot be prosecuted for the offence (Austria, Czech Republic, Finland, Germany, Hungary, Italy, Netherlands, Romania, Slovak Republic, Spain, Sweden, Lithuania and Greece). While in 3 countries (Luxembourg, Poland and France) they can be prosecuted for the offence (16%). There was no information received for Ukraine and Russia (11%). Belgium’s response indicated that a child will be treated as a child and therefore, selected the “Other” option:



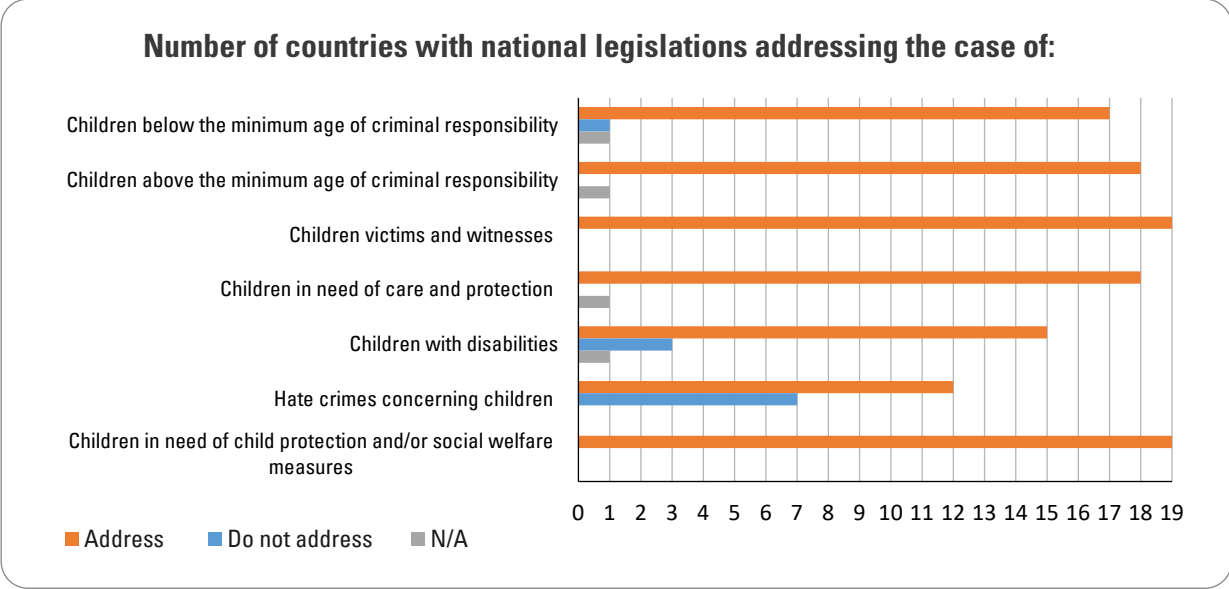
Regarding the **minimum age of imprisonment** (deprivation of liberty pre and post-trial), 33% of respondents indicated the age of 14 years old, as can be seen in the chart below, followed by 28% of the respondents stating their countries have more than one minimum age. One country mentioned that the minimum age was 13 years (France), two countries noted theirs was 15 years old (Greece and Czech Republic) and three countries stated that their minimum age was 18 years old (Belgium, Romania, Sweden).



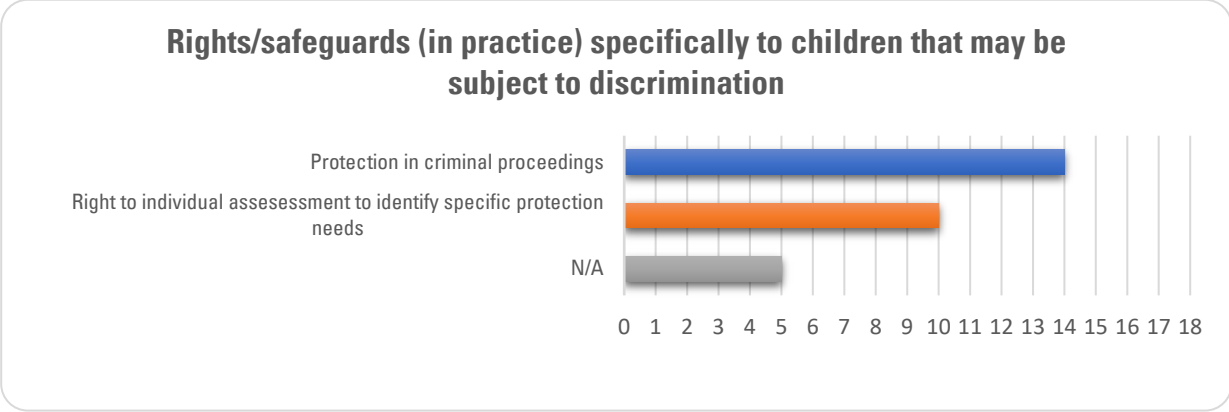
Child Specific Legislation

Child specific legislation is crucial to a child friendly justice system. Specific provisions in the law which provide safeguards for children in contact with the law offer the opportunity for a country to adopt a system that adapts the needs and rights of children when they access justice, by taking into account their best interests and their particularities as being non adults. Respondents were asked to comment on whether their State has legislation specifically addressing children, child victims and witnesses, children in need of care and protection, children with disabilities, and hate crimes involving children.

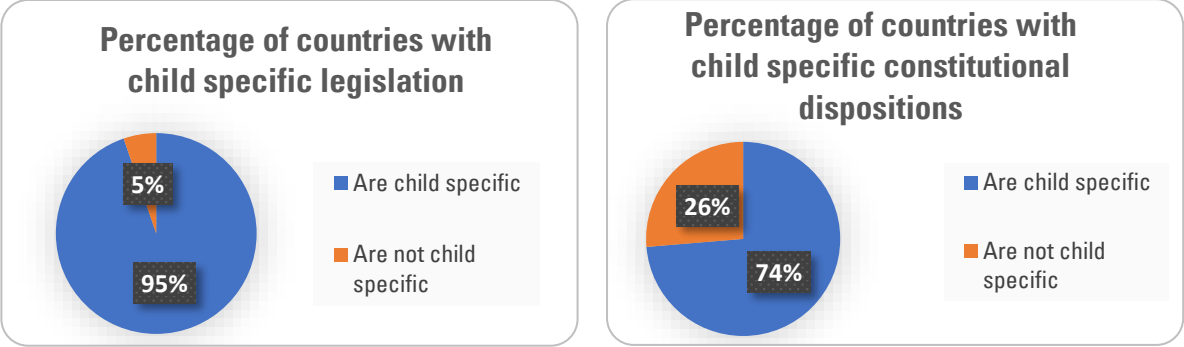
When asked about the existence of **national legislations** in relation to hate crime, disabilities and protection, there were still 7 European countries who did not have child-specific provisions related to hate crime (Belgium, Luxembourg, Sweden, Lithuania and France) and 3 countries with no provisions relating to children with disabilities (Finland, Luxembourg, and Spain). However, all the European countries had specific provisions for children in need of protection and or social welfare measures. Furthermore, all respondent countries have legislation for child victims and witnesses, while all but Greece have legislation for children in need of care and protection. Greece did not respond to this question.



Concerning **rights and safeguards that exist specifically in relation to children that might be subject to discrimination**, 14 countries were found to have ensured that child protective measures were present in criminal proceedings. For example, in the Ukraine children may be temporarily placed in pre-school educational institutions under the consent of their parents, and the law allows for protection measures, including personal protection. In Germany, certain parties may be excluded from the proceedings if it is in the best interests of the child. With respect to individual assessments, 9 countries were also found to have ensured that rights to individual assessment for specific protection needs were in place. There was no answer from 6 countries, suggesting that there are either no rights and safeguards in place in those countries, or this information was not made available to the respondent at the time of responding to the questionnaire. Hungary indicated that these rights existed, however not specifically for children. France selected the “Other” option.



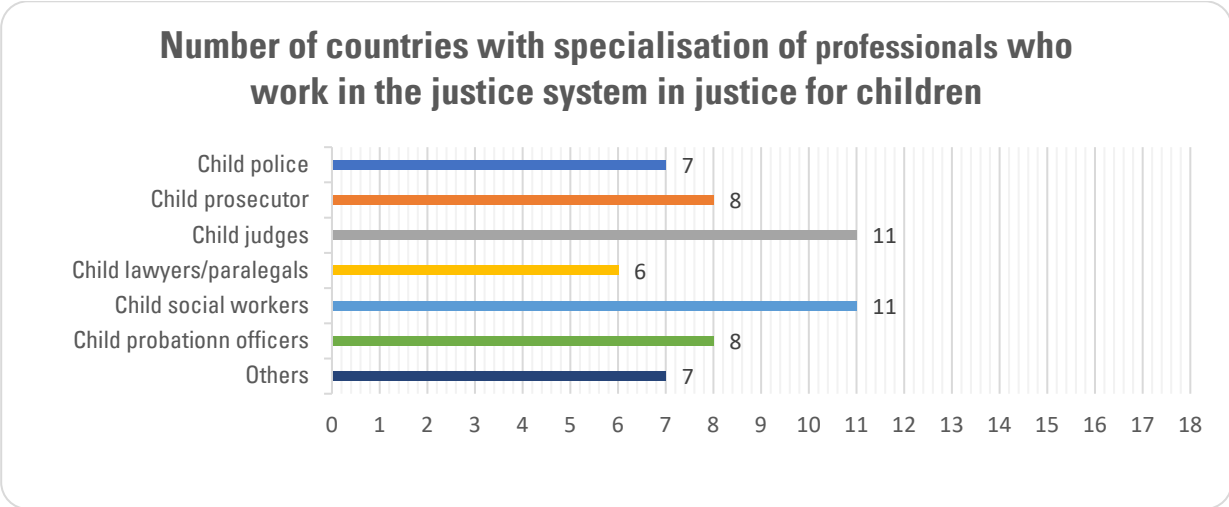
On the percentage of **countries with child specific legislation**, it was found that 95% of the analysed countries have child specific legislation with only 1 country as an exception (Russia). More than two-thirds of the countries (14 countries) have **child specific constitutional dispositions** including rights to protection and care and the child’s right to have their moral, physical, mental, and sexual integrity respected. While 32% of countries do not have child specific constitutional dispositions, including Czech Republic, Hungary, Luxembourg, The Netherlands, and Ukraine.



Regarding the number of countries with **specialised child justice institutions**, it was found that the most prevalent child specialised institution was the Child Social Work Service (68%), followed by Child Courts (53%) and in third place, all with the same frequency, were Child Police Units, Child Prosecution Offices, and Child Probation Services (42.10%). It is worth noting that 2 countries, Finland and Sweden, did not report any kind of specialised institution.



Specialised Professionals and Institutions

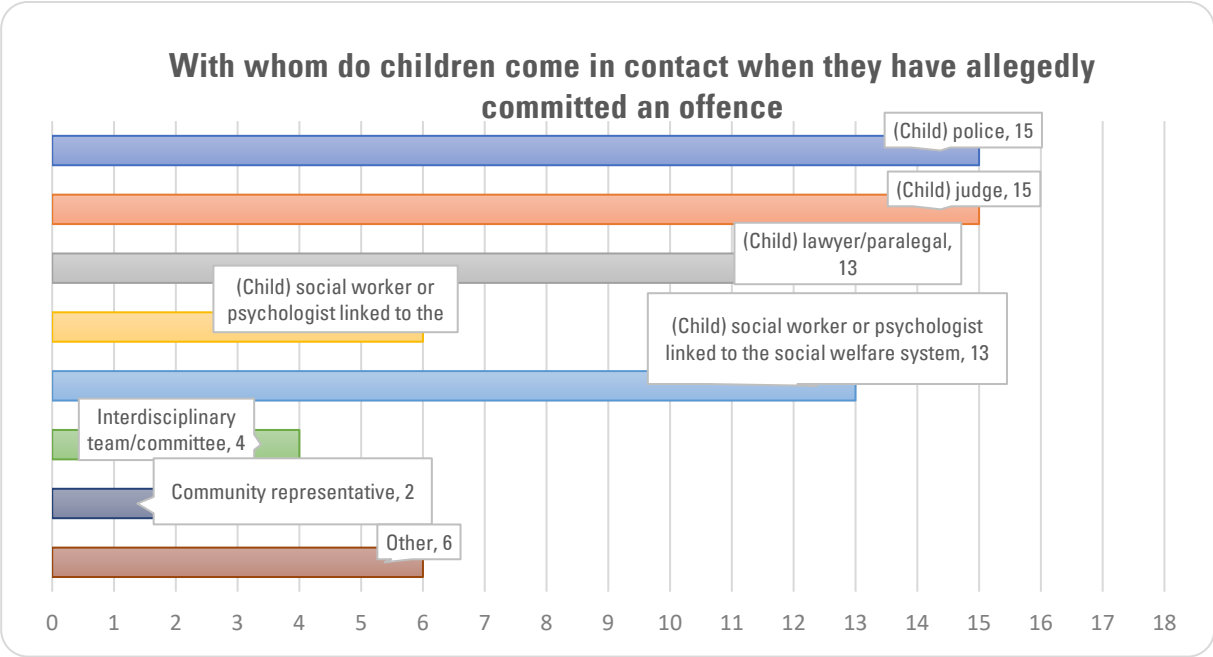


In the majority of cases, **the first contact of children (for both victims and suspects/accused) with a professional** is a police officer (15 out of 19 cases), and/or a judge (15 cases). This is followed by a child lawyer (13 cases) and a psychologist or social worker (12 cases).

In 5 cases, children in contact with the law are first seen by:

- Specialised units in hospitals (Belgium)
- The Bureau Halt (specialised child justice institution) (The Netherlands)
- The Ombudsman for Children (Poland)
- The Responsible Specialists of the Juvenile Commission and the Juvenile Department (Russia)
- A representative of the Body of Social-legal Protection of Children and Social Curatorship (Slovak Republic)

It is also worth noting that, according to the responses received from the surveyed countries, children receive attention from a child social worker or psychologist linked to the welfare system twice as much as from a child social worker or psychologist linked to the justice system.



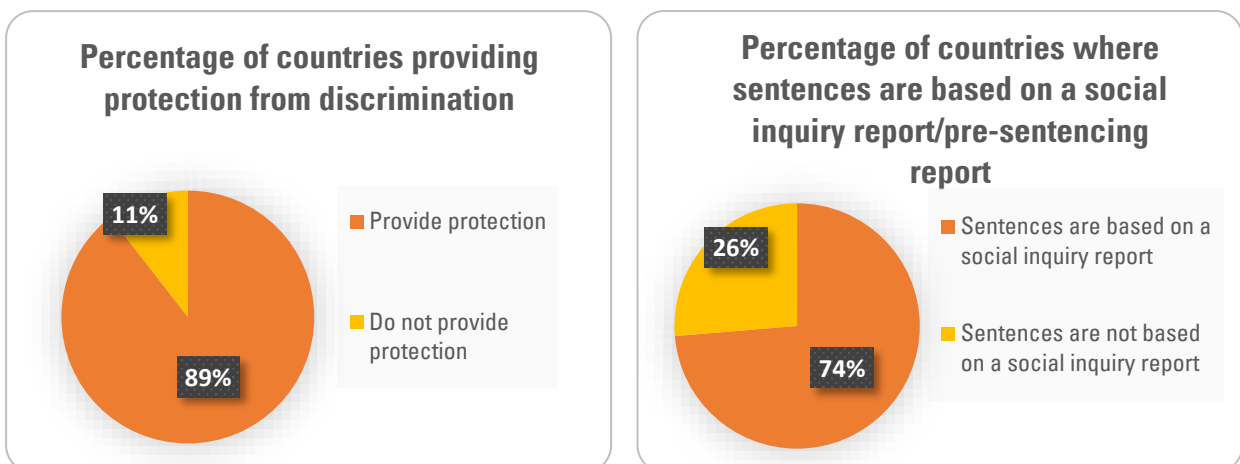
Child suspects or accused in criminal proceedings

The Procedural Rights Directive (2016/800/EU) was adopted on 11 May 2016. The aim of this Directive is to ensure that child suspects or those children that are accused in criminal proceedings are able to understand the proceedings and exercise their right to a fair trial. The Directive also aims to prevent children from reoffending in order to foster their reintegration into society. The Directive was to be transposed by Member States into their national legislation by 11 June 2019.

The aims of the Procedural Rights Directive (2016/800/EU) are consistent with those of the UN Convention on the Rights of the Child. In General Comment 24,²⁸ the Committee on the Rights of the Child established that children should be guaranteed a fair trial and outlined the procedural safeguards for doing so.

Furthermore, both the Procedural Rights Directive (2016/800/EU) and the UN Convention on the Rights of the Child provide that detention should only be used as a measure of last resort. Alternative sentencing measures, such as diversion, are recommended.

The survey asked questions to determine which provisions of the Procedural Rights Directive (2016/800/EU) had been transposed into national law and what procedural safeguards for criminal proceedings involving children in conflict with the law exist. This section contains a summary of those responses.

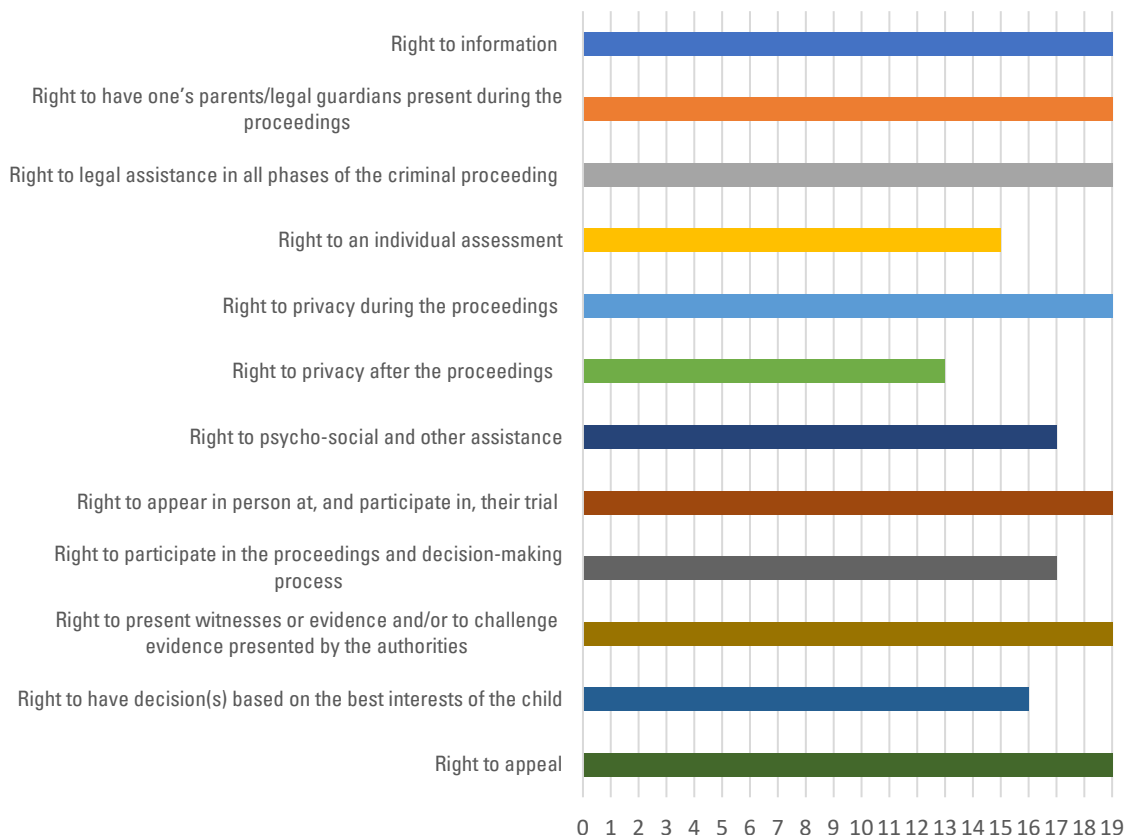


Regarding the countries' **provision of protection against discrimination**, a majority of the countries (17) have provisions in their laws protecting individuals from discrimination. These provisions are not present in the laws of 11% of the countries analysed (Luxembourg and Czech Republic).

