

# Social Fieldwork Research (FRANET)

## Procedural safeguards for children who are suspects or accused persons in criminal proceedings

**Bulgaria**

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## **PART A. EXECUTIVE SUMMARY**

### **General implementation of the procedural safeguards for children who are suspects and accused persons in criminal proceedings as regulated by the Directive (EU) 2016/800:**

In the light of the incomplete transposition of Directive (EU) 2016/800, Bulgaria's legislation is seen as safeguarding children's rights to a fair extent, but lacking specificity in terms of children's vulnerability and nature as specific holders of rights, i.e., treating accused children like adults. In addition, specific regulation in areas like age assessment and right to individual assessment is completely lacking. This leads to lack of knowledge about children's entitlements and elements of individual assessment scattered throughout several types of assessments within different frameworks.

### **Age assessment and the presumption to be a child in case of remaining uncertainty:**

Age assessment and the presumption to be a child in case of remaining uncertainty seem to be concepts only known in Bulgarian law and practice in relation to asylum and migration. Interviewees, with few exceptions, were generally not aware of those concepts and most of them have not had such cases.

### **The rights to information, having the holder of parental responsibility informed and audio-visual recording of the questioning:**

Children are generally informed about their procedural rights, including the right to a lawyer, in writing and orally upon bringing charges against them. Exceptions include informal 'talks' children are called for before acquiring any procedural capacity, where they are given no information and no access to a lawyer. Parents are informed about the proceedings against their children and their rights, but show a differing degree of involvement. With few exceptions, no audio-visual recordings of children's questionings are made.

### **The rights to be assisted by a lawyer and legal aid:**

Few practical details were shared about children's right to be assisted by a lawyer as the legal assistance to accused children is mandatory for all stages and procedural actions in criminal proceedings against children. Children, who do not have a lawyer or cannot afford a lawyer of their choice, are appointed one by the state. Lawyers usually join proceedings when the child is formally charged. They can, and do, actively participate in all procedural actions. Doubts were raised about the qualifications and specialisation of state-appointed lawyers, but also, yet much less, about the good will of hired lawyers to defend children's interests properly.

### **The right to an individual assessment:**

In the absence of specific provisions on individual assessment, interviewees spoke of at least three distinct types of such assessments. All of these are mandatory and are mostly done ex officio. The psychological and psychiatric assessment of accused children is used to delimit their criminal responsibility, i.e., to check whether they could understand the meaning of their actions and could manage them. The reference by children's pedagogical units (*детски педагогически стаи*) and the social reports deal with various factors of the child's environment, which have led to their anti-social acts or crimes. In addition, extended social assessments and various other instruments were used to assess children's characteristics. Varying opinions were expressed about the assessments' degree of detail and sensitivity towards children's needs, and the involvement of parents and children.

Assessments are mainly used to help determine remand measures and sentences, but protection measures for children at risk can also be imposed.

**Deprivation of liberty as a last resort and safeguards for children who are deprived of their liberty:**

For all but a few interviewees, deprivation of liberty is indeed used as an exceptional measure, mainly in cases of serious crimes and/or children's previous convictions. Alternatives to detention are also used. Medical examination is done and can also be triggered by children, their parents and lawyers. Special treatment in detention mainly consists of medical care. No educational or development measures are offered to children deprived of liberty.

**The rights to effectively participate in and be accompanied during the trial:**

Interviewees spoke of few, if any, modifications of settings when trying accused children. Most modifications concern the conduct of proceedings: hearings behind closed doors, careful questioning and explanations by judges, lay judges with special qualifications as required by law, etc. Children are able to speak and express their opinion, but usually remain fairly passive throughout the trial. They are also able to consult with their parents and lawyer before, during and after the hearings.

## PART B. INTRODUCTION

In total, **20 eligible interviews** were carried out in the timeframe of 4 March 2021 to 19 July 2021 in two regions: Sofia and Plovdiv.

Interviews were conducted with four police officers, two from Sofia and two from Plovdiv; five lawyers, three from Sofia and two from Plovdiv; one judge from Sofia and one from Plovdiv; two prosecutors from Sofia and one from Plovdiv; and six (non-legal) specialists, four from Sofia and two from Plovdiv.