Concerning the percentage of countries **where sentences imposed by a court are based on social inquiries and/or pre-sentencing report**, 74% of responses indicated that the judge, when deciding on a case involving a child in conflict with the law, based his or her decision on a social inquiry report. On the contrary however, this does not occur in the countries (26%) of Austria, Czech Republic, Italy, Luxembourg and Russia.

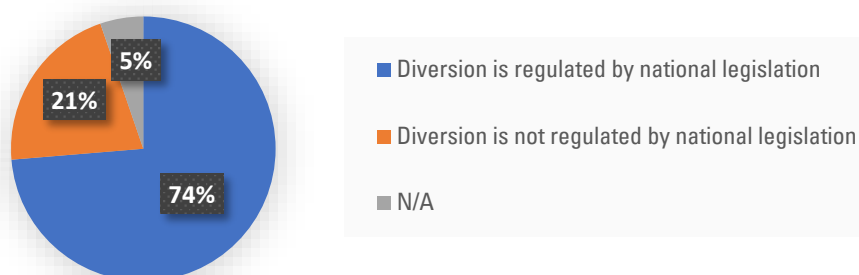
²⁸ <https://undocs.org/en/CRC/C/GC/24>

Safeguards/rights that are applied in cases of children who have allegedly committed an offence

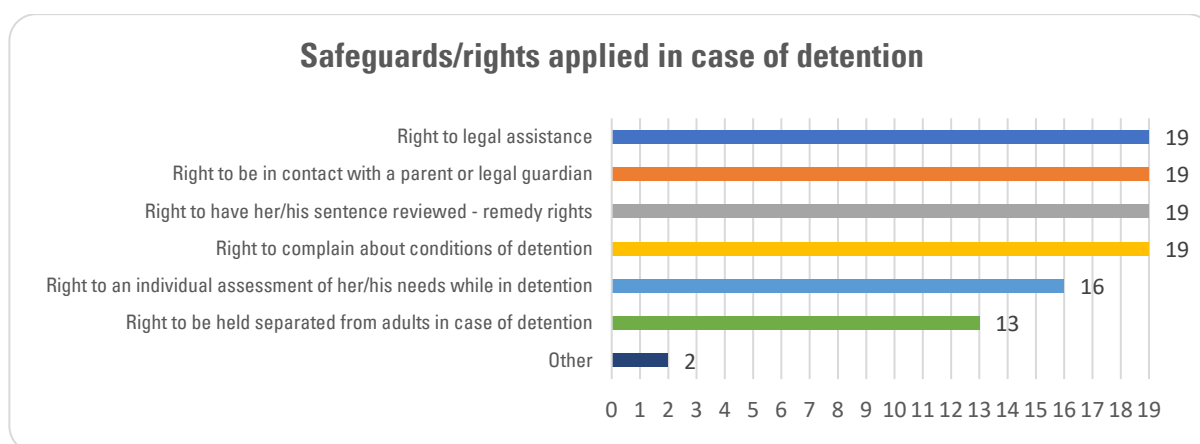


In relation to **the safeguards applied in cases where children are accused of having allegedly committed an offence**, all countries reported they have the following safeguards: the right to information, the right to have one's parents or legal guardian present during the proceedings, the right to legal assistance in all phases of the criminal proceedings, the right to appear in person and participate in their trial, the right to present or challenge witnesses or evidence, and the right to appeal. The least noted safeguard was the right to privacy after the proceedings with only 68% of the surveyed countries ensuring this right. The survey also notes how 22% of the 19 countries do not have safeguards that allow for the right of a child to have an individual needs assessment incorporated into national legislation.

Percentage of countries where diversion of children from judicial proceedings is regulated by national legislation



Diversion²⁹ is not regulated by national legislation in 21% of the countries (Hungary, Luxembourg, Slovak Republic and Sweden). However, the majority of respondents (74%) regulate diversion under their national legislation. Data on **diversion** were unavailable for Russia.



In the case of **detention**, it was noted that all countries have safeguards on the right to legal assistance, the right to be in contact with a parent or legal guardian, the right to have his or her sentence reviewed and the right to access remedy rights. Child detainees have the right to complain about the conditions of detention and the right of children to be held separately from adults when detained. Two countries specify other safeguards. For example, in the Slovak Republic the child justice system ensures compulsory education during detention.

Child victims and witnesses in criminal proceedings

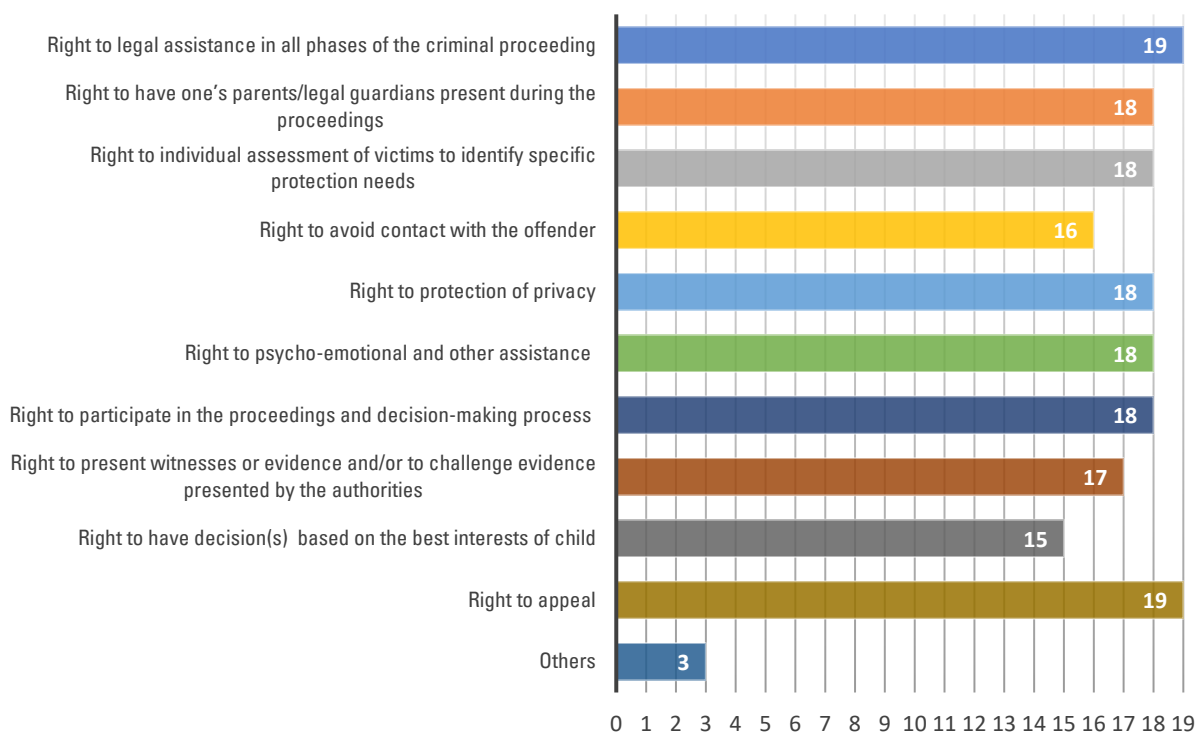
The Victims' Rights Directive (2012/29/EU) was adopted on 25 October 2012. The aim of this Directive is to ensure that victims are treated in a respectable manner (without discrimination), protected from revictimization, and supported in their recovery. The Directive was to be transposed into the national legislation of Member States by 16 November 2015.

The aims of the Victims' Rights Directive (2012/29/EU) are consistent with the UN Convention on the Rights of the Child provision pertaining to victims, which is to promote the physical rehabilitation, psychological recovery and social reintegration of a child victim.

With respect to child victims, other aspects of child-friendly justice include the right to be heard during legal proceedings, and to have their needs assessed at the earliest stage possible. The survey asked questions in order to determine which provisions of the Procedural Rights Directive (2012/29/EU) have been transposed into national law and what procedural safeguards for child victims and witnesses exist. This section contains a summary of those responses.

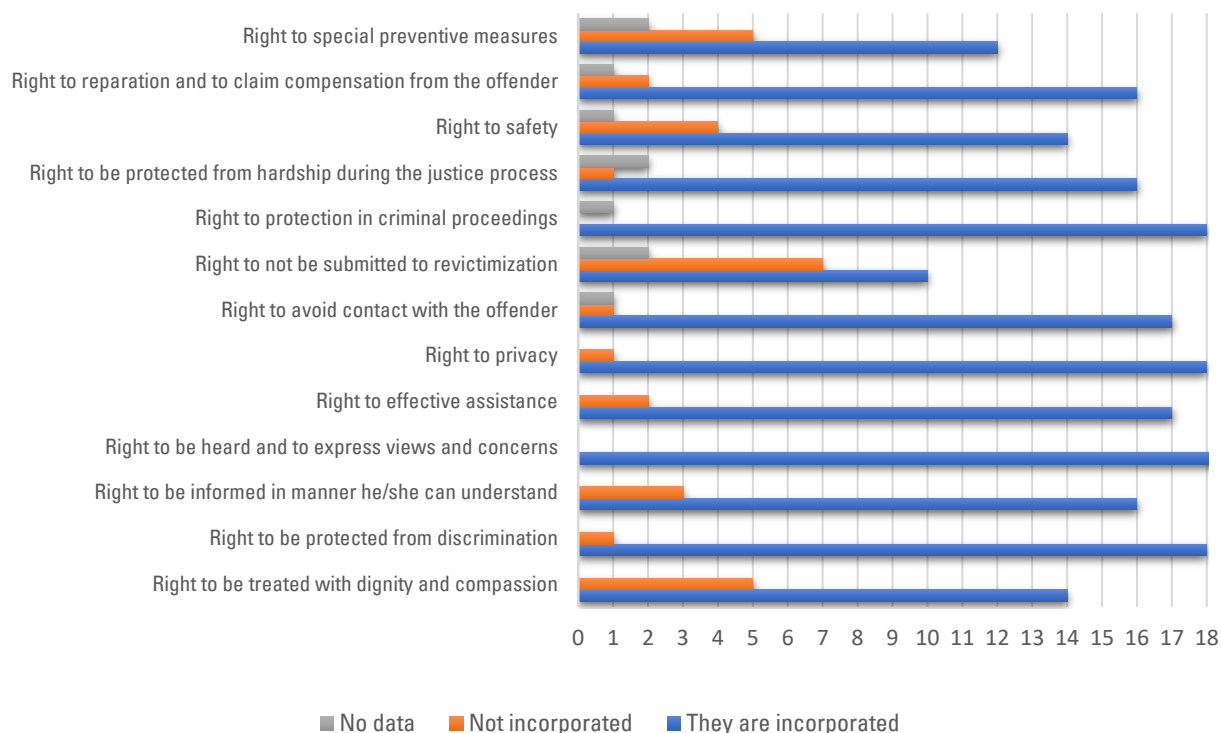
²⁹ Diversion: Diversion means the conditional channelling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable many children - possibly most - to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record. Retrieved from: https://www.unicef.org/tdad/index_56037.html

Safeguards/rights are applied in cases of child victims and witnesses in criminal proceedings



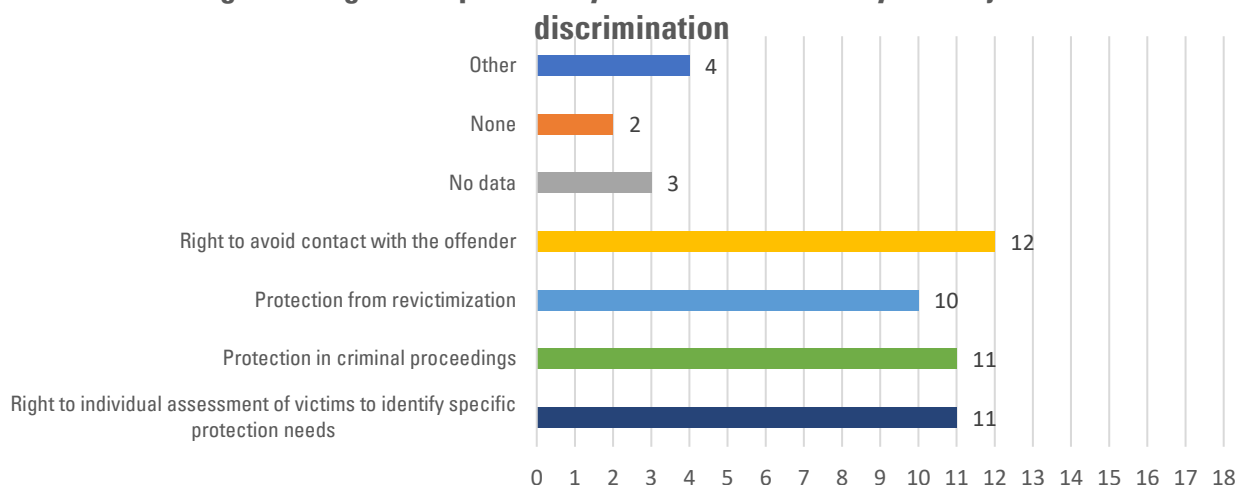
The **existing safeguards and rights for child victims and witnesses during criminal proceedings** showed that the right to appeal and the right to legal assistance exists in all the countries selected. The least common safeguard was the right to have the decision based on the best interests of the child, as 21% of the countries did not confirm this was an available right. With respect to other safeguards, 16% of countries do not ensure a victim's right to avoid contact with the offender and 11% do not ensure the right to present witnesses or evidence and / or challenge the evidence presented by the authorities.

Number of countries where the rights of child victims and witnesses are incorporated into national legislation



When respondents were asked about the **existence of provisions in national legislations that related to procedural safeguards for child victims and witnesses**, it was found that 36% of countries do not have safeguards for the victim or witness to protect them from revictimization. In addition, the right to special preventive measures exists in only 12 of the 19 countries. Other rights, such as the right to protection in criminal proceedings, the right to be heard, right to privacy and the right to be protected from discrimination, are in place for the majority of respondent countries.

Rights/safeguards specifically for children that may be subject to discrimination

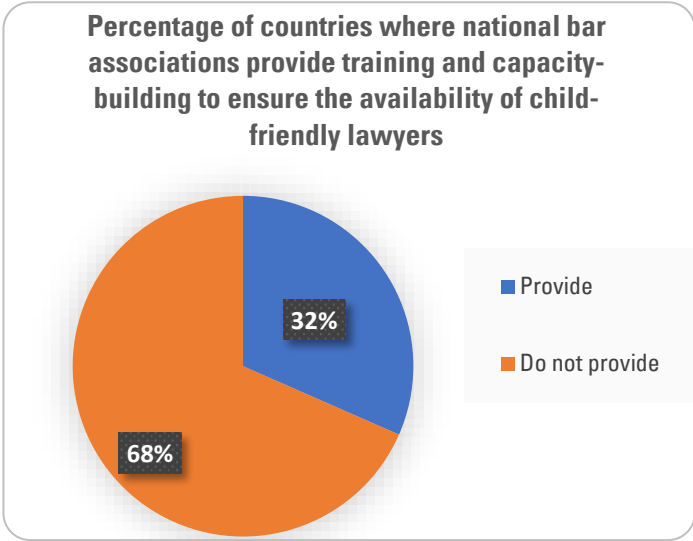


All but one country (Luxembourg) had measures in place to **prevent discrimination of child victims and witnesses**. At least half the countries could not guarantee protection against re-victimization.

Other measures to enhance safeguards for children in contact with the law

As mentioned in the specialised professionals and institutions section, to ensure a child-friendly justice system, professionals who interact with children in the criminal justice sector should receive appropriate and continuous training. Furthermore, children should be able to access free legal advice. This section offers an overview of the child-focused training obtained by professionals and an outline of civil society organisations (NGOs) that are involved in ensuring children receive free legal advice.

When questioned about the availability of child-centred, child-specific or child-focused training, the respondents indicated the following:

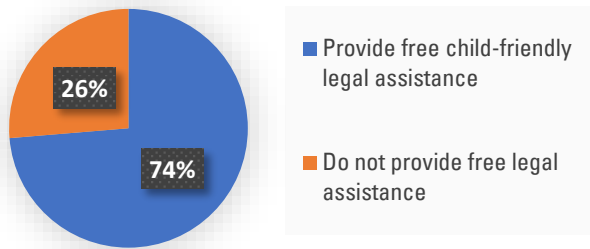


In 68% of the cases, there was no specialised training provided to lawyers representing children. Only 6 countries have training provided by the national bar association for specialised lawyers (Italy, France, Russia, Spain, Sweden and Ukraine).



More than one-third (37%) of countries have specialised trainings on restorative justice (Belgium, Czech Republic, Finland, Hungary, Poland, Spain, Sweden, and Ukraine), while 8 countries (47%) do not have training to on restorative justice. We did not receive an answer in response to this from three countries (16%) (Lithuania, Romania, and Russia).

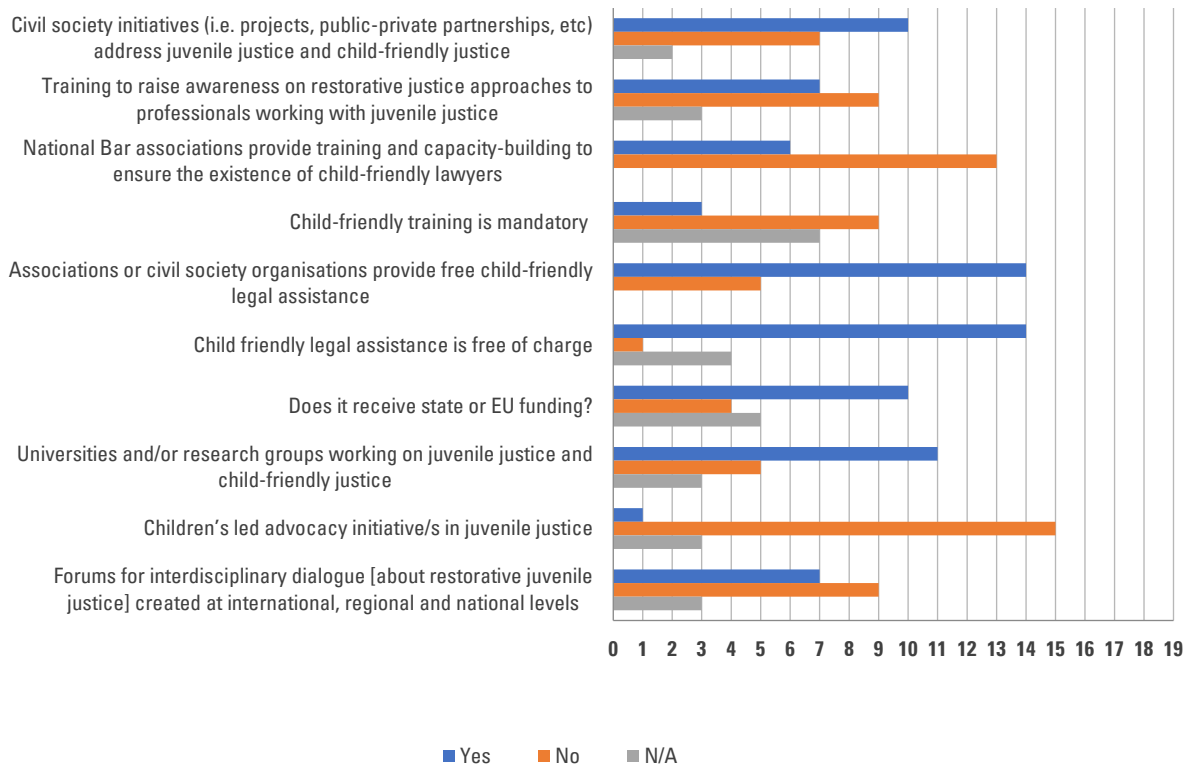
Percentage of countries in which associations or civil society organisations provide free child-friendly legal assistance



In 74% of cases, free child-friendly legal assistance was provided by NGOs. Only Finland did not confirm that civil organisations provide free child-friendly legal assistance.

In 6 out of 18 cases, universities had known initiatives related to child justice. In 8 cases, initiatives were not mentioned. Only France, Spain and Sweden had compulsory child-friendly trainings available.