Ten interviews were carried out face-to-face and the other ten were carried out online. In the majority of cases the setting of the interview was chosen in compliance with the interviewees' preferences. During face-to-face interviews, all applicable COVID-19 regulations were observed (physical distancing, use of sanitizer and face masks, etc.).

### ○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

No specific interviewer training was conducted for this study, as both interviewers had done interviews for a previous FRA fieldwork research in the same thematic area and with the same profile of interviewees. Preparation for the interviews consisted of studying available material on current juvenile justice topics in Bulgaria.

The identification and selection process of interviewees went rather smoothly. Prosecutors were identified via official correspondence with the Prosecutor General (*Главен прокурор*). Police interviewees were identified via official correspondence with the Ministry of the Interior (*Министерство на вътрешните работи*). One judge was identified via an exchange of official letters with the president of the respective court. Three specialists were identified via official correspondence with the respective social services or their umbrella structures. The rest of the interviewees were identified via the contractor's own network of experts.

### ○ SAMPLE AND DESCRIPTION OF FIELDWORK

Police officers:

Requested: 4, completed: 4

Defence lawyers:

Requested: 5, completed: 5

Judges/prosecutors:

Requested: 5, completed: 5

(Non-legal) Specialists:

Requested: 6, completed: 6

**Table 1: Sample professionals**

Group	Expertise in juvenile criminal justice	Gender
Police officer	Experience in investigating crimes allegedly committed by children	M
Police officer	Experience in investigating crimes allegedly committed by children	M
Police officer	Experience in investigating crimes allegedly committed by children	F
Police officer	Experience in working with children having committed crimes and/or anti-social acts	F



Defence lawyer	Experience in defending accused children	M
Defence lawyer	Experience in defending accused children	F
Defence lawyer	Experience in defending accused children	F
Defence lawyer	Experience in defending accused children	M
Defence lawyer	Experience in defending accused children as state-appointed lawyer	F
Prosecutor	Experience in prosecuting cases against accused children	F
Prosecutor	Experience in prosecuting cases against accused children	M
Prosecutor	Experience in prosecuting cases against accused children	F
Judge	Experience in adjudicating cases against accused children	F
Judge	Experience in adjudicating cases against accused children	M
(Non-legal) Specialist	Experience in social work with children having experienced criminal proceedings	F
(Non-legal) Specialist	Experience in expert assessment of children in criminal proceedings	M
(Non-legal) Specialist	Experience in working with accused children or children with anti-social acts	F
(Non-legal) Specialist	Experience in social work with children having experienced criminal proceedings	F
(Non-legal) Specialist	Experience in social work with children having experienced criminal proceedings	F
(Non-legal) Specialist	Experience in social work with children having experienced criminal proceedings	M

Interviews lasted around 45 minutes on average. The atmosphere was calm and there was overall consensus that the aim of criminal proceedings against accused children was above all to rehabilitate the child and prepare them for a life abiding by the law. The level of trust was relatively high, which was due to the long-term trust built between the contractor and the professional community of experts working in the criminal justice system.

- **DATA ANALYSIS**

The data is analysed by firstly clustering the answers of interviewees by question and by professional group. Quantitative data is presented in tables. Qualitative data is discussed under each section in line with the pre-defined structure of the report. Opinions are first summarised group by group. Then the points of agreement and disagreement among groups under different topics are sought.

- **BRIEF OVERVIEW OF THE REPORT'S CONTENTS**

The report starts with a discussion of the implementation of Directive (EU) 2016/800, which has not been fully transposed in Bulgarian law. Further, the themes of age assessment and the presumption to be a child are outlined. The report continues with discussing the right to information, the right to be assisted by a lawyer and the right to legal aid. A specific section deals with the right to an individual assessment and the various forms it undertakes due to the incomplete transposition of Directive (EU) 2016/800. Deprivation of liberty is then outlined, together with the safeguards for detained children. Lastly, the rights to effectively participate in and be accompanied during the trial are discussed. The report closes with the interviewees' general assessment of challenges, improvements, promising practices and suggestions. Relevant conclusions are also presented throughout the report.

## PART C. RESEARCH FINDINGS

### C.1 Implementation of Directive (EU) 2016/800

#### a. General overview

In Bulgaria, 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 is not fully transposed. In 2020, the Ministry of Justice (*Министерство на правосъдието*) assessed the compliance of the national legislation with the provisions of the Directive and outlined the areas in which further legislative amendments were necessary to complete the transposition process.<sup>1</sup> According to the assessment, the Directive is not fully transposed as regards the right to individual assessment, the right to be accompanied by the holder of parental responsibility and/or other support person, the right to privacy as well as some of the rights associated with detention and effective participation in the trial. In November 2020, the government submitted to parliament a set of amendments to the Criminal Procedure Code (*Наказателно-процесуален кодекс*) aimed to complete the transposition of the Directive.<sup>2</sup> The parliament, however, did not manage to adopt the amendments before it was dismissed in March 2021 due to the upcoming parliamentary elections. Since then, no further efforts have been made to complete the transposition process.

#### b. Scope of the Directive's application and relevant age categories

In Bulgaria, children who are suspected or accused of a crime face two options: prosecution in the framework of criminal proceedings or diversion to correctional measures outside criminal proceedings.

The rules on criminal proceedings against children are laid down in the Criminal Procedure Code (*Наказателно-процесуален кодекс*). They are generally the same as the rules on criminal proceedings against adults. The only exception are some specific provisions that apply only to cases against children.<sup>3</sup> Criminal proceedings usually begin with the issuance of a formal document called 'decree for instituting the proceedings' (*постановление за образуване на производство*). By exception, the proceedings can also start automatically with the first investigative action. These are the cases where certain investigative actions (search and seizure, questioning of witnesses) have to be performed immediately and this is the only way to collect and preserve the evidence. In such cases, the police must inform the prosecutor within the next 24 hours.<sup>4</sup> During the pre-trial investigation, when enough evidence is collected against a person, this person is formally charged and becomes an accused person (*обвиняем*). At the end of the pre-trial investigation, the prosecutor checks to what

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<sup>1</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>2</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020. The parliament did not manage to adopt the amendments before the expiration of its mandate. The amendments can be discussed and voted by the next parliament only if they are re-submitted.

<sup>3</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021. The special rules on criminal proceedings against children are scattered throughout the law, but most of them are organised in Chapter 30: Special Rules for Cases of Crimes Committed by Juveniles (*Глава тридесета: Особени правила за разглеждане на дела за престъпления, извършени от непълнолетни*).

<sup>4</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 212.

extent the evidence, collected by the investigative authorities, is sufficient to prove beyond any doubt that the accused person has committed the crime. If the evidence is considered sufficient, the prosecutor brings the case to court by filing a bill of indictment (*обвинителен акт*). The bill marks the start of the trial. With the start of the trial, the accused person becomes a defendant (*подсъдим*). Bulgarian legislation does not envisage any other status under which the alleged offender can participate in the proceedings. In the past, the law provided for the status of suspect (*заподозрян*), but these rules have long since been repealed.

The procedure for applying correctional measures outside criminal proceedings is laid down in a special law, the Countering of Anti-social Behaviour of Juveniles and Minors Act (*Закон за борба с противообществените прояви на малолетните и непълнолетните*).<sup>5</sup> The procedures for imposing correctional measures are referred to as correctional proceedings (*възпитателни дела*). They are not considered criminal proceedings.

The law specifies when a child should be prosecuted in the framework of criminal proceedings and when a correctional measure should be imposed. As a rule, children below the age of 14 are considered incapable of bearing criminal liability. If a child between the age of 8 and 14 commits a criminal act, they can be subjected only to correctional measures. Children between 14 and 18 years can be prosecuted in the framework of criminal proceedings only if they, at the time of committing the crime, they have understood the nature and importance of their actions and have been capable of controlling them. Otherwise, they are subjected to correctional measures. No special procedures are established for assessing whether the child has understood and has been capable of controlling their actions. This is done through a forensic psychological and/or psychiatric assessment, conducted in most cases of accused children. Children between 14 and 18 years of age, who have understood the nature and importance of their actions and have been capable of controlling them (i.e., who can be criminally prosecuted), can also be diverted to correctional measures, if they have committed a minor crime and their behaviour has been driven by “passion or frivolity” (*увлечение или лекомислие*). This can be done at different points in the course of the proceedings: before the criminal proceedings are launched or in the course of the pre-trial investigation (by the prosecutor), or before the start of the trial or at the sentencing stage (by the court).<sup>6</sup> The terms “passion” and “frivolity” are not defined in the law, but the courts consistently follow the definitions provided by the Supreme Court back in 1975. According to these definitions, “passion” is the emotional state of the child at the time of the crime and is characterised by reduced self-control under the influence of certain circumstances, while “frivolity” is related to the intellectual development of the child and means insufficient ability to correctly assess the nature, significance and unlawfulness of the criminal act, the consequences of its commission, etc.<sup>7</sup>