Training in child-friendly justice



Last but not least, child-friendly training was compulsory in only 3 out of the 19 countries studied (France, Spain and Sweden). Free child-friendly legal assistance is not available everywhere, and it is noted that in less than half the countries, forums for interdisciplinary dialogues about restorative justice were known/available. This highlights the need for further awareness-raising on existing initiatives to promote child-friendly justice and specialised capacity building.

Status Offences

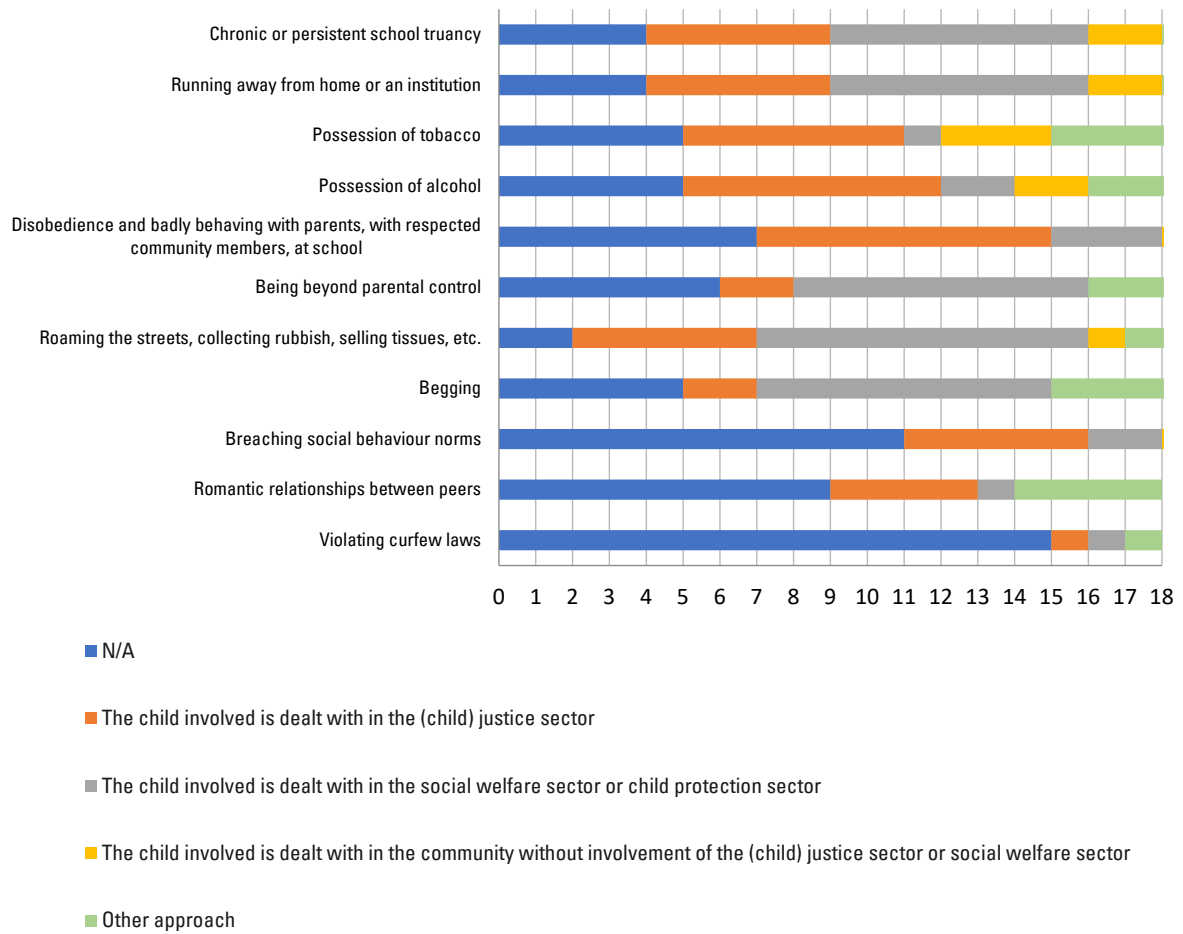
In General Comment 24,³⁰ the Committee on the Rights of the Child urged States to remove status offences from their State laws. Status offences are offences which are not considered crimes when committed by adults but are punishable if committed by children. Status offences include truancy, running away from home, begging, trespassing, and adolescents engaging in consensual sexual acts.

Survey Respondents were asked about a series of potential status offences and how these cases were dealt with. The majority of the countries addressed status offences through their child protection system. However, in some countries the justice systems were still the first response for offences relating to running away (Ukraine and Romania), possession of tobacco (Austria and Ukraine), possession of alcohol (Austria, Finland, The Netherlands and Ukraine), disobedience, roaming streets, peer romances and breaching curfew laws (Belgium, Czech Republic and Spain).

Several countries held adults (i.e., the child's parents or legal guardians) criminally responsible for the child's truancy. In addition, in some countries, while the child may not be held criminally responsible for possession of alcohol or tobacco, the adult that provided it could be. In this research, a specific question was asked to explore if status offences could lead to the deprivation of liberty. Alcohol, begging, breaching social norms, school truancy and possession of tobacco were status offences which could result in the deprivation of liberty. In Finland, the possession of alcohol could result in deprivation of liberty. In Hungary, a child could be deprived of liberty for begging and breaching social norms. In the Netherlands, school truancy could lead to the deprivation of liberty. Truancy, possession of alcohol and possession of tobacco may lead to deprivation of a child's liberty in Sweden. In Lithuania, a child may be deprived of liberty for truancy, possession of alcohol or tobacco, roaming the streets, or breaching social norms. In the Czech Republic, romantic relationships and disobedience could lead children to be deprived of liberty.

³⁰ <https://undocs.org/en/CRC/C/GC/24> (see paragraph 12)

How status offences are dealt within european national legislation



Part 2. Conclusions and Recommendations

In November 2020, 40 children and young people aged 12-25 years old were consulted by Terre des hommes about their views of the justice system.³¹ When asked about what was, according to them, a child-friendly system, they expressed the following opinions:

“I think of ways that we can make a **justice system suited to a child** so that when he/she grows up, the child can be an **active member of the community and benefit the community** itself.” (Greece)

“...Any child who commits any sort of crime **should be given the chance to contribute to society** because they are the future. Child-friendly justice is **necessary for the welfare of society**.” (Greece)

“The right to a lawyer, free of charge, is important for children. Often children don’t know what will happen during the criminal procedure. A lawyer can explain what is happening, because he or she is an expert. A lawyer can also inform the child the best way about the consequences of confessing or denying the offence. Or about remaining silent or lying about what happened.” (Netherlands)

Almost echoing these and the many other opinions shared by children, this Synthesis Report and the country specific Fact Sheets offer insight into the respondent countries’ compliance with child-friendly justice standards and highlights some specific needs of children in contact with the law. This research shows the extent of the specialization of child justice systems in Europe and the prevalence of procedural safeguards in national legislation for children in contact with the law. Key trends identified show that while there is some compliance with the safeguards established by the CRC, Procedural Rights Directive (2016/800/EU) and Victims’ Rights Directive (2012/29/EU), States must take additional measures to truly realize child-friendly justice systems.

Also, in conjunction with the European Commission’s recent publication of the EU Strategy on the Rights of the Child (2021-2024), this Synthesis Report suggests a list of key recommendations to effectively implement the EU Strategy. The EU Strategy provides that “national justice systems must be better equipped to address children’s needs and rights.”³² The EU Strategy finds that at times professionals lack training to interact with children and that there is a lack of awareness of rights for child victims.³³ As such, the EC encourages Member States to “support judicial training providers and all relevant professionals’ bodies to address the rights of the child and child friendly and accessible justice in their activities”³⁴ and “develop robust alternatives to judicial action: from alternatives to detention, to the use of restorative justice and mediation in the context of civil justice.”³⁵ The recommendations made in this Synthesis Report therefore align with the key recommendations developed in the EC Strategy.

While this Synthesis Report is static, the data will be published online, as part of the Justice with Children Global Initiative (www.justicewithchildren.org) and will be regularly updated by the international community of justice professionals. This collective group of stakeholders includes policy makers, academics, non-governmental

³¹ See “Just with children, Child-friendly justice for all children in Europe, Policy Brief in response to the Consultation on EU Strategy on the Rights of the Child 2021-2024”, developed by Terre des hommes in partnership with key child rights organisations in Europe and Baker McKenzie, available at : http://tdh-europe.org/upload/document/7293/JUST_with_Children_Policy_Brief_EC_Strategy_Child_Rights.pdf

³² European Commission, EU Strategy on the Rights of the Child (2021-2024), page 14, available at: https://ec.europa.eu/info/sites/default/files/child_rights_strategy_version_with_visuals3.pdf

³³ Ibid, page 14 and 15.

³⁴ Ibid, page 16.

³⁵ Ibid.

organisations, judiciary, and the private sector. The diverse membership of this community fosters an environment where lessons learned in building successful child-friendly justice systems can be shared.

In close partnership with its key strategic partner organisations, the academic world and European institutions, Terre des hommes in Europe aims to seize opportunities and expand this research, particularly given the increasing digitalisation of justice systems which will need to adapt to the needs and rights of children and young people. By implementing the recommendations below, Tdh aims to ensure child-friendly justice systems for all children in contact with the law in Europe, without discrimination.

Based on the responses collected, the following recommendations have been formulated. The list below is non exhaustive and provides some key areas where Terre des hommes, in close collaboration with its key partners in Europe from the governmental sector and civil society, could invest further resources to pave the way for children to enjoy better access to justice in Europe. The recommendations are categorized in four groups: Build Stronger Skills for Professionals Working with Children in Criminal Proceedings, Create Child-Centred Policy and Legislative Frameworks, Invest in Robust Monitoring of the Situation of Children in Criminal Proceedings, and Improve Knowledge of Professionals about the Needs of Children in Criminal Proceedings.

A. Build stronger skills for professionals working with children in criminal proceedings

1. Make **training programmes on child justice compulsory** for legal practitioners (judges, lawyers, probation officers, social workers, etc).
2. **Develop specific training programmes for all professionals working with children** who committed an offence or experienced victimisation **to learn about communication methods tailored to this specific target group.**
3. Consolidate **partnerships with National Bar Associations** to develop training programmes on child justice for lawyers.
4. **Involve young people when developing training programmes for them** and consider their advice.
5. **Develop training programmes for criminal justice professionals** about the core values and implementation of **child-sensitive and child-specific restorative justice.**
6. **Include innovative tools** (e.g. cards, images, toys, objects, board games, movements) in training on restorative child justice for practice in communication skills.
7. Build the capacities of professionals to understand the specific **needs and rights of child victims** and witnesses.

B. Create child-centred policies and legislative frameworks

8. Influence changes in **legislation for children from vulnerable groups**: children with disabilities in contact with the justice system, child victims of hate crime, identification of specific protection needs. Advocate for the adoption and the implementation of child specific legislation for these vulnerable groups.
9. Where non-existent, **encourage the development and creation of a new, specialised law for children and child justice** that indicates the minimum age of criminal responsibility deals with anti-social behaviour and other important definitions according to international standards.
10. **Raise the minimum age of criminal responsibility** to 14 as a minimum.
11. **End the imprisonment of children**: raise the minimum age of imprisonment to 18 years.
12. Allow for the child justice system to apply to individually to **young adults over the age of 18, to take into account that the brain development continues into the early twenties.**

13. Assess the use of deprivation of liberty for children **and promote the use of alternatives to deprivation of liberty.**
14. **Immediately decriminalise status offences**
15. **Transpose all the safeguards** contained in Directive 2016/800/EU and 2012/29/EU.

C. Invest in robust monitoring of the situation of children in criminal proceedings

16. Collect **data on child offenders, child victims from the first contact with the police to a possible sanction.**
17. Collect **data on children subject to diversion.**
18. Collect **data on children in pre-trial and post-trial detention.**
19. Collect **data on equal access to justice for all children** (among others, children with disabilities, LGBTQI+ children, minority children including Roma children)
20. Share results and **promising practices of collaboration with the academic world** in relation to research on child justice.
21. Support the EC in promoting the implementation of **measurable child justice indicators** at a national level to strengthen data collection.
22. Follow up on the study of data collection on children's involvement in judicial proceedings in EU Member States.

D. Improve the knowledge of professionals about the needs of children in criminal proceedings

23. Invest in **child-led advocacy initiatives** to empower children and ensure that their voices are heard in legal proceedings.
24. Implement the recommendations of the Global study on Children Deprived of Liberty.
25. Develop **communication material on key child-justice concepts** for professionals related to child justice: re-victimization, status offences, etc.
26. Advocate for **free legal assistance** for children in contact with the law.
27. Raise awareness of professionals to conduct robust **multidisciplinary individual needs assessments** for children in contact with the law

Part 3. Country Fact Sheets

This summary serves as a guide to reading the Fact Sheets. Please note that the Fact Sheets do not reflect all the information contained in the questionnaire. For detailed responses or more information, please refer to the questionnaire responses, which will be provided upon request.

The Fact Sheets provide an overview of the country's specific information pertaining to children in contact with the law. They may be used to identify areas within a country's legislation which need improvement and to, highlight areas where the country is succeeding. Practitioners in the field of child justice will also find these Fact Sheets helpful in quickly determining what safeguards are available to children in a certain country. In addition, civil society organisations may use the Fact Sheets and information in this report to plan initiatives and to advocate for change.

Demographic information about the country is provided in the top left text box of the first page, titled **"Overview"**. This section includes the geographic size of the country and the country's population. It also contains statistical data on the number of children living in their country and their age range. Furthermore, relevant information regarding the date the country adopted the U.N. Convention on the Rights of the Child and the date the death penalty was abolished is included in the **Overview**.

Below the Overview section is the section entitled **"Minimum Ages"**. This section provides critical ages for children in conflict with the law, including the minimum age of criminal responsibility ("MACR"), the minimum age of imprisonment, and the age until which the child justice laws are applied. This snapshot will show where the country stands in terms of adherence to recommendations made by the Committee on the Rights of the Child and the EU as outlined in the report.

The right-hand side of the first page incorporates additional information regarding the country, including the **"Type of Legal System"** (for example, civil law, common law, continental law, etc.). As mentioned in the report, both the Committee on the Rights of the Child and the Procedural Rights Directive (2016/800/EU) provide that professionals working with children should be adequately trained to do so. Therefore, the following section summarises the **"Specialisation of the System"** in the country. Finally, the first page ends with a summary of the **"Child Specific Legislation,"** pertaining to the criminal justice sector, which is available in the country.

The second page of the Fact Sheet is dedicated to **"Child Suspects or Accused in Criminal Proceedings"**. This page begins with the status of the **"Implementation of EU Directive 2016/800"** and advises whether the Procedural Rights Directive (2016/800/EU) is fully transposed into national law. The following section reviews the **"Cross-cutting Safeguards"** available to children in conflict with the law. This includes a selection of comments related to the provision of procedural rights of the child suspect or accused, such as the right to free legal assistance, participation in the hearing, and the child suspect's or accused's right to privacy during the proceedings. Any **"Specific Procedural Measures"** present in the country's legal system will be outlined in this section. The section on child suspects or accused in criminal proceedings ends by providing a summary of the country's law relating to **"Diversion and Alternatives to Detention"**.

The Fact Sheet's final page begins with a review of **"Child Victims and Witnesses in Criminal Proceedings"**. A brief statement is made about the "Implementation of EU Directive 2012/29" and whether the country has transposed the Victims' Rights Directive (2012/29/EU). **"Cross-cutting Safeguards"** to protect victims' and witnesses' rights are also mentioned in this section.

The final page continues by providing a summary of the type of behaviour the country categorises as **"Status Offences"**. As stated in the report, status offences are discouraged by the Committee on the Rights of the Child. Finally, the report ends by providing **"Other Relevant Information"** relevant to the country's child justice system. This may include civil society involvement or other procedures in place to protect the rights of children in conflict with the law.

1. **Austria**
2. **Belgium**
3. **Czech Republic**
4. **Finland**
5. **France**
6. **Germany**
7. **Hungary**
8. **Italy**
9. **Lithuania**
10. **Luxembourg**
11. **The Netherlands**
12. **Poland**
13. **Romania**
14. **Russia**
15. **Slovak Republic**
16. **Spain**
17. **Sweden**
18. **Ukraine**



Access to justice for children

Country fact sheet: **Austria**¹



Overview

Country size: 83 900 km²

General Population: 8,9 million

Number of Children: 1,721 million
(0-19 years old in 2021)

Date of ratification of the Convention on the Rights of the Child:
6 August 1992

Date of abolition of the death penalty: 7 February 1968

Minimum ages

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

Age of imprisonment: 14 years

Age until juvenile justice legislation is applied: 21 years

Type of legal system

The Austrian legal system is based on the civil law system.

Specialisation of the system

Austria provides for several specialised institutions including:

- Child legal aid
- Child social work services
- Child probation services
- Juvenile Courts Assistance Service which is referred to as *Jugendgerichtshilfe (JGH)*

Austria also provides for several specialised professionals including:

- Child prosecutors
- Child judges
- Child social workers

Child-specific legislation

- [Federal Constitutional Act on the Rights of Children](#) or *Bundesverfassungsgesetz über die Rechte von Kinder (Rights of Children Act)* – outlines the rights of children including the rights to protection and care, participation, and a non-violent upbringing. Also provides protections for children with disabilities.
- [Austrian Juvenile Courts Act](#) or *Jugendgerichtsgesetz (JGG)* – provides specific provisions for children in conflict with the law, including, criminal liability, juvenile court trials, and detention.
- [Austrian Code of Criminal Procedure](#) or *Strafprozessordnung (StPO)* – provides specific provisions for interacting with victims who are children.

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

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in December 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The [EU Criminal Law Amendment Act 2020](#) or *Strafrechtliches EU-Anpassungsgesetz 2020*, serves to implement **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings. The law which amended the *JGG*, requires that cases involving children in conflict with the law be carried out expeditiously, and that the accused be informed of his or her rights. This law also set parameters for the interrogation of child suspects and for medical examinations. The provisions of the federal law largely came into force on 1 June 2020.

Cross-cutting safeguards

- Children under the legal minimum age of criminal responsibility (under 14 years) alleged to have committed an offence cannot be prosecuted for the offence. See *JGG*, Sections 1(1) and 4(1).
- Children (14-18 years) are not liable for prosecution if the child is not yet mature enough to see the injustice of the act or to act upon this insight. Furthermore, if the child commits an offence (punishable by imprisonment for up to three years) before reaching the age of 16, he or she will not be held liable if the application of juvenile criminal law is not required to deter the juvenile from committing further criminal offences. See *JGG*, Sections 1(2) and 4(2).
- The *JGG* applies until the age of 21. See *JGG*, Section 1(5).
- Children have the right to engage with an attorney at all stages of criminal proceedings. Where the obligation to pay legal expenses is harmful to the future development of the child, an attorney must be provided at no charge. See *JGG*, Section 39.
- Children in conflict with the law have the right to privacy during proceedings. The public can be excluded from the main trial if it is in the interest of the child. See *JGG*, Section 42.
- Equal treatment and protection from discrimination is guaranteed by the *Federal Constitutional Law on the Rights of Children* and other constitutional rights.

- Other safeguards include the right to information and the requirement to make decisions in the best interests of the child. See *JGG*, Sections 32(a), 33, 37(1) and *Rights of Children Act*.

Specific procedural measures

The *JGH* plays an important role in assessing the situation of the child in conflict with the law. This includes an in-depth assessment of the individual and their living conditions. This assessment also includes recommendations on measures which are necessary to correct problem behaviour. This process is to assist the court in acting in the best interest of the child.