- c. Special training
  - i. Legal overview

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<sup>5</sup> Bulgaria, Countering Anti-social Behaviour of Juveniles and Minors Act ([Закон за борба с противообществените прояви на малолетните и непълнолетните](#)), 14 February 1958, last amended 27 December 2019.

<sup>6</sup> Bulgaria, Criminal Code ([Наказателен кодекс](#)), 2 April 1968, last amended 2 February 2021, Article 61.

<sup>7</sup> Bulgaria, Supreme Court (*Върховен съд*), Resolution No 6 of 30.10.1975 concerning the case law on proceedings for crimes committed by juveniles (*Постановление № 6 от 30.10.1975 г. относно съдебната практика по делата за престъпления, извършени от непълнолетни*), 30 October 1975.

In Bulgaria, Article 20 of Directive (EU) 2016/800 is not fully transposed.<sup>8</sup> The current rules on training are limited to the general requirement that the pre-trial investigation in proceedings against children should be carried out by investigative authorities with special training.<sup>9</sup> Also, lay judges during the trial must be teachers or educators.<sup>10</sup>

The draft amendments to the Criminal Procedure Code, which were submitted to the parliament in November 2020 with the purpose of completing the transposition of the Directive (EU) 2016/800, envisaged that all investigative authorities, prosecutors and judges in proceedings against children must have special training in the area of children’s rights. These amendments, however, have not yet been adopted.<sup>11</sup>

A study, published in 2014, has revealed that the majority of law enforcement officials, prosecutors and judges lack the necessary training for working with children.<sup>12</sup>

ii. Special training received by interviewees

**Table 2: Special training received by professionals (apart from the regular classes during their studies) concerning the rights of children who are suspected or accused of crime**

	No special training	Special training (law/professional practice)	Special training (multidisciplinary)
Police	1	1	2
Judges and prosecutors	1 prosecutor, 2 judges	2 prosecutors	
Lawyers	3	2	
(Non-legal) specialists	2	1	3
Total by factor	7/20	5/20	5/20

*Note: The table summarises the responses of the interviewees to the interview question ‘Have you received any special (apart from your regular classes during your studies) training concerning the rights of children who are suspected or accused of crime? If so, what did this training involve?’, showing the number of interviewees from each group who said that they (a) have not received any special training, (b) have received training only in law and professional practice, or (c) have received multidisciplinary training.*

<sup>8</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>9</sup> Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, last amended 18 May 2021, Article 385.

<sup>10</sup> Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, last amended 18 May 2021, Article 390.

<sup>11</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020.

<sup>12</sup> Social Activities and Practices Institute (*Институт по социални дейности и практики*) (2014), Social inclusion of children in conflict with the law – new models and practices: handbook for professionals ([Социално включване на деца в конфликт със закона – нови модели и практики: наръчник за професионалисти](#)), Sofia, Social Activities and Practices Institute.

Police interviewees recalled a number of courses and training they have followed. They have varying degrees of specificity and multidisciplinary nature. A police officer from Sofia mentioned courses by the Institute of Psychology of the Ministry of the Interior (*Институт по психология на МВР*) and the Ministry of the Interior Academy (*Академия на МВР*), which are focused on preserving children's mental well-being. Another police officer from Sofia mentioned internal training within the police aimed at exchanging experiences on various cases. Trainings of broader audience (magistrates, educational specialists, etc.) were also discussed.

With two representatives receiving only legal training and three not having received any specific training, interviewed lawyers reported considerably less training than police and (non-legal) specialists. The Attorneys' Training Centre (*Център за обучение на адвокати*), the bar associations and various projects are considered the main sources of training. Two lawyers emphasised on the voluntary nature of training, depending on the will of lawyers to get trained.

Judges and prosecutors mainly attend training on the legal rights of accused children. However, only one prosecutor from Sofia, who also attended a training of trainers, thought of them as specific to the topic. This interviewee also noted the negative role of anti-epidemic restrictions on the continuation of training courses. The National Institute of Justice (*Национален институт на правосъдието*) (the public authority responsible for training of judges and prosecutors), non-governmental organisations and UNICEF were cited as the main training providers. A judge from Plovdiv thought the lack of specific training is a serious deficiency.

Two (non-legal) specialists expressly mentioned they have not attended any specific training. Courses attended by specialists are mainly multidisciplinary. Topics cover law and criminal procedure, children's rights and participation in legal proceedings. Some interviewees have often been in the capacity of trainers too. Some topics include the so called 'intensive' model of work with such children, depending on the level of risk they are in, as well as structured risk assessment instruments.

#### d. Effectiveness of measures / Monitoring

There is no publicly available information about any data collection specifically aimed at monitoring and assessing the implementation of the rights of accused children in criminal proceedings.

## **C.2 Age assessment and the presumption to be a child in case of remaining uncertainty**

### a. Legal overview

In Bulgaria, Article 3 of Directive (EU) 2016/800 is not fully transposed.<sup>13</sup> There are no detailed rules on assessing the age of children suspected or accused of a crime. There is no legally binding provision either obliging the authorities to presume that a person is a child in case of remaining uncertainty as to whether that person has reached the age of 18. At present, there is one only rule dealing with the issue of age assessment. This is the general rule determining the facts and circumstances, about which the criminal justice authorities must collect evidence when the accused person is a child. According to this rule, during the pre-trial investigation and the trial, evidence must be collected of the child's day, month and year of birth. The provision does not specify how this evidence must be collected, what sources can be consulted and what are the consequences in case no reliable evidence is collected.

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<sup>13</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([\*Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство\*](#)).

The draft amendments to the Criminal Procedure Code, submitted in November 2020 with the purpose of completing the transposition of Directive (EU) 2016/800, envisaged a more detailed regulation of the age assessment, including a provision introducing the presumption of being a child. These amendments, however, have not yet been adopted.<sup>14</sup>

- b. How is the age of a person suspected or accused of a crime assessed and determined in practice?

**Table 3: Determining the age of young persons whose age cannot be verified by official documents**

	Have not had or heard of cases of children whose age cannot be verified	Have had or heard of cases of children whose age cannot be verified (from ethnic minority groups)	Have had or heard of cases of children whose age cannot be verified (migrants)
Police	1	2	2
Judges and prosecutors	2 prosecutors, 2 judges	1	
Lawyers	4	1	
(Non-legal) specialists	4		2
Total by factor	12/20	4/20	4/20

*Note: The table summarises the responses of the interviewees to the interview question ‘For young persons whose age cannot be verified by official documents: Who determines their age how and when?’, showing the number of interviewees from each group who said that, based on their own experience, they (a) have never had or heard of such cases, (b) have had or heard of such cases involving children from ethnic minority groups, or (c) have had or heard of such cases involving migrant children.*

Almost **no police and judicial interviewees had direct encounters** with children whose age cannot be verified. However, some have heard of such cases. A police officer from Sofia mentioned cases from outside the capital, as confirmed by an officer from Plovdiv, with children mainly of Roma origin. They did not have identity documents and their parents were not able to certify their exact age. In these cases, the police either inquire into databases, based on the data provided by the children and their parents, or contact the respective municipality and/or medical establishments. Family members, relatives and close friends are interviewed, and birth certificates are searched for. Judges and prosecutors suggested similar sources for collecting information about a person’s age: the persons themselves, relatives, public authorities, national population database, the child’s birth certificate, etc.

**(Prosecutor, Bulgaria):** “When a child does not have an identity document, the procedure is as follows: the parents are called and they present the birth certificate. There is virtually no other way to establish that this is the same person. When a person turns 14, they must have an ID card, but some parents, especially those from minorities, do not get an ID card for their children until they need it for something else, such as for applying for social benefits.”

*„Когато непълнолетен няма документ за самоличност, процедурата е следната: викат се родителите и те представят акта за раждане. На практика няма друг начин да се установи, че това е същото лице. Лицето, когато стане на 14 години,*

<sup>14</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020.