Diversion and alternatives to detention

- Detention is considered as a measure of last resort to be applied for the shortest appropriate period of time. See *JGG*, Section 35.
- Children may await their trial in the community. See *JGG*, Section 35.
- Diversion from judicial proceedings can be initiated at the prosecution-level. The public prosecutor can refrain from a criminal proceeding if the guilt of the accused is not regarded as serious, and the accused's actions did not result in death (with an exception for the negligent death of a family member). See *JGG*, Section 7.
- A financial penalty is an option as a corrective measure. Payment of any sum of money should only be proposed if the child can pay it without impairing his or her development. See *JGG*, Sections 7 and 8.
- Sentencing can be reserved for a probationary period of 1 to 3 years if it can be assumed that the sentence and threat of conviction will prevent the offender from committing further criminal acts. See *JGG*, Section 13.
- Children must be detained separately from adults. See *JGG*, Section 55.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Austria has not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against Austria for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- Child victims of violence or exploitation have the right to adequate compensation and rehabilitation. See *Rights of Children Act, Article 5(2)*.

- *StPO* also has special provisions for vulnerable victims, including children. These allow the victims to demand to be questioned by a person of the same gender, to have an interpreter, and to refuse to answer certain sensitive questions. See *StPO, Section 66a*.
- Additional rights and safeguards provided to victims include the right to be represented, right to have an assessment for the special need of protection, right to be informed of the subject matter and progress of the proceedings, right to have translation assistance, right to avoid contact with the offender, and right to protection from revictimization. See *StPO, Section 66*.

Focus on status offences

Some behaviour of children is considered to be a status offence and therefore, may result in criminal liability for children, as discussed below. These offences include:

- *Truancy* - the headteacher must file a criminal complaint if the student is a persistent truant and previous attempts to resolve the matter have not worked.
- *Possession of Alcohol/Tobacco & Violation of Curfew*– These laws vary from state to state within Austria. In some states, the child is warned, and other measures are taken before the child is fined. Parents are also liable to fines for the child's possession of alcohol/tobacco or violation of the curfew.
- *Begging* – Begging is an administrative offence which is punishable by a fine. Failure to pay the fine could lead to imprisonment for up to one week.
- *Romantic Relationships* – Sexual contact by two individuals who are both below the age of 14 is prohibited, but violators will not be held criminally liable. Sexual contacts that do not lead to sexual intercourse remain unpunished if the age difference between the young people does not exceed four years and the younger partner is already 12 years old. If sexual intercourse occurs, this remains unpunishable if the difference in age does not exceed three years and the younger partner is already 13 years old.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include offering conferences to keep judges and public prosecutors working in the field informed on subject matter and striving to maintain a minimum age of criminal responsibility of no younger than 14 years old. A list of relevant NGOs will be made available upon request.



Access to justice for children

Country fact sheet: **Belgium**¹



Overview

Country size: 30 689 km²

General Population: 11,5 million

Number of Children: 2,56 million
(0-19 years old in 2018)

Date of ratification of the Convention on the Rights of the Child:
15 January 1992

Date of abolition of the death penalty: 10 July 1996

Minimum ages

Minimum age of criminal responsibility ("MACR"): There is no minimum age for criminal responsibility. Under the Belgian system, criminal responsibility starts as from 18 years old.

Age of imprisonment: 18 years

Age until juvenile justice legislation is applied: 18 years

Type of legal system

The Belgian legal system is based on the civil law system.

Specialisation of the system

Belgium provides for several specialised institutions and professionals including:

- Child prosecutor's office / child prosecutors
- Child courts / child judges
- Child social work services / child social workers
- Child probation services / child probation officers
- Specialised units in hospitals

Child-specific legislation

The child justice system in Belgium concentrates on child protection rather than punishment. The laws governing this are enacted on a federal level, and through Community Decrees.

- *Federal law:* The Belgian Constitution contains a provision that children are entitled to have their moral, physical, mental, and sexual integrity respected and be protected from discrimination. In addition, articles of the *Judicial Code* address children's courts and various codes within Belgium's criminal law (*Youth Protection Act of 1965* as modified by the *Act of 15 May 2006*, *Criminal Instruction Code*, and *Criminal Procedure Code*), address children in contact with the law. The *Law of 1 March 2002* is relevant regarding the temporary placement of minors who have committed an offence. Federal law defines delinquent behaviour, sets forth measures to take in relation to said behaviour, and regulates the process of children involved in the justice system.
- *Community Decrees:* Various decrees have been entered separately by the French, Flemish, and German speaking Communities. These address matters such as help for child victims, youth assistance, child delinquency, youth and child rights policy, and child protection. The Flemish Community created the Flemish Office of the Children's Rights Commissioner and the Flemish and French Communities have adopted decrees on child protection (Flemish Community – Decree dated 7 March 2008 on special assistance to youth; and French Community – Decree dated 4 March 1991 on youth assistance). The Community Decrees regulate the implementation of the federal law, including legal measures and institutions that provide services to children.

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** on procedural safeguards for children who are suspects or accused persons in criminal proceedings is transposed in Belgian law and the *Youth Protection Act of 1965*, *Criminal Instruction Code*, and *Criminal Procedure Code* have been amended accordingly.

Cross-cutting safeguards

- Belgium has a separate justice system for children below 18 years old. Individuals who are at or above 18 years and who are alleged to have committed an offence while below 18 years, will be treated as if they were still children. Acts which qualify as “offences” will be heard before the Youth Tribunal or Child Court.
- The parents or the legal guardian of children should be present during all stages of the proceedings. See *Youth Protection Act of 1965*, Article 51.
- Generally, children have the right to effective participation during all stages of the proceedings. However, there is an exception if the child is below 14 years old and he/she is not accompanied by a parent, a tutor, or a person having custody. In this case, the child will be entitled to attend hearings only for the instruction, and the judgement; or when he/she is requested to attend in person or assist as a witness. See *Youth Protection Act of 1965*, Article 52ter.
- Trials are public, but the judge can decide to order a “huis clos” or “behind closed doors” to preserve the child’s privacy. This is assessed on a case-by-case basis. See *Youth Protection Act of 1965*, Article 57.
- Equal treatment and protection from discrimination is guaranteed by the Belgian Constitution.

Specific Procedural Measures

- Belgian law foresees that children who have been in detention (public youth protection institutions or hospitals), will be under the Child Court’s surveillance until they reach 18 years of age. The surveillance may be performed by the competent social service. See *Youth Protection Act of 1965*, Article 42.

- Divestment procedures (“*Procédure de dessaisissement*”), which operate to refer a child out of the Child Court, may also be used for children over 16 years old. If the Child Court determines that custody, preventative, or educational measures would be inadequate, it may send the case to the criminal court. The Child Court does not make a determination about the child’s guilt. The Child Court must order a social study and psychological assessment of the child before divesting itself and must verify that protection-related measures have already been imposed on the child or that the alleged facts present a certain degree of seriousness (e.g., rape or torture). See *Youth Protection Act of 1965*, Articles 57bis and 125.

Diversion and alternatives to detention

- Belgian law requires detention of children to be a measure of last resort, applied for the shortest, appropriate, period of time. See *Law of 1 March 2002 on the temporary placement of minors who have committed an offence*, Article 4.
- Diversion may be initiated at the prosecution-level, where the prosecutor may mediate or drop the case while issuing a written warning. Diversion may also occur at the court-level. See *Youth Protection Act of 1965*, Articles 45ter and 45quater.
- Children with mental illness may be placed in a closed institution if no alternative and appropriate treatment exists, and if the child puts his/her health and security at risk or represents a serious danger to the life or integrity of others. Fees associated with placement in a closed institution will have to be paid by the child or his/her parents or guardians unless they cannot afford to. See *Youth Protection Act of 1965*, Article 43.
- There are several alternatives to detention, including a child staying with a legal guardian, surveillance by the social services, or required work hours. During the sanction phase a judge can decide among a wide range of sanctions, including (i) restorative offer, (ii) project proposed by the child, (iii) assistance while staying in his/her living-environment, (iv) placement in open facility and, as last resort, (v) placement in a closed facility. See *Youth Protection Act of 1965*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May, 2020, Belgium has not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against Belgium for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- Belgian law provides several rights to victims and witnesses, but they are not child specific. These include the right to legal assistance in all phases of the criminal

proceedings, right to have one's parents/legal guardians present during proceedings, right to avoid contact with the offender, right to psycho-emotional and other assistance, right to be treated with dignity and compassion, right to be informed in a manner he/she can understand, and the right to be heard and to express views and concerns,

- The French community has additional protections for child victims and witnesses, including help for child victims of mistreatment. See *Articles 35, 51 and 122 Decree dated 18 January 2018 on the Code for youth aid prevention and protection* and *Decree dated 12 May 2004*.

Focus on status offences

As detailed below, status offences for children in Belgium are treated in the following manner:

- Disobedience, behaving badly with parents or at school, and being beyond the parent's control – If the matter cannot be addressed by measures implemented by the parents or the school, and the child's health, security, morality or educational conditions are put at risk, the public prosecutor can request the Child Court to take educational assistance measures. These measures include: (i) surveillance of the child; (ii) educational or medical instructions from an educational orientation or mental health centre; (iii) regular attendance to an ordinary or specialized establishment; and (iv) exceptionally, placement in an appropriate establishment.
- Roaming the streets – If this is an offence under municipality law, the child will be sanctioned directly by the municipality.
- Romantic Relationships between peers – The age of sexual majority is 16 years old. If two children below the age of sexual majority have a sexual relationship, with or without consent, both children are committing an infraction and the Child Court may impose a measure on both of them.

Sanctions exist for parent/guardians but not for children for offences such as truancy, running away from home, and begging.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of the non-governmental organisations (NGOs) include aiming to ensure that justice is made more accessible and understandable to children and providing trainings to professionals working in the child justice sector (including training on restorative justice). A list of relevant NGOs will be made available upon request.



Access to justice for children

Country fact sheet: **Czech Republic**¹



Overview

Country size: 78 866 km²

General Population: 10,7 million

Number of Children: 2,3 million

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

30 September 1990

Date of abolition of the death penalty: May 1990

Minimum ages

Minimum age of criminal responsibility ("MACR"): 15 years.

Age of imprisonment: 15 years (strict conditions to imprison children 15 to 18 years of age).

Age until juvenile justice legislation is applied: 18 years of age and in certain cases 19 years.

Type of legal system

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

Specialisation of the system

The Czech Republic provides for the following specialised institutions and professionals:

- Child social work service
- Child judges
- Child social workers
- Child probation officers

Child-specific legislation

The Czech Constitution does not have any child specific provisions. However, there is child specific legislation, which includes:

- [Act on Youth Justice System](#) (JSY) – governs responsibility for unlawful criminal acts committed by children. [English version.](#)
- [Criminal Code](#) – (CC) provides for alternatives to post-trial detention and provides that detention should be used as a last resort. [English version.](#)
- [Act on Criminal Judicial Procedure](#) (CJP) – provides for certain rights including free legal assistance if an accused does not have adequate funds to pay, and protection of privacy. CJP also provides certain rights for child victims and witnesses, including instructions for questioning witnesses under 15 years and that children under 15 may only be questioned in exceptional circumstances. [English version.](#)
- [Act on the Social & Legal Protection of Children](#) (SLPC) – contains provisions for children in need of protection, and social welfare measures for the protection of children.

Although not child specific, the following legislation is also relevant to a child's right to non-discrimination:

- Charter of Fundamental Rights and Fundamental Freedoms – offers legal protection from discrimination based on gender, race, colour of skin, language, faith religion, political or other conviction, national or social origin, membership of a national or ethnic minority, property, birth, or other status. [English Version.](#)
- [Anti-Discrimination Act](#) – provides for equal protection before the law. [English version.](#)

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

¹ The information used to compile this fact sheet is based on responses to the questionnaire received in November 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** is now fully transposed and implemented in the Czech Republic's national legislation. Following the adoption of **EU Directive 2016/800**, the Czech Parliament amended relevant acts of its legislation, including the preference for audio-visual recording during the interrogation of a child and the separation of children from adults in custody, even after the child reaches the age of 18.

Cross-cutting safeguards

- Children under the age of 15 years old cannot be criminally prosecuted. See *JSY, Article 89*.
- There is a right to legal assistance at all stages of the proceedings. Legal assistance is free if the accused lacks the funds to pay. See *CJP, Section 33* and *JSY, Articles 42(2) and 42(3)*.
- Children have the right to be treated in accordance with their age, mental development, and health. See *JSY, Article 42(1)*.
- Children have the right to effective participation during all stages of the proceedings. See *JSY, Article 42*.
- Children have the right to have their privacy fully respected during all stages of the proceedings. See *JSY, Articles 3(5), 52, 53, and 54*.
- Additional safeguards for child suspects and accused include the right to have one's parents/legal guardians present during the proceedings, right to an individual assessment, right to psycho-social and other assistance, right to appeal, and the right to have decisions based on the best interest of the child.

Special procedural measures

The *SLPC* provides that social and legal protection should focus on children who committed a crime or if under the age of 15, committed an act that would be considered a crime (See *Section 6(c)*), and children who are victims of crimes (See *Section 6(e)*). The *SLPC* requires that authorities discuss behavioural

weaknesses with children and take measures to eliminate factors that have a negative effect on children. The *SLPC* also requires authorities to cooperate with the Probation and Mediation Service Centre where children are involved in criminal proceedings or where acts are punishable in other ways.

Diversion and alternatives to detention

- Detention or imprisonment of a child is to be used only as a measure of last resort and for the shortest appropriate period of time. See *JSY, Article 46, CC, Section 55, and CJP, Section 72a*.
- Diversion may be initiated at the prosecution-level and at the court-level (before the first trial hearing). See *JSY, Articles 15, 24, and 70* and *CC, Section 52*.
- There are alternatives to pre-trial detention and post-trial detention, including placing the child in the care of a trustworthy individual or the use of a financial guarantee. Protective measures may be imposed and include protective treatment and protective education. However, the Czech Republic does not collect data or keep records on the application of alternative measures to children in the justice system. See *JSY, Article 19* and *CC, Sections 60(6), 63(3), and 98*.
- Children under the age of 18 at the time of detention must be housed separately from adults. See *JSY, Article 51(1)*.
- The Czech criminal system promotes restorative justice. The Czech Republic's Probation and Mediation Service conducts a Restorative Justice Week to increase awareness and promote restorative justice practice.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May, 2020, the Czech Republic has not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against the Czech Republic for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- Victims have a right to claim compensation. See *CJP, Section 43*.
- A victim or witness under 15 years old may only be confronted in exceptional circumstances. See *CJP, Section 104a(5)*.

- Witnesses under the age of 15 should be questioned with special care, and consider their age, and their ability to perceive, remember and reproduce. See *CJP, Section 102*.
- The period of time during which a victim of human trafficking or of any of the certain sexual criminal offences (as described in the *Criminal Code*) was younger than 18 years will not be counted against the period of limitation. See *CC 34(3)(c)*.
- Other rights for child victims and witnesses include the right to legal assistance in all phases of the criminal proceeding and the right to avoid contact with the offender. See *CJP*.

Focus on status offences

For the most part, status offences such as truancy, running away from home, roaming the streets and begging are addressed through the social welfare sector, pursuant to the *SLPC* and the *Administrative Infraction Act*.

Cases involving disobedience, badly behaving with parents, and romantic relationships between peers may be addressed through either the criminal justice or social welfare sector. Under the *Criminal Code*, it is illegal to have sex with anyone under the age of 15 years old.

Children are not dealt with through the criminal justice sector for other common status offences, such as possession of alcohol and tobacco and curfew violations. However, consumption of alcohol is considered as an offense.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of the non-governmental organisations (NGOs) include providing social services to child criminal offenders. Such services include a probation program which is offered as diversion from the criminal trial and strives to reintegrate children and reduce the risk of recidivism. A list of relevant NGOs will be made available upon request.



Access to justice for children

Country fact sheet: **Finland**¹



Overview

Country size: 338 454 km²

General Population: 5,5 million

Number of Children: 1,03 million

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

20 July 1991

Date of abolition of the death

penalty: 1949 (concerning crimes committed during peace time) / 1972 (concerning war time crimes)

Minimum ages

Minimum age of criminal responsibility ("MACR"): 15 years

Age of imprisonment: 15 years, however, an unconditional sentence of imprisonment may be imposed only for weighty reasons for persons under the age of 18 years.

Age until juvenile justice

legislation is applied: 18 years. For the most part, the specific legislation applies to persons aged 15–17 years. Single provisions / statutes apply to persons aged 15–20 years.

Type of legal system

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

Specialisation of the system

Finland does not have separate specialised courts of law or other child justice institutions such as child prosecution offices or child police stations. Some professionals, including members of the police force, are specially trained to deal with children. Also, government bill 177/2018 (relating to the implementation of EU Directive 2016/800) provides that the Judicial Training Board delivers training for judges and public legal aid officers relating to the treatment and rights of child suspects. Finland has an Ombudsman for Children whose role is to ensure that the status and rights of children are upheld by legislators and society's decision makers.

Child-specific legislation**

- [Constitution of Finland](#) – establishes that everyone is equal under the law and prohibits discrimination based on sex, age, or other grounds. [English version](#).
- [Non-Discrimination Act](#) – aims to promote equality and prohibits discrimination based on age, sexual orientation, and other grounds. [English version](#).
- [Child Welfare Act](#) – contains provisions for the social welfare of children. [English version](#).
- [Criminal Code of Finland \(English\)](#) and the [Criminal Procedure Act \(English\)](#) – provides the legal framework for criminal offences, responsibility and procedure.
- [Criminal Investigation Act](#) – contains provisions governing the investigation stages, including timeliness of investigation and questioning of accused and witnesses. [English version](#).
- The following laws also contain provisions which pertain to children in the justice system: [Act Concerning Clarification of the Situation of a Young Person Suspected of Crime](#), [Act on Court-Annexed Mediation \(English\)](#), [Act on the Publication of Court Proceedings in General Courts \(English\)](#), [Act on the Treatment of Persons in the Custody of the Police](#), [Legal Aid Act \(English\)](#), [Code of Judicial Procedure \(English\)](#), and [Remand Imprisonment Act \(English\)](#).

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

*** If available, an English translation is provided. Please note that the English translations may not include the most recent amendments and, thus, may not fully correspond with the Finnish law texts.*

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in November 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** has been implemented in Finnish national legislation. Due to **EU Directive 2016/800**, several amendments have been made and new provisions have been added to different laws. The amended provisions entered into force on 11 June 2019.

Cross-cutting safeguards

- Children between the ages of 15-17 are prosecuted as children. The relevant factor is the age of the child at the time of the criminal act, not at the time of the proceedings. See *Criminal Code, Chapter 3, Section 4*.
- A public defender is appointed when the suspect is under 18 years of age unless it is apparent that he or she has no need for a public defender. The public defender is compensated from State funds. See *Criminal Procedure Act, Chapter 2, Section 1* and *Criminal Investigation Act, Chapter 4, Section 10, Paragraph 3*.
- A child has a right to have their parents or legal guardians present during all stages of the proceedings. An investigator may prohibit the presence of a legal representative during questioning for certain reasons, including if it will hamper the investigation. In such cases, another adult representative may be present during the questioning. In addition, the social welfare authority may send a representative to be present during questioning. See *Criminal Investigation Act, Chapter 7, Sections 14 and 16*, and *Code of Judicial Procedure, Chapter 12, Sections 1 and 2*.
- Trials are normally open to the public. However, the court may decide that oral proceedings shall be held without the presence of the public. A permitted reason may be if a child below the age of 18 years is charged with an offence and closed proceedings would not be in violation of an exceptionally important public interest. See *Act on the Publicity of Court Proceedings in General Courts, Section 15*.
- Equal treatment and the protection from discrimination on certain grounds is guaranteed by the Constitution.
- Other safeguards include the right to appear in person and participate, and the right to appeal.

Special procedural measures

- If the predicted sentence will be more than a fine, the prosecutor must ask the Criminal Sanctions Agency to formulate a sentencing report. The agency assesses the child's social situation, the reason for committing the crime, the risk of reoffending, and the prerequisites to support a child living a crime-free life. See *Act Concerning Clarification of the Situation of a Young Person Suspected of Crime*.
- Children who turn 18 while on remand may still be kept separate from other adult remand prisoners if this is justified considering his or her personal circumstances. A remand prisoner who has attained the age of 18 may be kept with a remand prisoner below the age of 18 only if it is not against the best interest of the remand prisoner below the age of 18. See *Remand Imprisonment Act, Chapter 3, Section 1*.