*трябва да има лична карта, но някои родители, особено от малцинствата, не вадят лична карта, докато не им потрябва за нещо, например за социални помощи.“*

One police officer from Sofia said they have had such cases with migrant children, where age assessment is done by medical specialists. However, the interviewee was not exactly aware how this is done in practice. A police officer from Plovdiv suggested a clear approach in case the age cannot be established: the police put down the child's visible age, which can later be clarified and changed accordingly when the person's identity is properly established.

The police were unanimous that **age assessment must be done at the beginning of proceedings.**

**(Police officer, Bulgaria):** “Children over 14 years of age should have an ID card, but Roma children may not have gone to apply for one upon completing 14 years. If we don't have a birth certificate either, maybe the parent has an ID card. If not, we usually ask a lot of questions, and we also have the police information system... in this system we find out if the person is who they claim to be, who their relatives and parents are, where and when they were born, who their siblings are. So, we don't have a problem in establishing anybody's identity.

*„Непълнолетните трябва да имат лична карта, но в ромския етнос много често се случва да не са си извадили при навършване на 14-годишна възраст. Ако нямаме и акт за раждане, може би най-малкото родителят има документ за самоличност. Ако не, можем да установим чрез задаване на множество въпроси, а имаме и информационната система на МВР... и при извършване на справка в тази система ние можем да разберем лицето това ли е, за което се представя, кои са роднините му, родителите му, къде и кога е родено, кои са братята и сестрите му. Така че проблем при установяване на самоличността не съществува пред нас.“*

A judge from Plovdiv concurred that age assessment is done much earlier than trial, usually during the pre-trial proceedings. The same judge also noted that if a person is below the age of 18, but they are treated as adults in the course of the proceedings, this will represent a serious procedural violation and a ground for annulment of the sentence.

**(Judge, Bulgaria):** “Age verification is not so much a question for the court, but rather for the pre-trial proceedings. Such a problem could arise there, for example if a juvenile perpetrator or a person who looks like a juvenile is caught. Then the assistance of the respective parent or other relative is sought to certify the age. Years ago, it was more difficult, but now there is no problem, because police officers have access to the national database and can quickly verify the age. But here we are talking about the investigation. Already in the courtroom, for the case to come to me, these things have already been certified and clarified, the identity has been established, etc.”

*„Това не е толкова въпрос за съда, а по-скоро за досъдебното производство. Там би могъл да възникне такъв проблем, например ако се залови непълнолетен извършител или лице, което изглежда като непълнолетно. Тогава се търси съдействие от съответния родител или друг близък, който да удостовери... Преди години беше по-трудно, но сега няма проблем, защото полицаите имат достъп до националната база данни и могат бързо да удостоверят... възрастта. Но тук говорим за оперативна обстановка. Вече в съдебната зала, за да дойде при мен подсъдимият, тези неща са удостоверени и уточнени, снета е самоличността и т.н.“*



A prosecutor from Plovdiv described a case from their own experience, in which the accused person was born somewhere in the countryside and the birth has never been registered by the parents. As a result, the person had no birth certificate and there was no information about them in any official register. To establish the person's identity and age, the prosecutor has filed a request to a civil court and the civil court has issued a decision identifying the person (who turned out to be 21 years old) and ordering the local authorities to produce the missing birth certificate.

**(Prosecutor, Bulgaria):** "I had one case of a person whose age was unknown, but the person turned out to be an adult. At the time, I filed a civil claim for establishing the person's identity and for issuing a birth certificate. This person did not exist anywhere in the legal domain in Bulgaria. They were just born somewhere, in a meadow, and there was nothing registered about them. In the course of my case, I initiated a fact-finding procedure before the court, to confirm, with witnesses, the existence of this person and to issue them a birth certificate."

*„Аз съм имала един случай на лице с неустановена възраст, но то се оказва пълнолетно. Тогав аз водих гражданско дело за установяване на самоличност и за издаване на акт за раждане. Това лице не съществуваше никъде в правния мир в България. То просто беше родено някъде, на някаква поляна, и никъде това лице го нямаше. Аз, в рамките на моето дело, водих установително производство пред съда, със свидетели да се установи съществуването на това лице и да му се издаде акт за раждане.“*

Like with special training, lawyers reported considerably less than other groups on age assessment, as they have not had such cases. Only one lawyer from Sofia mentioned **cases of children of Roma origin**, who are not aware of their exact age and are not present in any official register either. In one such case, a judge at trial has sent the police to the person's neighbourhood to bring a supposed relative to certify the person's identity and age.

Four (non-legal) specialists have had no cases of children with unestablished identity. However, two specialists mentioned such cases, mostly of children who are foreign nationals. According to them, if the child's age is unknown, it can be determined via inquiries into databases and talks with the children themselves, even by sending information to the TV stations. If the child is younger than 18 years of age, authorities work based on the child's own perception of their age. A specialist from Plovdiv mentioned a child of Turkish origin, who has not had a birth certificate and has moved through the school system with a personal identification number (*единен граждански номер*) practically invented by the school administration.

**(Non-legal specialist, Bulgaria):** "We have come across children whose age is unknown. It was an absurd case since the child had lived in Bulgaria since shortly after their birth, they were included in the educational system, they were about 11 years old when we worked with them and in order to enroll them the school had practically invented a personal identification number for them, in their interest, so that they can study."

*„Попадали сме на деца с неустановена възраст. Беше абсурден случай, защото детето живее от малко след раждането си в България, включено е в образователната система, беше на възраст около 11 години, когато работихме с него, и реално от училището, за да го запишат, си бяха измислили ЕГН, което беше в интерес на детето, за да може то да учи.“*

c. Discussion of findings

With Directive (EU) 2016/800 not being fully transposed, age assessment and the presumption of being a child seem to be relatively unknown to Bulgarian practitioners. A few mentioned that adults and children were subject to different procedural regimes and treating children as adults would be a serious procedural violation. All but a few affirmed that they have not had cases of children of unestablished identity or age. They pointed to different sources for verifying a person's age: birth certificates, national population database, parents and relatives, public authorities. The few cases of children whose age is unknown, explicitly mentioned by the interviewees, related either to migrant children or to children of Roma origin who did not have proper identity papers.

### **C.3 The rights to information, having the holder of parental responsibility informed and audio-visual recording of the questioning**

- a. The right to information
  - i. Legal overview

In Bulgaria, Article 4 of Directive (EU) 2016/800 is not fully transposed.<sup>15</sup> There are no special rules on the right to information when the accused person is a child. The general rules for informing accused persons about their procedural rights apply. The information is provided in writing and is included in the official document, by which the accused person is charged (*постановление за привличане на обвиняем*).<sup>16</sup> The rights, about which the accused person is informed, are: the right to learn which crime they are accused of and on the basis of what evidence; the right to give or refuse to give explanations on the charges; the right to get acquainted with the casefile; the right to present evidence; to right to participate in the proceedings; the right to make requests, remarks and objections; the right to speak last; the right to appeal against acts that infringe their rights; the right to have a lawyer; and the right to interpretation and translation if they do not speak Bulgarian. Most of the additional procedural rights of accused children, envisaged in Directive (EU) 2016/800, have not been introduced in national law. Thus, there is no corresponding provision obliging the authorities to inform the accused person about them.

The draft amendments to the Criminal Procedure Code of November 2020 meant to complete the transposition of the Directive (EU) 2016/800 envisaged several specific rights. Those are the right of accused children to have the holder of parental responsibility informed and to be accompanied by them; the right to individual assessment; the right to medical examination and the right to protection of privacy. A corresponding obligation for public authorities to inform the accused child about these rights is also envisaged. These amendments, however, are not yet adopted.<sup>17</sup>

- ii. Information about procedural rights and safeguards in practice

**Table 4: Informing suspected or accused children about their procedural rights, including the right to be assisted by a lawyer: responsible authority, form and manner, and stage of the proceedings at which children are informed**

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<sup>15</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>16</sup> Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, last amended 18 May 2021, Article 219.

<sup>17</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020.

	Timely information provided but only in writing	Timely information provided in writing and orally	Timely information provided but sometimes children are detained and/or questioned without being informed
Police	3	1	
Judges and prosecutors	1	4	
Lawyers			5
(Non-legal) specialists	2	2	2
Total by factor	6/20	7/20	7/20

*Note: The table summarises the responses of the interviewees to the interview question ‘From your experience, are suspected or accused children informed about their procedural rights, including the right to be assisted by a lawyer? If so, by whom, in what form and manner, and at which stage of the proceedings are children informed?’, showing the number of interviewees from each group who said that, based on their own experience, children are informed (a) timely but only in writing, (b) timely both in writing and orally, or (c) timely with the disclaimer that sometimes children are detained and/or questioned without being informed.*

Police officers generally thought **information to the accused child is given from their first contact with the police**. Investigative police officers thought it is given both orally and in writing, while operative police mentioned just oral explanations. The written information is contained in the forms filled in for different investigative actions, like the accused’s questioning. An officer from Sofia emphasised that when children are detained, they are requested to sign a declaration that they have been informed of expressly listed rights. An officer from Plovdiv elaborated that the provision of information upon first contact make children feel safer.