Diversion and alternatives to detention

- Unconditional sentences of imprisonment shall not be imposed for an offence committed when the child was below 18 years of age unless substantial reasons demand otherwise. Detention and arrest may be used only as a measure of last resort and for the shortest appropriate period of time. See *Criminal Code, Chapter 6, Section 9*.
- Mediation is an alternative to court proceedings. The accused and the victim meet with an independent mediator to discuss the harm caused to the victim and remedial measures. A child must give their consent to mediation in person and their legal representative must also consent. See *Act on Court-Annexed Mediation*.
- "Juvenile punishment" is an option for offences committed by children under 18 years old and requires the child to report for supervision and carry out certain activities. Punishment may also be waived for children below the age of 18 at the time the offence was committed if it is shown the child lacked understanding at the time the act was committed or alternatively, that the act is deemed to be the result of lack of understanding or of imprudence. See *Criminal Code, Chapter 6, Sections 1 and 12*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime has been transposed into Finnish law.

Cross-cutting safeguards

- Crimes involving underage victims may not be referred to mediation if the victim needs special protection due to the nature of the crime or the victim's age. See *Act on Court-annexed Mediation*.

- The court may, under certain preconditions, appoint an adequately qualified person to support the victim during the criminal investigation and criminal proceedings. See *Criminal Procedure Act, Chapter 2, Section 3*.
- Child victims and witnesses in criminal proceedings may benefit from several additional safeguards, including but not limited to the right to avoid contact with the offender, right to protection of privacy, right to participate, right to appeal, and the right not to be submitted to revictimization.

Focus on status offences

Status offences are generally not criminalized in Finland. For example, school truancy situations are primarily dealt with in the school with parents and possibly a psychologist. Additional behaviours such as running away from home, roaming the streets, and begging are dealt with in the social welfare sector.

Possession of alcohol or tobacco by a child is addressed through the criminal justice sector. A fine may be imposed as a sanction.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include mediation training for professionals working with children and providing legal counselling on child and family law matters to municipal social services and other authorities dealing with child justice. A list of relevant NGOs will be made available upon request.

In Finland, there are several provisions in different laws regarding protection from discrimination. The Constitution of Finland states that everyone is equal before the law, and no one shall be treated differently from others on the grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. Finland also has a specific *Non-Discrimination Act* that aims to generally promote equality and prevent discrimination as well as to enhance the protection provided by the law to those who have been discriminated against. Other protections for vulnerable groups include:

- *Act on Disability Services and Assistance* (to eliminate obstacles and disadvantages caused by disability).
- *Criminal Code* (committing a crime based on the motive of race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or other reason, can result in an increased punishment).
- *Finnish Alien Act* (offers legal protection for aliens and migrants regarding immigration).



Access to justice for children

Country fact sheet: **France**¹



Overview

Country size: 643 801 km²

General Population: 66,5 million

Number of Children: 15,3 million (from 0 to 19 years old)

Date of ratification of the Convention on the Rights of the Child:
7 August 1990

Date of abolition of the death penalty: 9 October 1981

Type of legal system

The French legal system is based on the civil law system.

Specialisation of the system

France provides for several specialised institutions including:

- Child police units
- Child prosecution offices
- Child judges and courts
- Child legal aid
- Child probation services
- Child welfare services

Child-specific legislation

- There is no specific provision referring to children in the French Constitution of 1958. However, the French Constitutional Council has ruled that the “best interests of the child” principle should be given constitutional status.
- As of 30 September 2021, the legislative reference for child criminal justice will be the new [Juvenile Criminal Justice Code](#),² created by Ordonnance n° 2019-950 of 11 September 2019 on the legislative role of the Juvenile Criminal Justice Code, as amended by its ratification law. The information included in this fact sheet is based on the new *Juvenile Criminal Justice Code (JCJC)*.
- Until ratification of the *JCJC*, Ordonnance n°45-174 dated 2 February 1945 continues to be the relevant law for child criminal justice.
- The French Criminal Procedure Code (FCPC) contains provisions addressing certain procedural rights for child victims, witnesses, suspects and accused.

The [Convention on the Rights of the Child](#) is partially incorporated into French law as not all of its provisions are directly applicable under national law. It is up to national courts to interpret the content of the provisions of the Convention and decide whether they are directly applicable before them and may be invoked by natural persons. French judicial and administrative courts have ruled that this was the case for some of them, including the “best interest of the child” principle.

Minimum ages

Minimum age of criminal responsibility: concept of judgement (*discernement*) of the child

Age of imprisonment: 13 years

Age until juvenile justice legislation is applied: 18 years

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

² As of May 2021, the ratification law is currently still being discussed by members of National Assembly and Senate.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The full transposition of EU Directive 2016/800 was achieved through the following pieces of legislation: Law of 23 March 2019 on 2018-2022 programming and reforming the justice system, Law of 18 November 2016 on the modernisation of 21st century justice, Decree of 24 May 2019 implementing the penal provisions of the Law of 23 March 2019 on 2018-2022 programming and justice reform of the justice system.

Cross-cutting safeguards

- There is no minimum age set by law for criminal responsibility. France uses the concept of judgement (*discernement*)³ of the child at the time of the commission of the offence. Therefore, unless there is proof that the child was unaware of the consequences of his/her behaviour, a child may be convicted for an offence regardless of his/her age. However, the new JCJC introduces a new rebuttable presumption that children below 13 years old lack judgement, while children over 13 years old are capable of judgement.
- Children may benefit from legal assistance at all stages of criminal proceedings, which can be free of charge in certain circumstances depending on the parents' resources. See *Law n° 91-647 of 10 July 1991 on legal aid*.
- A child has the right to have his or her parents or legal guardians present at all stages of the proceedings. See *JCJC, Article L. 12-5*.
- Court hearings involving children are not open to the public. Only the victim, witnesses, close relatives, and legal representatives may be present. The president of the court may even decide that the child should not attend all or part of the proceedings. See *JCJC, Articles L. 12-3 and L. 13-3 and FCPC, Article D. 594-18, III, 2*.

Specific procedural measures

- The judge will have an assessment carried out for the child. This may include investigation of the social and family environment. Furthermore, a medical and psychological

examination of the child may be performed. Based on the evidence presented, the public prosecutor will decide whether a child may be prosecuted or not. See *JCJC, Articles L. 322-1 through L. 322-10*.

- Aftercare is available for children who are released from post-trial detention in order to facilitate the reintegration process.

Diversion and alternatives to detention

- Children aged 13 to 18 can be sent to juvenile jail only if the measure is absolutely necessary or if it is impossible to take any other measure. Also, it must be shown that judicial supervision and electronic surveillance are insufficient.
- A public prosecutor or police officers appointed by him or her may propose criminal mediation as a remedial measure. However, the victim must express his or her agreement to the mediation. In the event of disagreement or non-execution of an agreement, the public prosecutor may resume proceedings.
- Diversion is possible at the court level. France collects data on children who have gone through diversion.
- There are alternatives to pre-trial detention for children so that children can await their trial in the community. See *JCJC, Articles L. 333-1 and L. 333-2 and L. 331-1 to L. 331-7*
- Alternatives to post-trial detention for children include judicial review, referral to a health, social or professional agency, electronically monitored house arrest, or a civic training course, or sentence to social and educational centres for children.
- Children have the right to be detained separately from adults. See *JCJC, Articles L. 124-1-L. 124-2 and FCPC, Article D. 594-18, III, 5°*.

³ The new *Juvenile Criminal Justice Code* adds the definition of judgement as follows: "A minor is capable of judgement if he/she has understood and wanted his/her act and is able to understand the meaning of the criminal proceedings against him/her" (Article L. 11-1 of the new *Juvenile Criminal Justice Code*).

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, France has not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against France for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- A child who is the victim of one of the offences mentioned in Article 706-47 of the FCPC shall be assisted by a lawyer when she/he is heard by the examining judge. *See FCPC, Article 706-51-1.*

- Examinations and witness confrontations with a minor who is the victim of one of the offences mentioned in Article 706-47 of the FCPC, are carried out, upon request, in the presence of a psychologist, a doctor, a member of the child's family, the appointed ad hoc administrator or another person mandated by the children's judge. *See FCPC, Article 706-53.*
- Other procedural safeguards provided for child victims and witnesses include the right to have one's parents/legal guardians present during the proceedings, right to psycho-emotional and other assistance, right to avoid contact with the offender and the right to appeal.

Focus on status offences

Child social services are generally the relevant authority in matters of chronic or persistent school truancy, running away from home or an institution, disobedience and behaving badly with parents or respected community members, at school, roaming the streets, collecting rubbish, selling tissues, and begging.

In extreme cases, criminal authorities may be involved, especially when the child's behaviour reveals bad parenting thus compromising the child's health, safety, morals or education. In addition, the child may face educational measures or criminal sanctions if his/her behaviour constitutes a criminal offence under French criminal law.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include providing free child friendly legal services and offering training on child justice to lawyers. A list of relevant NGOs will be made available upon request.



Access to justice for children

Country fact sheet: **Germany**¹



Overview

Country size: 357 582 km²

General Population: 83,2 million

Number of Children: 10,4 million
(children under 14 years, status: 2018)

Date of ratification of the Convention on the Rights of the Child: Signed on 20 November 1989 and came into force on 5 April 1992

Date of abolition of the death penalty: 1949

Minimum ages

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

Age of imprisonment: 14 years

Age until juvenile justice legislation is applied: 18 years (if under 21 the court decides whether juvenile justice legislation is applied).

Type of legal system

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

Specialisation of the system and professionals

Germany provides for several specialised institutions and professionals including:

- Child police units / child police
- Child prosecution office / child prosecutors
- Child Chamber (court)
- Child legal aid
- Child social work service / child social workers
- Child probation service / child probation officers
- Children's Courts Assistance, which is referred to as *Jugendgerichtshilfe (JGH)*

Child-specific legislation**

- [Basic Law of the Federal Republic of Germany](#) or *Grundgesetz (GG)* – the German Constitution which has provisions pertaining to children. [English version](#). Each German state also has its own constitution with specific protections for children.
- [German Criminal Code](#) or *Strafgesetzbuch (StGB)* – provides for the minimum age of criminal responsibility. [English version](#).
- [Youth Courts Law](#) or *Jugendgerichtsgesetz (JGG)* – provides rules for the prosecution of children between 14-18 and young adults between 18-21. [English version](#).
- [Courts Constitution Act](#) or *Gerichtsverfassungsgesetz (GVG)* – provides for certain procedural protections for victims and witnesses. [English version](#).
- Other relevant legislation includes [German Code of Criminal Procedure](#) or *Strafprozessordnung (StPO)* ([English](#)), the [Act for Protection against Violence](#) (English not available), and [Guidelines for Criminal and Administrative Fine Proceedings](#). (English not available).

The [Convention on the Rights of the Child](#) is not directly applicable in German's justice system.

** Please note that the English translations may not include the most recent amendments and, thus, may not fully correspond with the German legal texts.

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in December 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directives 2016/800** on procedural safeguards for children who are suspects or accused persons in criminal proceedings and 2016/1919 on legal aid for suspects and accused persons in criminal proceedings have been transposed and came into force at the end of 2019. Certain amendments were made to the *StGB* and *StPO*.

Cross-cutting safeguards

- Children under the legal minimum age of criminal responsibility ("MACR") (under 14 years) alleged to have committed an offence cannot be prosecuted for the offence. See *StGB, Section 19*.
- For youths aged between 18 and 21 years, the court decides whether the *JGG* applies or whether the offender is fully liable under the *StGB*.
- Proceedings against children are not open to the public. If young adults or adults are also defendants, the proceedings are public, but the public may be excluded if it is shown to be in the interest of the child defendant. See *JGG, Section 48*.
- Children have the right to be present at and participate in their trial. See *JGG, Section 50* and *StPO, Sections 230 and 231*.
- Parents or legal guardians may be present at all stages of the legal proceedings but may be excluded from a hearing if it is suspected they are involved in the child's misconduct, there is a fear of danger to the well-being of the child, or the presence of the parent or legal guardian will impair jeopardise reaching the truth. See *JGG, Sections 51 and 67*.
- In certain cases, children will have defence counsel appointed. This includes if counsel would have been appointed for an adult or if the child's parent or legal guardian has been excluded from the hearings. In addition, legal assistance will likely be free. See *JGG, Sections 68 and 74*.
- Equal treatment for all is guaranteed by the *GG*.
- Other rights for child suspects and accused include the right to participate in the proceedings and decision-making

process, right to have decisions based on the best interests of the child, and the right to information.

Specific procedural measures

- Some localities have interdisciplinary teams who work with child repeat offenders. For example, the City of Cologne has a team of police, social workers, and prosecutors who focus on children who are repeat offenders. They are referred to as the House of Juvenile Justice or "*Haus des Jugendrechts*".
- Before a child offender is prosecuted, the child is assessed by the *JGH*. The assessment is read in court so that the prosecutor and judge can use the information to determine a fair procedure.

Diversion and alternatives to detention

- Pre-trial detention is considered as a last resort. Instead of detention, every other possible measure should be considered, including temporary placement in a youth welfare service home. See *JGG, Sections 71 and 72*.
- Detention (not longer than 4 weeks in duration) and "*Youth Imprisonment*" (deprivation of liberty in a facility) is to be a measure of last resort. The judge may apply educational measures (most common), which include social training courses, community service, and mediation. The judge may also apply disciplinary measures, including reprimands, reparation orders and imposition of conditions. The third category is suspended youth imprisonment (probation) and determinate youth imprisonment of 6 months up to 5 years, or in serious cases, 10 years. The disciplinary measure should be proportionate to the offence. See *JGG, Sections 13-18*.
- Diversion is possible at all levels of the child justice process. The prosecutor may initiate diversion without the judge's consent. In such cases, if the child admits his or her guilt, the prosecutor may propose a reprimand for the judge's approval. Also, the judge may issue instructions to the child, which should not unreasonably hinder the way the child conducts his or her life. These include, performing certain work tasks, attending social training, complying with no contact orders, and reaching a settlement with the victim. See *JGG, Sections 10, 45 and 47*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Germany has not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against Germany for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- During the proceedings, the judge will determine whether a child victim should testify before the offender or only in front of the judge. Child victims or witnesses' testimony should be recorded so that a child will not need to testify

more than one time. See *StPO, Section 58* and *Guideline for Criminal and Fine Proceedings, Section 18*.

- The protection of the child witness/victim is paramount during the proceedings. If required, a restraining order may be entered against the offender, and the youth welfare office together with the family court may take measures to prevent revictimization. See *Protection Against Violence Act, Section 1*.
- Other rights for child victims and witnesses include the right to legal assistance, right to have one's parents or guardians present at the proceedings, and the right to be informed.

Focus on status offences

Behaviour such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco may be addressed through the social welfare or child protection sectors. As such, the behaviour of the child is not criminalized, but adults may be held responsible for certain actions (for example, parents may be fined for a child's failure to attend school and an adult who provides alcohol or tobacco to a child may be charged under the law).

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include holding an annual child court day, where experts from all fields of child justice speak about criminal proceedings involving children and providing child-friendly free legal assistance. A list of relevant NGOs will be made available upon request.

In addition, German law offers protections for vulnerable groups, including:

- The Anti-Discrimination Centre ("*Antidiskriminierungsstelle*") - a national agency which combats discrimination. The legal basis for the Centre is the General Equal Treatment Act (*Antidiskriminierungsgesetz*). The Centre counsels, conducts research, and starts campaigns with other NGOs. One of its current campaigns is called *fair@school*. This campaign aims at diversity and anti-discrimination at school and focuses on refugee children and children with disabilities.



Access to justice for children

Country fact sheet: **Hungary**¹



Overview

Country size: 93 030 km²

General Population: 9,8 million

Number of Children: 1,4 million under 14 years; about 2 million under 18 years.

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

7 October 1991

Date of abolition of the death penalty: 31 October 1990

Minimum ages

Minimum age of criminal responsibility ("MACR"): 12 years or 14 years depending on the offence

Age of imprisonment: 14 years

Age until juvenile justice legislation is applied: 18 years

Type of legal system

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

Specialisation of the system

Hungary provides for several specialised institutions including:

- Child social work service
- Child probation service

Hungary also provides for several specialised professionals including:

- Child social workers
- Child probation officers

Child-specific legislation

- Fundamental Law of Hungary – constitutional rights providing for state protection and care of children, necessary for proper physical, mental and moral development.
- [Act XC of 2017 on Criminal Proceedings \(CP\)](#) – outlines special provisions for criminal proceedings against youth and establishes procedures for the treatment of victims and witnesses.
- [Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship \(PCAG\)](#) – provides basic rights and obligations of children and parents. Also provides for the protection and welfare of the child.
- [Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities](#) – requires equal treatment in the protection of children. Also states that discrimination is prohibited, based on several grounds including gender, age, race, nationality, disability, sexual orientation and sexual identity.
- Act C of 2012 on the Criminal Code (CC) – contains provisions for criminal responsibility.
- Other legislation relevant to children in contact with the law includes [Act II of 2012](#) (Minor Offences Act), [Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanours](#), [Act CXXXV of 2005 on Crime Victim Support and State Compensation](#), and [Government Decree 100/2018](#).

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

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

Hungary has fully transposed **EU Directive 2016/800**. The procedural provisions of **EU Directive 2016/800** are contained in *Act XC of 2017 on Criminal Proceedings*, which entered into force on 1 July 2018. Other legislation, including *Act II of 2012 on misdemeanours, misdemeanour proceedings and the registration system of misdemeanours*, has also been modified to transpose **EU Directive 2016/800**.

Cross-cutting safeguards

- Children under fourteen years old are generally exempt from criminal responsibility. However, for certain serious crimes, including murder, voluntary manslaughter, battery, acts of terrorism, robbery, and looting, the minimum age of criminal responsibility (MACR) is 12 years but only if the child had the capacity to understand the nature and consequences of his/her acts at the time the offense was committed. See *CP, Chapter XCV*.
- Equal treatment and protection from discrimination is guaranteed by Act CXXV of 2003 on *Equal Treatment and the Promotion of Equal Opportunities*.
- Child specific procedural safeguards include the rights to have decisions based on the best interests of the child (*PCAG, Section 2*), and to have parents or guardians present at proceedings (*Government Decree 100/2018 (VI. 8.) Section 54*)

Specific Procedural Measures

- Correctional institutions place emphasis on the correction and future reintegration of children. They have the opportunity to study or work during their sentences. Law enforcement institutions run several reintegration programmes for children.
- During criminal proceedings involving children, an individual assessment is conducted which examines the child's particular needs and environment. See *CP, Section 683*.

Diversion and alternatives to detention

- Arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time. See *CC, Section 106*.
- Diversion provisions are not specific to children, save for preventive parole regulated in the *PCAG*. Diversion can be initiated at prosecution-level or court-level. Data on diversion is collected by the Prosecution Service of Hungary and the National Office for the Judiciary and can be requested on an individual basis.
- Community service work and work to be performed as a sanction may only be imposed upon child offenders over the age of sixteen years at the time of sentencing. See *CC, Sections 112 and 117*.
- In special circumstances, the prosecutor may order a conditional suspension if the offence is not punishable by more than 8 years and if, given the circumstances of the offence, probation will allow for the child's continued development in the right direction. See *CP, Sections 416 and 690*.
- Children are detained separately from adults. See *Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanours, Section 192*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Hungary has not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against Hungary for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- Age is a decisive factor in the assessment of special protection needs of a victim or witness. The individual needs of a child are taken into account during the planning and execution of proceedings activities. See *CP, Sections 81 and 85*.

- During any proceedings activity involving children under 14 years of age, special provisions are in place. This includes that the confrontation of a witness who has not reached 14 may not be ordered and that the accused and their defence attorney may not be present at any proceeding requiring the participation of child under 14. See *CP, Section 88*.
- Several procedural protections are included in the law for victims and witnesses, although they are not child specific. These include the right to benefit from legal assistance at all stages of the criminal proceedings, the right to psycho-emotional and other assistance, and the right to compensation. See Act CXXXV of 2005 on *Crime Victim Support and State Compensation, Section 26/A*.

Focus on status offences

For the most part, status offences such as truancy, running away from home, and roaming the streets are addressed through the social welfare sector, pursuant to the *PCAG*. These offences are not addressed in the criminal justice system.

Cases involving a breach of social norms may be addressed through the criminal justice system. Any person who displays apparent anti-social conduct capable to incite indignation or alarm in other people commits a minor offence (See *Minor Offences Act, Section 170*); or if it involves an aggressive conduct as well it is a crime (See *CC, Section 339*). In both cases anyone 14 years and older can be held liable.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include providing training for judges and policemen on interviewing, interacting with children and ensuring that children's views and interests are considered. A list of relevant NGOs will be made available upon request.

In addition, various national laws offer protection for vulnerable groups, including:

- *PCAG* and *Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities Rights of Child Act, Article 6* (protection for children with disabilities).
- *CC, Section 332* (incitement against national, ethnic, racial or religious groups and certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation is a punishable act).



Access to justice for children

Country fact sheet: **Italy**¹



Overview

Country size: 301 338 km²

General Population: 60 million

Number of Children: 9,8 million

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

27 May 1991

Date of abolition of the death penalty: 1889

Minimum ages

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

Age of imprisonment: 14 years

Age until juvenile justice legislation is applied: 18 years. However, an individual who commits a crime under the age of 18 and is therefore within the purview of the child court/system, will remain under the court's responsibility until they reach the age of 25.

Type of legal system

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

Specialisation of the system

Italy provides for several specialised institutions including:

- Child prosecution office
- Child court
- Child legal aid
- Child social work service

Italy also provides for several specialised professionals including:

- Child prosecutors
- Child judges
- Child lawyers / paralegals
- Child social workers

Child-specific legislation

- [Italian Constitution](#) – provides that parents are responsible for supporting and educating their children. It also states that children born out of wedlock are entitled to the same legal and social protection as other children. [English version](#).
- [Italian Criminal Code](#) – governs the criminal responsibility of children.
- The Juvenile Criminal Procedure Code 448/1988 - governs the criminal procedure for children in conflict with the law. It includes all procedural safeguards and guiding principles of the Italian child justice.
- [Legislative Decree of 2 October 2018](#) – rules for the enforcement of sentences against children.
- [Law No. 69/2019](#) – provisions on the protection of victims of domestic and gender-based violence.

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

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** on procedural safeguards for children who are suspects or accused person in criminal proceedings has been transposed and it can be found in the Annex A of *Law no. 163 of 25 October 2017, "Delegation to the Government for the transposition of European directives and the implementation of other acts of the European Union - European Delegation Law 2016-2017"*.

Cross-cutting safeguards

- Children alleged to have committed an offence while below the minimum age of criminal responsibility (MACR) cannot be prosecuted for the offence, but they might be subject to restriction orders (safeguards). When the age of the child is unknown and it cannot be shown that the child is at or above the MACR, the child will not be held criminally responsible. See *Juvenile Criminal Procedure Code, Article 8*.
- Hearings involving children are behind closed doors. Any child age 16 and above may request that the hearing be open to the public. The court will evaluate the request and make a determination. However, the request will not be granted if there are co-defendants who are under the age of 16. See *Juvenile Criminal Procedure Code, Article 33*.
- The Italian constitution provides that all citizens shall be equal before the law and that there should not be any distinction based on gender, race, language, religion, political opinion, personal or social conditions. See *Constitution, Article 3*.
- Italian legislation provides guarantees for children, particularly during proceedings: free legal assistance at all stages of criminal proceedings, presence of a legal guardian or parents at all stages of proceedings, right to effective participation, right to privacy, and protection from discrimination.

Specific procedural measures

- Each prosecutor's office at the child courts has police specialised in child justice. See *Juvenile Criminal Procedure Code, Article 5*.
- The judge and the prosecutor shall perform an assessment of the child's personal, family, social, and environmental conditions to determine the child's responsibility for the crime and any disciplinary measures. See *Juvenile Criminal Procedure Code, Article 10*.

Diversion and alternatives to detention

- Detention is considered as a measure of last resort to be applied for the shortest appropriate period of time. See *Juvenile Criminal Procedure Code, Articles 16-24*.
- The judge may order pre-trial detention as a measure of last resort and only in certain circumstances including if the child is a flight risk, or if the child poses a danger to society. The law offers alternatives to detention for children awaiting trial. See *Juvenile Criminal Procedure Code Article 23*.
- There are alternatives to post-trial detention including education and work programmes. Furthermore, the judge may order the child stay-at-home for a certain time. See *Juvenile Criminal Procedure Code, Articles 25-35*.
- The Italian justice system provides diversion measures specifically for children. Through probationary diversion (*mesa alla prova*), the court may suspend the trial to use various measures, including restorative measures. The measures can consist of an individualised educational project lasting a maximum of 3 years. The project may include a variety of objectives and activities, the most interesting being penal mediation. Within an educational project, the justice services may be able to forge a reconciliation path between the child and the victim of the offence. See *Juvenile Criminal Procedure Code, Article 28*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Italy has not transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime and the European Commission had ongoing infringement proceedings against Italy for its failure to transpose **EU Directive 2012/29**.

Cross-cutting safeguards

Children who are victims of certain crimes of exploitation or sexual offences shall receive emotional and psychological assistance at every stage of the proceedings. See *Criminal Code, Article 609 decies*.

Focus on status offences

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

Other relevant information

The *Italian Criminal Code* makes it an offence to instigate or commit a crime based on racial, ethnic, national, or religious reasons. It is also a criminal offence to incite discrimination based on these reasons. See *Criminal Code, Article 604 bis*.

There are several civil society organisations in Italy which raise awareness and promote equality for LGBTQ and children of foreign origin.



Access to justice for children

Country fact sheet: **Lithuania**¹



Overview

Country size: 65 300 km²

General Population: 2,79 million

Number of Children: 569 100 (2012)

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

31 January 1992

Date of abolition of the death penalty: 9 December 1998

Minimum ages

Minimum age of criminal responsibility ("MACR"): 16 years in general but 14 years for serious crimes.

Age of imprisonment: 16 years in general but 14 years in exceptional cases.

Age until juvenile justice legislation is applied: 18 years

Type of legal system

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

Specialisation of the system

Lithuania provides for several specialised institutions and professionals including:

- The State Child Rights Protection and Adoption Service
- The Interdepartmental Child Welfare Council
- Child social workers

Child-specific legislation

- [The Constitution of the Republic of Lithuania](#) – contains provisions regarding the protection and care of children.
- [Criminal Code](#) – contains provisions on the criminal responsibility of children and safeguards for child victims.
- [The Law on the Basics of the Protection of the Rights of the Child](#) – provides for the non-discrimination of children and the child's right to be heard and to participate.
- [Criminal Proceedings Code](#) – contains provisions on legal rights and safeguards for children in conflict with the law.
- Other legislation relevant to children in contact with the law include the [Penitentiary Code](#) and the Law on Compensation for Damage Caused by Violent Crimes.

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

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** on procedural safeguards for children who are suspects or accused persons in criminal proceedings is in the process of being transposed into Lithuanian law. Several draft amendments were made to the *Criminal Proceedings Code* to be compliant with **EU Directive 2016/800**, including amendments to provisions regarding the right to information, right to an individual assessment, and parental participation.

Cross-cutting safeguards

- While the minimum age of criminal responsibility is 16 years old, it is possible for children below this age to have criminal responsibility. Children age 14 and above may be subject to criminal responsibility if they commit serious offences including, murder, rape, or robbery. A child who has not reached 14 years of age and commits a serious crime may be subject to educational measures. See *Criminal Code, Article 13*.
- Children have the right to free legal assistance throughout legal proceedings and there is compulsory participation of an advocate if the suspect/accused is a child. See *Criminal Proceedings Code, Articles 10, 21, 44, 50 and 51*.
- Legal representatives, such as parents and guardians, may be present at all stages of legal proceedings. However, the court may refuse to permit the legal representative to participate in the proceeding if it deems it contrary to the interests of the child. See *Criminal Proceedings Code, Articles 53 and 54*.
- A child in contact with the law has the right to privacy. The publication of pre-trial investigation data of child suspects and victims is prohibited. Also, while hearings are generally open to the public, hearings involving child suspects and victims may be closed. See *Criminal Proceedings Code, Articles 9, 21, and 177*.

- Equal treatment and protection from discrimination is guaranteed by the *Law on the Basics of the Protection of the Rights of the Child*.
- A child suspect or accused has the right to be informed. This includes the right to receive information on the proceedings against him or her, right to translation, right to make requests, and the right to review investigative material. See *Criminal Proceedings Code, Article 21*.

Specific procedural measures

- An individual assessment of the child suspect or accused shall be performed. It should assess the child's personality, environment, and needs. The individual assessment shall be used in determining corrective measures. See *Criminal Proceedings Code, Article 27² and 189¹*.
- Court psychologists play a significant role in the proceedings as described below in "Other relevant information".

Diversion and alternatives to detention

- Lithuanian law provides that the purpose of criminal liability is to: ensure responsibility in accordance with the child's age and maturity, to limit custodial sentences, to eliminate deviant behaviour and assist the child in changing his or her lifestyle, and to deter a child from committing further criminal offences. See *Criminal Code, Article 80*.
- Prior to trial, a child may be placed in the custody of their parents while waiting for trial. The parent or legal guardian must provide a written statement to ensure the child will behave properly and will appear when summoned. The parents of a child who fails to appear when summoned will be fined. See *Criminal Proceedings Code, Article 138*.
- Alternatives to post-trial detention include public works, fines, and restriction of liberty. See *Criminal Code, Article 90*.
- Children shall be detained in separate locations from adults. See *Penitentiary Code, Articles 52 and 70*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Lithuania had not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime. As of this date, the European Commission had ongoing infringement proceedings against Lithuania for its failure to fully transpose EU Directive 2012/29. According to the Ministry of Justice, Lithuania adopted the necessary legislation to transpose EU Directive 2012/29 in 2020 and are waiting for the European Commission to terminate the infringement proceedings.

Cross-cutting safeguards

- Under Lithuanian law, victims have the right to receive compensation for damage suffered as a result of a criminal offence. Also, the pre-trial officer or prosecutor must notify the victim of violent crime about the right to receive compensation under the *Law on Compensation for Damage Caused by Violent Crimes*. See *Criminal Proceedings Code, Articles 44 and 46*.
- Other procedural safeguards provided to victims include the right to legal assistance, right to have parents or guardians present during proceedings, right to avoid contact with the offender, and the right to appeal.

Focus on status offences

Offences such as possession of alcohol and tobacco and breaching social behaviour are in accordance with the Code on Administrative Offences. The disciplinary measures taken may depend on the age of the child and may result in a fine. Other offences including truancy and running away from home are addressed through the social welfare and community systems.

Other relevant information

Lithuania has various measures in place to ensure the equal protection and non-discrimination of children. The *Law on the Basics of the Protection of the Rights of the Child* states that all children have the same rights and prohibits discrimination on the basis of sex, age, nationality, race, language, religion, beliefs, social status, family status, health or any other circumstances.

Also, in Lithuania **court psychologists** play a significant role in the child justice process. The court psychologist works in the following areas:

1. in pre-trial investigation (conducts child interviews with the pre-trial investigation judge);
2. in criminal cases (helps judge to interview children during the court hearing); and
3. in civil cases (helps judge to hear the child's opinion).



Access to justice for children

Country fact sheet: Luxembourg¹



Overview

Country size: 2586 km²

General Population: 626 108

Number of Children: 119 539

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

20 December 1993

Date of abolition of the death penalty: 17 May 1979

Minimum ages

Minimum age of criminal responsibility ("MACR"): 18 years, but may be 16 years for certain serious crimes.

Age of imprisonment: 16 years

Age until juvenile justice legislation is applied: 18 years

Type of legal system

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

Specialisation of the system

Luxembourg provides for specialised institutions including:

- Child police units
- Child court - Juvenile and Guardianship Court

Luxembourg also provides for specialised professionals including:

- Child police
- Child judges

Child-specific legislation

- [The Law of 10 August 1992 on Youth Protection](#) – contains provisions addressing criminal proceedings involving children in contact with the law.
- [The Law of 16 December 2008 on Youth and Families](#) – addresses social assistance for children in distress.
- [The Law of 25 July 2002 creating Support for the Ombudsman for Children's Rights](#) – established a Luxembourg committee to safeguard and promote the rights and interests of children.
- [The Civil Code](#) – provides for safeguards for children in contact in the law.
- Other relevant legislation includes the [Code of Criminal Procedure](#) and the [Law of 28 November 2006 on Equal Treatment](#).

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

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in November 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

At this date, the **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings is not fully transposed in Luxembourg law. However, several existing pieces of legislation contain provisions in line with the provisions of **EU Directive 2016/800**.

Cross-cutting safeguards

- Children who turn 18 years old during proceedings can still be dealt with in the Juvenile and Guardianship Court or *Tribunal de la Jeunesse et des Tutelles* (Court) and individuals above 18 years old are charged as adults by general courts. However, nothing is mentioned in national law regarding children whose age cannot be proven.
- The law requires a lawyer to be appointed as soon as a child under 18 is suspected of committing an act defined as an offence in criminal law. Therefore, a child must be interviewed in the presence of a lawyer.
- A child in contact with the law is entitled to free legal assistance.
- Hearings by the Court cannot be published or reproduced publicly. Similarly, the publication or reproduction of any element that could allow the identification of the child or that concern the child's personality is forbidden. Furthermore, decisions of the Court or judge are kept in a special register and not entered in public records. See the *Law of 10 August 1992, Articles 15 and 28*.

Specific procedural measures

- The protection of the best interests of the child is firmly established in Luxembourg legislation. In this regard, the Court must consider the best interests of the child when determining which measures to take. When the representatives of a child appear to act contrary to the best interests of the child in the context of judicial proceedings, the judge can designate an ad-hoc representative. See the *Law of 10 August 1992, Article 37* and *Civil Code, Article 388-2*.

- In deciding which measures to take, the Court or children's judge assesses the personality of the child through several routes including social inquiry, medical, psychological and psychiatric examinations, behavioural observation, and a vocational guidance examination. The Court or children's judge may also seek the advice of any person who can provide useful information. See the *Law of 10 August 1992, Article 23*.
- To promote children's reintegration after detention, the Juvenile and Guardianship Court may award holidays to children. The holiday may be short holidays or holidays over weekends and can be awarded by the persons who have the custody of children or by the directors of the establishments where the children are placed.

Diversion and alternatives to detention

- While Luxembourg legislation provides that the detention should be used as a measure of last resort, it does not specifically state that detention should be for the shortest appropriate period of time. See the *Law of 10 August 1992, Article 6*.
- Children in detention are to be held separately from adults. See the *Law of 10 August 1992, Article 26*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Luxembourg has not transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against Luxembourg for its failure to transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- There are legislative measures to protect child victims and witnesses from secondary victimisation, including the ability

to record the child's testimony. The child or his or her legal representative must consent to the recording. See *Code of Criminal Procedure, Article 48-1*.

- Other important safeguards or rights for child victims and witnesses include the right to legal assistance in all phases of criminal proceedings, right to have one's parents/legal guardians present during the proceedings, right to avoid contact with the offender, right to psycho-emotional and other assistance, right to present witnesses or evidence and/or to challenge evidence presented by the authorities, and right to appeal.

Focus on status offences

Luxembourg does not address behaviour which are typically deemed as status offences through the criminal justice sector. These include offences such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco. As such, the behaviour of the child is not criminalized, but adults may be held responsible for certain actions (for example, an adult who provides alcohol or tobacco to a child may be charged under the law).

However, the Court may take measures against children who exhibit certain behaviour including habitually evading compulsory schooling, engaging in debauchery, begging, vagrancy or crime. See *the Law of 10 August 1992, Article 7*.

Other relevant information

While there is no child specific rule on the prohibition of discrimination in Luxembourg legislation, the *Law of 28 November 2006 on Equal Treatment* applies to everyone. The *law of 28 November 2006* prohibits discrimination by public and private persons and bodies, based on religion or beliefs, disability, age, sexual orientation, race, or ethnic group.



Access to justice for children

Country fact sheet: **The Netherlands**¹



Overview

Country size: 41 543 km²

General Population: 17,2 million

Number of Children: 3,8 million (under 20 years)

Date of ratification of the Convention on the Rights of the Child:
6 February 1995

Date of abolition of the death penalty: 1870 (1983 constitution abolished the option of reintroduction)

Minimum ages

Minimum age of criminal responsibility ("MACR"): 12 years

Age of imprisonment: 12 years

Age until juvenile justice legislation is applied: 18 years

Type of legal system

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

Specialisation of the system

The Netherlands provides for several specialised institutions and professionals including:

- Child police stations/ units / child police
- Child court / child judges
- Child social work service / child social workers
- Child legal aid / child lawyers and paralegals
- Child probation service / child probation officer
- Child Care and Protection Board (*Raad voor de kindbescherming*)

Child-specific legislation

The Constitution of the Netherlands does not contain any articles specifically referring to children. However, the following child specific legislation exists:

- [The Child and Youth Act](#) – provides for specialized and preventive care and support by municipalities for children with mental health problems and other disorders.
- [Dutch Criminal Code](#) – includes provisions addressing criminal responsibility of children and punishments for crimes against children. [English version](#).
- [Dutch Code of Criminal Procedure](#) – contains provisions for procedural safeguards for children in contact with the law throughout all stages of the criminal proceedings. [English version](#).

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

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** on procedural safeguards for children who are suspected or accused persons in criminal proceedings was transposed thanks to the *Act of 15 May 2019* amending the *Code of Criminal Procedure* and the *Surrender Act*.

Cross-cutting safeguards

- Children above the minimum age of criminal responsibility (MACR) cannot be prosecuted for crimes allegedly committed while they were below MACR. Children aged 16 or 17 may be tried as adults, but lifelong imprisonment cannot be imposed. See *Criminal Code, Articles 77a, 77b and 77c*.
- Children have the right to free legal assistance at all stages of criminal proceedings. However, this right does not apply if: the child suspect has not been detained; the child suspect is at home and is summoned by letter; the child suspect is detained after 8 p.m. in the evening and does not have to report for questioning until the following day; and a child under the age of twelve is being questioned by the police. See *Code of Criminal Procedure, Article 489*.
- Children have the right to have their parent or legal guardian present at all stages of legal proceedings, however, their presence can be denied in certain circumstances by the Public Prosecutor. See *Code of Criminal Procedure, Articles 488aa, 488ab, 491a, 493a, and 496*.
- While proceedings involving children are normally behind closed doors, there are certain exceptions. These include granting access to the victim or the victim's next of kin to attend the hearing or finding that the importance of the public nature of the trial outweighs the importance of protecting the child's privacy. See *Code of Criminal Procedure, Article 495b*.
- Equal treatment and the protection from discrimination is guaranteed by the Dutch Constitution.

Special procedural measures

- The Child Care and Protection Board carries out a multi-disciplinary individual assessment of the child. The Child

Protection Board submits a recommendation to the court for the measures to be implemented for the child. The recommendation submitted by the Child Protection Board must be supported by at least one behavioural expert. See *Criminal Code, Sections 77o, 77w, and 77wb*.

- *Bureau Halt* is a Dutch organization with a national network of offices which aims to prevent and combat child crime. *Halt* is also responsible for the enforcement of alternative punishment given to children under 18. In some cases, police may decide to send a child to *Bureau Halt*. With a *Halt* punishment, children can rectify what they have done wrong, without having a criminal record.
- Another remedial measure may exist through the Child Protection Council (*Raad voor de Kinderbescherming*). Police inform the Child Protection Council as soon as a child has been arrested. The Council may conduct an investigation and visit the child at the police station. The Council drafts a report and advises what punishment, if any, should be imposed. This report is provided to the public prosecutor and to the court.

Diversion and alternatives to detention

- Detention of a child should be used as a last resort and for the shortest period of time. See *Code of Criminal Procedure, Articles 67a and 493*.
- As an alternative to post-trial detention for children, three main penalties are used. These include child detention, community service and fines. Community Service is performed through the Child Protection Council.
- As described above, the *Halt* penalty is an intervention tailored to the offence and to the child. A *Halt* penalty ensures that young people learn to take responsibility for their actions and is considered a restorative justice-based measure.
- Children have the right to be detained separately from adults. See *Code of Criminal Procedure, Article 488aa*.
- All criminal punishments (including alternatives to detention) are registered in the justice records.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime has been transposed into Dutch law by the Act of 8 March 2017 implementing Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards for the rights, support and protection of victims of crime and replacing the Framework Decision 2001/220/JHA.

Cross-cutting safeguards

- There is no explicit right to privacy for child victims or witnesses, however, the privacy interests of victims must be considered in press releases; the victim should be informed, and the press release should not contain any victim identification data.
- Procedural safeguards and rights for victims included in Dutch law include the right to free legal assistance, right to an individual assessment, right to participate in the proceedings and decision-making process, right to be informed in a manner he or she can understand, right to avoid contact with the offender, and right to protection during legal proceedings.

Focus on status offences

Failure to attend school regularly may result in a judge sentencing a child, age 12 or older, to community service or a suspended prison sentence of up to 1 month. In addition, the child's parents may be held criminally liable and fined.

A child who is in possession of alcohol will also be dealt with through the criminal justice system.

A child who is begging may be dealt with through the social welfare system and child protective services may become involved.

Other relevant information

Civil Society – There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include providing free legal advice to children and young people and working to reintegrate children after their release from detention. A list of relevant NGOs will be made available upon request.

Protection from Discrimination – The Dutch Constitution states that all people should be treated equally under the law and prohibits discrimination based on religion, belief, political opinion, race, gender or on any other ground. Furthermore, as the Convention on the Rights of the Child is directly applicable in the Dutch justice system, children are protected from discrimination pursuant to Article 2 of the CRC.

Treatment of International Treaties – Article 94 of the Dutch Constitution states that treaties have a direct effect in the Netherlands and can be invoked by individuals (including children) where treaty provisions accord individuals direct rights.



Access to justice for children

Country fact sheet: Poland¹



Overview

Country size: 312 679 km²

General Population: 37,97 million

Number of Children: 7 million (under 18, 2013)

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

2 September 1990

Date of abolition of the death

penalty: The 1997 Penal Code abolishing the death penalty passed into law on 1 September 1998.

Minimum ages

Minimum age of criminal

responsibility ("MACR"): There is more than one MACR. As a rule, a person who has reached the age of 17 years may be subject to criminal liability. Children aged 15 and above who commit certain crimes including rape, robbery and grave bodily injury may be subject to criminal liability.

Age of imprisonment: There is more than one minimum age of imprisonment. As a rule, a child who has reached the age of 17 years may be subject to detention on the same basis as adults. In exceptional circumstances, a child who is 15 may be imprisoned.

Age until juvenile justice legislation is applied: 17 years

Type of legal system

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

Specialisation of the system

Poland provides for several specialised institutions and professionals including:

- Child police units / child police
- Child prosecution office / child prosecutors
- Child court / child judges
- Child legal aid / child lawyers and paralegals
- Child social work service / child social workers
- The Ombudsman for Children

Child-specific legislation

- [The Constitution of the Republic of Poland](#) – provides rights for children including the rights to non-discrimination, care, education, and that children's views should be given priority. The Constitution also provides rights for detained persons, including the right to be informed in a manner which is comprehensible to him or her. [English version](#).
- [Polish Criminal Code](#) – addresses the criminal responsibility of children. English version not available.
- [Law of 26 October 1982 on Proceedings in Juvenile Cases](#) – provides for a special type of protective-educational proceedings for children. English version not available.
- Other child specific legislation includes the [Act of 6 January 2000 on the Ombudsman for Children](#), the [Act of 11 February 2016 on State aid in bringing up children](#), the [Act of 9 June 2011 on family support and foster care system](#), the [Act of 12 March 2004 on social assistance](#), and the [Regulation of the Minister of the Interior and Administration of 31 March 2011](#).

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

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

According to information provided by the Ministry of Justice, the transposition of **EU Directive 2016/800** is not necessary, as existing Polish legislation includes the content indicated in the Directive. The Polish Ombudsman holds a different opinion, and the Ombudsman indicates that some of the existing procedures are insufficient to comply with **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings.

Cross-cutting safeguards

- While the minimum age of criminal responsibility is 17 years old, it is possible for children below this age to have criminal responsibility. Children above the age of 15 may be subject to the criminal responsibility on the same basis as adults if they commit certain offences, including a crime against life, rape, robbery, a crime against public safety, or deliberately inflicting grave bodily injury or grave damage to health. See the *Law of 6 June 1997, Code of Criminal Procedure, Article 10*.
- A child who has not attained 18 years of age must be represented by a defence counsel. A child accused of a crime can request that a defence counsel be appointed *ex officio* if he or she can show that they cannot bear the costs of representation. See the *Law of the 6 June 1997, Code of Criminal Procedure, Articles 78 and 79*.
- In proceedings involving children, parents or legal guardians are parties to the proceedings (along with the child and public prosecutor). See the *Law of 26 October 1982, Law on the Proceedings in Juvenile Cases, Article 3*.
- The child has the right to participate during the proceedings although the presiding judge may determine if the accused's presence at trial is necessary. Presence of a legal representative or a *de facto* guardian is required unless it is contrary to the interest of the proceedings. See the *Law of the 6 June 1997, Code of Criminal Procedure, Articles 171 and 374*.
- The court may exclude the public from the whole or part of the trial if at least one of the accused is a child. The court may also exclude the public for the duration of the examination of a witness who is below 15. See the *Law of the 6 June 1997, Code of Criminal Procedure, Article 360*.

- Equal treatment and the protection from discrimination is guaranteed by the Polish Constitution.

Specific procedural measures

- The court or judge carries out a study of the personality of the child, in particular by means of a social inquiry, medical, psychological and psychiatric examinations, behavioural observation and a vocational guidance examination.
- The final decision maker in proceedings involving children is the judge. However, several parties are involved in the proceedings including lawyers, social workers or psychologists, interdisciplinary committees, community representatives, and the Ombudsman for Children.

Diversion and alternatives to detention

- As a rule, a person who has reached the age of 17 years may be subject to detention on the same basis as an adult. However, a court may order educational or reformatory measures against a person who has committed an offence after reaching the age of 17 years but before the age of 18 years. In exceptional circumstances, a child who is 15 may be imprisoned.
- The detention of a child should be used as a measure of last resort and for the shortest appropriate period of time. If a child is detained, the child must be informed of his or her rights and police shall immediately notify their parents or guardian as well as the competent family court. See the *Law of 26 October 1982, Law on the Proceedings in Juvenile Cases, Article 32g*.
- During sentencing, the court will primarily aim to rehabilitate the child. No child under the age of 18 at the time of the offence will be sentenced to life imprisonment. See the *Law of 6 June 1997, Criminal Code, Article 54*.
- Diversion may be initiated at the court level. Educational correctional or educational-medical measures may be taken. The National Criminal Register collects data on children who have gone through diversion. See the *Law of 26 October 1982 Law on the Proceedings in Juvenile Cases, Articles 13 and Article 94*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May, 2020, Poland had not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and, the European Commission had ongoing infringement proceedings against Poland for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- A child victim or witness has the right to avoid contact with the offender. If there is a justified concern that the direct presence of the accused might hinder the witness's

testimony or have a negative impact on his or her mental state, the testimony may be carried out through the use of technical devices allowing the testimony to take place remotely, with a simultaneous transmission of sound and vision to the court.

- The right not to be submitted to revictimization is not guaranteed by Polish law.
- The *Regulation of the Minister of the Interior and Administration of 31 March 2011* provides a procedure for taking a child away from the family in the event of a direct threat to the life or health of a child in connection with domestic violence.

Focus on status offences

Polish law categorizes behaviour which is typically deemed a status offence as **social maladjustment**. It describes thirteen symptoms which include: 1) unsystematic attendance at school, 2) truancy or other neglect of education, 3) inappropriate behaviour in and out of school, 4) being away from home for a long time without control, 5) wandering around in the company of demoralised colleagues and joining in gangs, 6) aggressive behaviour, 7) vandalism, 8) running away from home, 9) smoking tobacco, 10) drinking alcohol, 11) the use of drugs, 12) premature sexual intercourse, and 13) offences committed by a person under the age of 13 or which are not punishable by criminal law.

If a child exhibits two or three different symptoms on a repetitive basis, the child may be referred to the family court. For example, a child who is a truant, while being away from home for a long time and committing vandalism, may be referred to the family court.

Other relevant information

The **Children's Rights Ombudsman** is an institution dealing with issues related to the problems of children and young people up to the age of 18. The Children's Rights Ombudsman guards children's rights as set forth in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other provisions of law, while respecting the responsibility, rights and duties of parents. The Ombudsman may request explanations on the case from the institution, court or prosecutor.

Measures are being taken under national and local policies and legislation regarding hate crimes, children on the move and/or affected by migration, and children with disabilities. Such measures are managed by the Children's Rights Ombudsman. There are also many non-governmental organisations working for children.



Access to justice for children

Country fact sheet: **Romania**¹

Overview

Country size: 238 397 km²

General Population: 19,4 million (2019)

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

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

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

Date of abolition of the death penalty: 8 January 1990

Minimum ages

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

Age of imprisonment: 18 years

Age until juvenile justice legislation is applied: 18 years

Type of legal system

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

Specialisation of the system

Romania provides for several specialised institutions and professionals including:

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

Child-specific legislation

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

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

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

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

Cross-cutting safeguards

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

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

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

Specific procedural measures

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

Diversion and alternatives to detention

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

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

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

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

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

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

Cross-cutting safeguards

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

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

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

Focus on status offences

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

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

Other relevant information

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

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



Access to justice for children

Country fact sheet: **Russia**¹



Overview

Country size: 17 125 191 km²

General Population: 146 million

Number of Children: 33 million (under 19 years old)

Date of ratification of the Convention on the Rights of the Child:
13 June 1990

Date of abolition of the death penalty: 27 February 1997

Minimum ages

Minimum age of criminal responsibility (MACR): 16 years generally. 14 years for the commission of certain crimes including murder, rape, kidnapping and robbery.

Age of imprisonment: 14 years

Age until juvenile justice legislation is applied: In Russia there is no special juvenile legislation. As a general rule, a child is considered to be a person under the age of 18 and legislation regarding the criminal responsibility of a child should be applied until the person is 18 years old.

Type of legal system

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

Specialisation of the system

Russia provides for several specialised institutions including:

- Juvenile Department
- Juvenile Commission
- Prosecutor's office
- Guardian Authority
- Social rehabilitation centre for children

Child-specific legislation

The [Constitution of the Russian Federation](#) contains several provisions pertaining to children and their right to care and education.

Children in contact with the law are covered by the legislation of the constituent entities of the Russian Federation and by the following federal regulations:

- [Criminal Code of The Russian Federation No. 63-Fz of June 13, 1996](#) – contains provisions on the criminal responsibility of children and sentencing for children.
- [Criminal Procedure Code of the Russian Federation No. 174 Fz of December 18, 2001](#) – contains provisions about the rights of an accused and has provisions for criminal investigation, including the interrogation of child victims, witnesses, and accused.
- Other relevant legislation includes Federal Law No. 120-FZ "On the basics of the system for the prevention of child neglect and delinquency" of 24 June 1999.

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

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in November 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

As Russia is not a Member of the European Union, there is no transposition into Russian law of **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings.

Cross-cutting safeguards

- If the age of a child cannot be established, he/she is placed in a temporary detention centre for young offenders. A forensic examination will be conducted to establish the child's age.
- Children in conflict with the law are entitled to free legal assistance at all stages of criminal proceedings. See *Criminal Procedure Code, Articles 16, 50 and 51* and *Federal Law NO. 120-FZ, Article 8*.
- Interrogation of a child suspect or accused shall not be conducted without a break every two hours, and in total it shall not exceed four hours a day. For children who have not reached 16 years of age, the participation of a psychologist is mandatory. See *Criminal Procedure Code, Article 425*.
- A child's legal representative may participate in all stages of the proceedings. However, the legal representative may be dismissed from participation in the criminal case, if there are grounds to believe that the actions of the legal representative are contrary to the interests of the child. See *Criminal Procedural Code, Articles 426 and 428*.
- Upon a court ruling or resolution, judicial proceedings concerning crimes committed by a child accused who has not reached 16 years old will not be open to the public. See *Criminal Procedure Code, Article 241*.
- The court may determine that a child defendant should be removed from the courtroom if the proceedings may have a

negative effect on the child. If this occurs, the judge should inform the child of what took place during his or her absence and give the child the opportunity to put questions to the persons interrogated in his absence. See *Criminal Procedure Code, Article 429*.

Specific procedural measures

- When sentencing a child, the court takes into consideration the child's life and educational background, the child's level of mental development, other distinctive personal characteristics, and the influence of older people on the child. See *Criminal Code, Article 89*.

Diversion and alternatives to detention

- Generally, detention of children is a measure of last resort and for the shortest period of time. Other penalties include fines, compulsory work, and corrective labour. See *Criminal Code, Articles 88 and 89* and *Criminal Procedure Code, Articles 105 and 423*.
- Children who are less than 16 years old at the time of the offence, may be deprived of liberty for a term of no longer than six years. Children in the same category who have committed especially grave crimes may be deprived of liberty for a term of no longer than 10 years. The term shall be served in educational colonies. Deprivation of liberty may not be imposed as a sentence on a child who is less than 16 years old at the time of the offence if the crime is of low or medium severity and a first-time offence. See *Criminal Code, Article 88*.
- Children must be detained separately from adults. See the *Federal Law No. 103-FZ, Article 33*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As Russia is not a Member of the European Union, there is no transposition into Russian Law of **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime.

Cross-cutting safeguards

- A pedagogue must be present during the interview of a victim or witness who is less than 14 years old. At the

investigator's discretion, a pedagogue may be present during the interviews of victims or witnesses aged 14 to 18 years old. Additionally, the child's legal representative shall also have the right to attend the interview. See *Criminal Procedure Code, Article 191*.

- Other procedural safeguards, such as the right to avoid contact with the offender, right to psychosocial assistance, and the right to be protected from discrimination, exist in Russian law.

Focus on status offences

Russia does not address behaviour which is typically deemed a status offence through the criminal justice sector. These include offences such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco. In some cases, a **prevention council** is convened in an educational institution, and the child's behaviour is addressed. However, a disciplinary measure cannot be applied to children in school grades 1-4 and children with disabilities. Upon reaching 15 years of age, and if the child has repeated violations, the child may be expelled from school based on a decision of the Juvenile Commission. Depending on the severity of the act, it will be decided whether the child should be placed in a special closed-type educational institution. Furthermore, if the child is beyond the control of the parent(s), then, taking into account the interests of the child, the social service may decide to take the child away from the parent(s) without depriving them of their parental rights (or restricting their parental rights).

Other relevant information

Lawyers in Russia receive training on child friendly justice issues through the **Bar Association**. This training includes topics such as "Actual issues in the field of protecting the rights of the child" and "Psychological aspects of investigative actions involving minors and witnesses". Furthermore, there is a list of lawyers who provide **free legal assistance to children**.

A survey by the Guardianship Authority, Juvenile Commission, and Juvenile Department on the conditions of the child criminal liability system in Russian federation found the following: 1) The age of children who commit crimes is decreasing; 2) Suggestions are made to tighten the responsibility of parents / legal representatives in relation to children; 3) It is emphasized that punishment in the form of deprivation of liberty is almost never imposed on children, despite the gravity of the crimes they commit (probably due to the fact that courts are guided by the unspoken rule that the child should live in the family); and 4) There is a complex bureaucratic procedure for the removal of a child from the family, however, it is emphasized that due to this, there is a low level of deprivation of parental rights.



Access to justice for children

Country fact sheet: **Slovak Republic**¹



Overview

Country size: 49 035 km²

General Population: 5,5 million

Number of Children: 1 million (2019)

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

2 September 1990

Date of abolition of the death penalty: 9 January 1991

Minimum ages

Minimum age of criminal responsibility ("MACR"): Generally, the MACR is 14 years and one day. The MACR is 15 years and one day in the case of sexual intercourse with a child of 15 years or younger. The MACR is 18 years and one day if someone solicits a child younger than 15 years through electronic communication services for a meeting with the intent of having sexual intercourse or making child pornography.

Age of imprisonment: More than one minimum age, i.e. a criminally responsible child can be imprisoned.

Age until juvenile justice legislation is applied: 18 years

Type of legal system

The Slovak Republic legal system is based on a civil law system.

Specialisation of the system

Child social work service is a specialized institution in the Slovak Republic.

The Slovak Republic has governmental structures/bodies specialized in child justice, including the Centre for International Legal Protection of Children and Youth, and the Public Defender of Rights.

Child-specific legislation

- The [Constitution of the Slovak Republic](#) – guarantees the protection of children and provides for other rights such as the right to education, care and non-discrimination, and equality for children born out of wedlock.
- [Criminal Code](#) – addresses criminal responsibility and sentencing measures for children.
- [Code of Criminal Procedure](#) – provides measures for the examination of child victims or witnesses and procedural rights in proceedings against children.
- [Act on Victims of Crime Offences and on Amendment and Supplement of Certain Acts](#) – provides additional rights and protections for child victims.
- [Act on Social and Legal Protection of Children and on Social Guardianship and on Amendment and Supplement of Certain Act](#) – contains measures for the protection and social welfare of a child.
- [Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination and on Amendment and Supplement of Certain Acts](#) (Anti-Discrimination Act) – contains provisions for anti-discrimination and equal treatment for all people.

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

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

EU Directive 2016/800 on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings was transposed into Slovak law.

Cross-cutting safeguards

- Children below the minimum age of criminal responsibility (MACR) who commit an offence cannot be prosecuted for the offence. If the age of the person is unknown and there is a reason to believe that he/she is a child, he/she has to be considered as a child until the contrary is proved. See *Criminal Code, Section 22*, and *Act on Victims of Criminal Offences and on Amendment and Supplement of Certain Acts, Article 1, Section 2*.
- An accused child must have an attorney from the preliminary hearing stage onwards. If the child cannot afford an attorney and demonstrates that he or she does not have sufficient funds, an attorney will be appointed for the child. See *Code of Criminal Procedure, Articles 37 and 40*.
- The public may be excluded from the hearing of an accused child if a motion is made by the child's attorney or legal representative. See *Code of Criminal Procedure, Article 343*.
- The child must attend the hearing determining their guilt or punishment. However, the child may be removed from the hearing if there is a concern that part of the proceedings may affect the child's moral development. Upon the child's return to the hearing, the child should be informed of what took place in his or her absence. See *Code of Criminal Procedure, Article 343*.
- The child's legal representative (i.e., parent or legal guardian), is entitled to represent the child through choosing a defence counsel, filing petitions on the child's behalf, and submitting request for appeal. Also, decisions in criminal proceedings are delivered to the social guardian and to the legal guardian with whom the child lives in the same household. See *Code of Criminal Procedure, Articles 35 and 344*.

- Equal treatment and the protection from discrimination is guaranteed by *Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination and on Amendment and Supplement of Certain Acts*.

Specific procedural measures

- A child who is under 15 years of age at the time of the offence, must always be examined as to whether he or she is competent to recognise the illegality of the act, and whether he or she is competent to control his or her own conduct. See *Code of Criminal Procedure, Articles 337 and 338*.

Diversion and alternatives to detention

- Detention and imprisonment of children are measures of last resort. Detention should be only for the necessary period of time. In determining the severity of punishment, the court shall consider, as a mitigating circumstance, how the child fulfilled the imposed educational obligations and restrictions. See *Criminal Code, Articles 110 and 117* and *Code of Criminal Procedure, Articles 70, 76, 85 and 86*.
- An accused child may be remanded in detention only if the purpose of detention cannot be achieved otherwise. The alternatives to detention include guarantees, promise and supervision. When using an alternative measure to detention, the court may impose appropriate restrictions and obligations and have the performance monitored electronically. See *Code of Criminal Procedure, Articles 70, 80, and 339*.
- The court may impose protective education for a child offender if: the education of the child is not properly ensured, and this deficiency cannot be eliminated in the family in which the child lives; the previous education of the child was neglected; or the environment in which the child lives does not guarantee his/her proper education. Protective education may only be imposed if the offender is criminally responsible and is not over 18 years. The court may also impose house arrest on a child offender. See *Criminal Code, Articles 102-105, and 116a*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, the Slovak Republic had not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime. As of this date, the European Commission had ongoing infringement proceedings against the Slovak Republic for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- Legal assistance is provided to victims through the Centre for Legal Aid and it is free when the victim does not have the means to pay for legal representation.

- During the assessment of the victim, the victim's personal situation and immediate needs, age, sex, disability, if any, and maturity, are taken into account. The victim's physical, mental and moral integrity should be fully respected. See *Code of Criminal Procedure, Article 2(21)*.
- Additionally, the Slovak Republic specifically ensures the following rights/safeguards to children: right to avoid contact with the offender, protection from revictimization, and protection in criminal proceedings.

Focus on status offences

The Slovak Republic does not address behaviours which are typically deemed a status offence through the criminal justice sector. These include offences such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco. Instead, such behaviour may be addressed through the social welfare or child protection sectors. As such, the behaviour of the child is not criminalized, but adults may be held responsible for certain actions. For example, parents may be fined for a child's failure to attend school and an adult who provides alcohol or tobacco to a child may be charged under the law.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include protecting the rights of children in proceedings before authorities and monitoring the country's fulfilment of its obligation to children under national and international law. A list of relevant NGOs will be made available upon request.

The Slovak Republic has various laws, including the *Constitution and Anti-Discrimination Act*, to help protection from discrimination. Protection from discrimination is focused on gender and diversity, race, persons with disabilities, etc.



Access to justice for children



Country fact sheet: Spain¹

Overview

Country size: 505 990 km²

General Population: 48 million

Number of Children: 8,4 million (under 18)

Date of ratification of the Convention on the Rights of the Child: 1990

Date of abolition of the death penalty: the death penalty was abolished in Spain by the adoption of the Spanish Constitution of 1978, although it was reserved for military jurisdiction until 1995.

Minimum ages

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

Age of imprisonment: 18 years and in some circumstances 14 years (only in detention centres for children)

Age until juvenile justice legislation is applied: Up to 18 years

Type of legal system

The Spanish legal system is based on a civil law system / continental law system.

Specialisation of the system

Spain provides for several specialised institutions and professionals including:

- Child police units/station
- Child prosecution office / child prosecutors
- Child court / child judges
- Child legal aid / child lawyers and paralegals
- Child social work service / child social workers
- Child probation services / child probation officers

Child-specific legislation

The [Spanish Constitution](#) contains several provisions regarding children's rights, including the right to education and protection of children. In addition, other child specific legislation includes:

- [Organic Law regulating the criminal responsibility of minors](#) – contains provisions on the criminal responsibility of children.
- [Organic Law on the Protection of Witnesses and Experts in Criminal Cases](#) – contains provisions on the protection of child victims and witnesses.
- [Organic Law on the Legal Protection of Minors](#) – contains provisions addressing children in need of protection and the other rights which are recognized by children. Establishes that children shall enjoy all the rights recognized in the Constitution, in the legal system, and in the Convention on the Rights of the Child.
- [Law 1/1996 on Free Legal Assistance](#) – contains provisions for legal assistance in proceedings.

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

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in November 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings and **2016/1919** on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings have been transposed into Spain's legislation.

Cross-cutting safeguards

- In Spain, children cannot be charged as adults. The accused's age is based on his or her age at the time of the commission of the offence.
- Children may receive free legal assistance at all stages of criminal proceedings. See *Law 1/1996 on Free Legal Assistance, Articles 2.g and 6.1* and *Organic Law regulating the criminal responsibility of minors, Article 17*.
- Children have the right to be informed of the charges against them, and their rights and obligations, in a manner that he/she can understand. See *Organic Law regulating the criminal responsibility of minors, Article 17.1*.
- Children have the right to effective participation during all stages of the proceedings. See *Organic Law regulating the criminal responsibility of minors, Article 22 c*.
- Children have the right to have their privacy fully respected during all stages of the proceeding. See *Organic Law regulating the criminal responsibility of minors, Articles 56.2 and 64*.
- Other safeguards available in Spain's legislation include: the right to have one's parents/legal guardians present during the proceedings, the right to have decision(s) based on the best interests of the child, and the right to appeal.

Specific procedural measures

- An assessment of a child in conflict with the law is conducted by public prosecutors, judges, social workers, and psychologists (Technical Team). See *Organic Law regulating the criminal responsibility of minors, Article 27*.

- The final decision maker on whether a measure is necessary and will be applied to a child in conflict with the law is the public prosecutor or children's court judge. This will depend on (a) the seriousness of the crime alleged, (b) what kind of rights-restrictive measure may be imposed, and (c) the stage of the proceedings.
- When there are reasonable grounds for believing that a crime has been committed and there is a risk that the child will evade or obstruct justice or that the legal assets of the victim will be undermined, the court may take precautionary measures for the custody and defence of the child in question or for the proper protection of the victim. Such measures may consist of placement in a centre under an appropriate regime, probation, prohibition of approaching or communicating with the victim or with those of the victim's relatives or other persons determined by the judge. See *Organic Law regulating the criminal responsibility of minors, Article 28*.

Diversion and alternatives to detention

- If a child is detained, he or she must be held at a children's detention centre. Pre-trial detention may not last longer than is necessary to conduct inquiries and clarify facts. The maximum period for pre-trial detention is 24-hours and the child must either be released or at the disposal of the public prosecutor (who can take 24 hours more to decide). See *Organic Law regulating the criminal responsibility of minors, Articles 17.4. and 17.5*.
- Spanish law provides for diversion for children in conflict with the law. Spain collects data on diversion, but data is only available for diversion by judges and public prosecutors.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

Spain has transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime into national law.

Cross-cutting safeguards

Safeguards available to child victims and witnesses in Spanish law include: the right to avoid contact with the offender, the right to be protected from hardship during the justice process, the right to reparation and to claim compensation from the offender, the right to raise objections in court; and the right to use a mediator.

Focus on status offences

Spain does not address behaviour which are typically deemed a status offence through the criminal justice sector. These include offences such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco. Instead, such behaviour may be addressed through the social welfare or child protection sectors or through the community. As such, the behaviour of the child is not criminalized.

Other relevant information

In Spain:

1. There is comprehensive protection of children through the public institutions of the State and Autonomous Communities.
2. "The best interests of the child" principle rules all aspects and fields of public administration.
3. There are institutions specialized in the protection of children and in criminal proceedings involving children.

Spain provides protection from discrimination for both child offenders and child victims and witnesses.



Access to justice for children

Country fact sheet: **Sweden**¹



Overview

Country size: 450 295 km²

General Population: 10,3 million

Number of Children: 2,2 million (under 18)

Date of ratification of the Convention on the Rights of the Child: 1990

Date of abolition of the death penalty: 1975

Minimum ages

Minimum age of criminal responsibility (MACR): 15 years

Age of imprisonment: 18 years

Age until juvenile justice legislation is applied: 21 years

Type of legal system

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

Specialisation of the system

The national legislation of Sweden does not provide for specialised child justice institutions, although there are specialised professionals, including child lawyers and social workers, and the Ombudsman for Children.

Child-specific legislation

- [Young Offenders Act](#) – contains provisions addressing the criminal responsibility and detention of children.
- [Social Services Act](#) – contains provisions for the care and social welfare of children. Also, contains procedural safeguards for child victims and witnesses.
- [The Preliminary Investigation Regulation](#) – contains procedural protections for child victims and witnesses.
- [Criminal Code](#) – contains provisions addressing the criminal responsibility and sentencing of children.
- [Code of Judicial Procedure](#) – contains provisions governing the proceedings and the procedural rights of the child offender, victims and witnesses.
- [Children and Parents Code](#) – states that the best interests of the child must be decisive for all decisions regarding custody, housing, and access to rights. The Code also provides that children have the right to care, security and good education, as well as to be treated with respect.
- [Care of Young Persons Act](#) – regulates when and how the state may remove the child from his/her guardian/s. Also contains provisions addressing children under the age of 15 committing crimes or children who are victims of parental abuse.
- Other relevant legislation includes the [Detention Act](#), [Counsel for An Injured Party Act](#), [Special Representative for Children Act](#), and [Discrimination Act](#).

In January 2020, the [Convention of the Rights of the Child](#) was incorporated into Swedish law.

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in November 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The **EU Directive 2016/800** on the procedural safeguards for children who are suspects or accused persons in criminal proceedings is transposed in Swedish law.

Cross-cutting safeguards

- A child under the minimum age of criminal responsibility (MACR) cannot be held criminally responsible for a crime. See *Criminal Code, Chapter 1, Section 6*.
- Pursuant to a Sweden Supreme Court case, if the child's age is not known, the court will determine the age of the child and the assessment most favourable to the child should be used. See *Case No. B 1346-16*.
- During the proceedings the child has a right to defence counsel paid for by the state. If acquitted, no repayment needs to be made to the state. However, if the accused is convicted, he or she may be required to pay all or part of the state's costs. See the *Code of Judicial Procedure, Chapter 21 and Chapter 31 Section 1 paragraph 3 and Young Offenders Act, Section 24*.
- Children have a right to have their parent/guardian present at all stages of proceedings. When a child is being accused of a crime the parents/guardians have to be informed and called to the police station. The parents have a right to attend the questioning of the child but not if it is not in the best interests of the child. Social services may also participate in the interrogation of the child if it is not to the detriment of the investigation. Also, parents/guardians have to be summoned to the child's hearing. See *Young Offenders Act, Sections 5 and 7*.
- Generally, court hearings are open to the public. However, when a child is a part of the proceedings the hearing can be closed to the public. Nevertheless, the court's judgement are public documents. While certain information can be kept confidential under the Information and Secrecy Act, there is nothing which concerns maintaining the confidentiality of children. See *Code of Judicial Procedure, Chapter 5 Section 1*.

Specific procedural measures

- After the police investigation is completed, and if the child has reached the age of 15, the prosecutor decides whether the case should be taken to court.
- In very specific cases, for example when the crime can lead to imprisonment for at least one year (for children above 15 years), the prosecutor can, based on a request from the social services, try the case in court through what is called evidentiary proceedings (*bevistalan*). The case is then tried as other criminal cases, and the court decides whether the child is guilty of the action. However, the child is not punished. This is seldom used, but when it is used it is to ensure that the child receives the most appropriate measures from the social services.

Diversion and alternatives to detention

- Children under the age of 18 can only be held in custody under extraordinary circumstances. See *Young Offenders Act, Section 23*.
- With respect to pretrial detention, alternatives such as restrictions on leaving a designated place of residence and obligations of reporting to the appropriate authorities may be used. See *Code of Judicial Procedure, Chapter 25, Section 1*.
- For children ages 15 to 18, special "youth penalties" are used. These include performing work service, following rules set by social services, or paying a fine. For severe crimes including rape or murder, there is a penalty called closed youth care. This means that the child is in detention with other children. If a child has not been convicted for a crime in the past and the current alleged offence is minor, a warning may be issued instead of an actual penalty.
- Children under 18 may not be housed in detention with a person over the age of 18 years old, unless it can be shown that it is in the best interests of the child. See *Detention Act, Chapter 2, Section 3*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Sweden has not transposed EU **Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime. As of this date, the European Commission had ongoing infringement proceedings against Sweden for its failure to transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- A child victim has a legal right to counsel. Additionally, children who have been victims of a crime committed by a parent or another individual who bears a close relationship with the child, have the right to a special representative. See *Counsel for An Injured Party Act* and *Special Representative for Children Act*.

- Witnesses under the age of 15 require permission from the court in order to testify and testimony may be behind closed doors. For children under 15, video taped hearings are often used in courts. In many places in Sweden these are carried out in specific child friendly places, so called *Barnahus* (Children's houses). See *Code of Judicial Procedure, Chapter 5 Section 1 and Chapter 36 Section 4*
- Witnesses under 15 are not allowed to take an oath. See *Code of Judicial Procedure, Chapter 36 Section 13*.
- Child victims and witnesses in criminal proceedings benefit from additional safeguards including the right to avoid contact with the offender, and the right to have parents or guardians present during the proceedings.

Focus on status offences

Sweden does not address behaviour which are typically deemed a status offence through the criminal justice sector. Behaviour such as truancy, possession of alcohol and possession of tobacco are addressed through the school system, in cooperation with the child's parents and possibly social services. Other offences, such as running away from home, acting beyond parental control, roaming the streets, and begging, may be addressed through the social welfare or child protection sectors.

A romantic relationship between peers is not a criminal act if both children are under the age of 15. However, there will be a criminal offence if a person over the age of 15 has a sexual relationship with a child under the age of 15.

Other relevant information

The Ombudsman for Children in Sweden has been tasked with supporting authorities, municipalities and county councils in their work on the practical application of the Convention on the Rights of the Child in their respective activities. This is known as the **Knowledge Promotion for the Rights of the Child**. The effort includes 16 authorities. The county administrative boards are also assigned to support the work on the practical application of children's rights in municipalities and county councils.

Sweden's *Discrimination Act* prohibits discrimination based on sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. This protection extends to children in contact with the law.



Access to justice for children

Country fact sheet: **Ukraine**¹



Overview

Country size: 603 628 km²

General Population: 41,98 million

Number of Children: N/A

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

27 February 1991

Date of abolition of the death penalty: April 2000

Minimum ages

Minimum age of criminal responsibility ("MACR"):

There is more than one minimum age of criminal responsibility. As a rule, a person who has reached the age of 16 years may be subject to criminal liability. Children age 14 and above who commit serious crimes including intentional homicide, rape, robbery and intentional destruction or damage to property may be subject to criminal liability.

Age of imprisonment: 18 years, however children younger than 18 can be sentenced to imprisonment with certain conditions.

Age until juvenile justice legislation is applied: 18 years

Type of legal system

The Ukraine legal system is based on a plural law system. It contains elements of civil law and common law.

Specialisation of the system

Ukraine provides for several specialised institutions including:

- Child police units
- Child social work service
- Child probation service

Ukraine also provides for several specialised professionals including:

- Child police officers
- Child prosecutors
- Child judges
- Child social workers
- Child probation officers

Child-specific legislation

- [Constitution of Ukraine](#) – contains provisions which state that parents are obligated to take care of their children, children are equal in their rights despite their origin and whether they were born in wedlock, violence and exploitation of a child is prosecuted, and that children have the right education.
- [Criminal Procedural Code of Ukraine](#) – provides for the minimum age of criminal responsibility and other procedural safeguards for children in conflict with the law.
- [Criminal Code of Ukraine](#) – outlines the elements of crimes and contains provisions regarding detention and alternatives thereto.
- [Law of Ukraine on Childhood Protection](#) – contains a provision on the equal treatment and non-discrimination of children and provides for free legal aid.
- Other relevant legislation includes the [Law of Ukraine On Free Legal Aid \(English version\)](#), [Law of Ukraine on Ensuring the Security of Persons Participating in Criminal Proceedings](#), [Criminal Executive Code](#), and the [Law of Ukraine on Principles of Preventing and Combating Discrimination in Ukraine](#).

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

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

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

As Ukraine is not a Member of the European Union, transposition into Ukrainian law of **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings is not required.

Cross-cutting safeguards

- While the minimum age of criminal responsibility (MACR) is 16 years old, it is possible for children below this age to be held criminally responsible. Children aged 14 and above may be subject to criminal responsibility if they commit serious offences including, intentional murder, rape, or robbery. Also, children 11 years and above who commit a socially dangerous act, can be subject to compulsory measures of an educational nature (this is not considered a criminal liability).
- If it cannot be established that a child is below the MACR, a forensic examination will be ordered to determine the child's age. See *Criminal Code, Article 242*.
- The participation of the defence counsel is obligatory for children under 18 years old who are suspected or accused of committing a criminal offence from the moment of verification of their underage status. See *Criminal Procedural Code, Article 52*.
- Children are entitled to free legal assistance with respect to representation of their interests in court, to receive legal information, receive advice and clarification on legal matters, and preparation of applications, petitions and other legal documents. See *Law of Ukraine On Free Legal Aid*.
- A judge may decide to conduct a closed hearing if the accused is a child. An amendment was drafted for the *Criminal Code* in early 2020 to make closed hearings mandatory for proceedings involving children. See *Criminal Procedural Code, Article 27*.
- Legal representatives, such as parents, guardians, or close relatives, may be present at all stages of legal proceedings. However, if the court determines that the actions and interests of the legal representative contradicts the interest

of the child, the legal representative may be replaced. See *Criminal Procedure Code, Article 44*.

Specific procedural measures

- Ukrainian legislation contains certain measures to ensure the safety of persons involved in criminal proceedings. As such, children may be temporarily placed in pre-school educational institutions under the written consent of parents or guardians. See *Law of Ukraine on Ensuring the Security of Persons Participating in Criminal Proceedings, Article 7*.
- A probation officer should make a social inquiry report during preparatory proceedings and should make recommendations for corrective measures. See *Criminal Procedural Code, Article 314-1*.

Diversion and alternatives to detention

- Children may be detained as a precautionary measure only if they are suspected of committing a serious or a particularly serious crime and if other precautionary measures would not eliminate the following risks: escape; illegal influence on the victim, another suspect or accused person, an expert, or a specialist in the particular criminal proceedings; destruction of evidence; or the commission of another crime. See *Criminal Procedural Code, Article 492*.
- Alternatives to pretrial detention include personal recognisance, personal suretyship, security deposit, home arrest, and placing under supervision of parents or child-care facilities. See *Criminal Procedure Code, Articles 176 and 493*.
- Alternatives to post-trial detention include fines, community service, and corrective work. See *Criminal Code*.
- Restorative justice options include reconciliation and dropping by the victim of a prosecution in private criminal prosecution proceedings. See *Criminal Code, Articles 469 and 471*.
- Children shall be detained in separate locations from adults. See *Criminal Executive Code, Articles 51, 88 and 92*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As Ukraine is not a Member of the European Union, transposition into Ukrainian Law of **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime is not required.

Cross-cutting safeguards

- The victim has the right to legal assistance during all phases of criminal proceedings. The witness has the right to legal

assistance while testifying and participating in other procedural actions. See *Criminal Procedural Code, Articles 56 and 66*.

- Ukrainian law imposes certain restrictions on victims' and witnesses' contact with offenders during questioning. Moreover, in the interests of the child victim/witness of a crime related to domestic violence, it is possible to restrict the offender's communication with the child for a period of two months with the possibility of further extension. See *Criminal Procedure Code, Articles 194 and 224*.

Focus on status offences

For offences such as running away from home and possession of alcohol and tobacco, a child will be dealt with in the criminal justice system. The measures taken may depend on the age of the child. For example, children between the ages of 14 and 16 are the responsibility of the parents, while children aged 16-18 may be reprimanded or asked to make a public apology. In addition, parents may be fined for such offences. Parents may also be fined for a child's persistent truancy.

Behaviour such as begging, roaming the streets, and being beyond parental control are addressed through the social welfare system.

Other relevant information

"Recovery Programme for Minors Suspected of Committing a Crime" - Ukraine launched this pilot project on 5 February 2019. Under the programme, the prosecutor will be able to offer children the ability to involve a lawyer-mediator from regional centres of free legal aid. The programme is for children who have committed a minor crime or crime of medium gravity for the first time. The child must admit that he or she committed the crime and the consent of both the child suspect or accused and the victim is required to participate in the programme. For additional information on the recovery programme, please refer to <https://zakon.rada.gov.ua/laws/show/z0087-19#n20> (Ukrainian; not available in English at this time).

National Strategy for Reforming the Justice System for Children until 2023 – The strategy includes the introduction of uniform standards for the training of lawyers who provide legal aid to a child suspect or accused. However, as of today, no uniform standards have been adopted.

Child's Advocate project – a joint working group of lawyers has been established to develop recommendations for legislation in the field of child representation in courts, as well as training courses on improving skills for being a child-friendly lawyer.




Non-Discrimination – Article 24 of the Ukraine Constitution provides that there may be no privileges or restrictions on the grounds of race, colour, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other characteristics. In addition, The Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" prohibits any form of discrimination. Furthermore, the Law of Ukraine on "Childhood Protection" states that all children in Ukraine, regardless of race, colour, sex, language, religion, political or other beliefs, national, ethnic or social origin, and other statuses or circumstances, have equal rights and freedoms.

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