According to police officers, information about **additional rights** is also given to the accused children, orally and in writing. However, one officer from Plovdiv noted that children often do not wish for their parents to be informed.

Police officers listed **many guarantees for adapting the information to the specific needs and background of the child**. One is the presence of an educational specialist or psychologist, from police ranks or external, during the child’s questioning, if the investigative authority decides so. Such a specialist is usually called when, among other reasons, the child has a mental disability or illness. Depending on each individual case, additional specialists may also be called, like sign language interpreters, to provide information in an accessible manner. The requirement that investigations against children must be carried out by authorities with special training was also mentioned.

All interviewed police officers pointed out that **information is generally understood**, depending on children’s level of education, development and capacity. Some said that age may not always be the leading criterion for the child’s development. Difficulties were mentioned concerning children of Roma origin, children with mental disabilities, where psychologists and psychiatrists are used, and migrant children, where interpreters are appointed.

In terms of **making sure the child understands** the information provided, all interviewed police officers are trying to judge that in communicating with the child. They ask the children whether they

understand what is told to them and invite them to ask additional questions. All police officers agreed that explanations are given in a simple and understandable language, with as little terminology as possible. Officers also try to speak slowly and repeat, where necessary, the important parts of the information. Additionally, they use the help of educational specialists and psychologists called in for the child's questioning. Examples of truth and lies are also used. A police officer from Sofia also mentioned that the Institute of Psychology (*Институт по психология*) of the Ministry of the Interior (*Министерство на вътрешните работи*) has special premises, adapted for working with child victims and accused children. The premises are arranged in a child-friendly manner with the walls painted in bright colours, large windows, sofas, and toys and other children's accessories.

**(Police officer, Bulgaria):** "Children are very different; it depends on the child. They have different levels of development and understanding of the language. We have children of Roma origin. In such cases we all take part in explaining, sometimes we even use interpreters from their language, if they don't speak sufficient Bulgarian. If we have to tell them they should tell the truth, we explain 'this is black and this is white, and if you tell this is the wrong colour, this is not true'. We also give other examples 'you are a boy, and if I ask you and you tell me you are a girl, then you lie'."

*„Самите деца са много различни, зависи какво е детето. Имат различно ниво на развитие и различно ниво на разбиране на езика. Имаме такива от ромски произход. Там се включваме всички в обяснението. Понякога се работи и с преводач от техния език, когато не знаят достатъчно български. Ако трябва да му кажем, че трябва да каже истината, обясняваме „ето това е черно, това е бяло, ако кажеш на това, че е грешният цвят, това не е вярно“. И други примери даваме „ето ти си момче, и ако аз те питам, а ти ми кажеш, че си момиче, значи ти лъжеш“.*

Interviewed lawyers opened a critical line, continued by (non-legal) specialists, about extra procedural activities police do with accused children. Most lawyers confirmed that children are duly informed, orally and in writing, about their procedural rights when they are formally called as accused persons or witnesses. However, **the informal 'talks' children are often called for** were also mentioned. According to all interviewed lawyers, children are often brought in for informal 'talks' without a detention order or any procedural capacity. Two lawyers from Plovdiv and one from Sofia even noted that lawyers are sometimes not allowed for children detained by the police for 24 hours.

**(Lawyer, Bulgaria):** "If the child has the official capacity of witness or accused under pre-trial proceedings, they are informed. But if a group has done something wrong, they catch person and bring them to the police station for a 'talk', telling them 'Tell us who did it, otherwise we will charge you'. Then information about rights is hardly given."

*„Ако имат качество свидетел или обвиняем по досъдебно производство, се информират. Но ако една група е свършила някаква поразия, хванали са някой от тях и са го завели в районното на тип „беседа“ и са му казали „Казвай кой беше, иначе ти го отнасяш“, едва ли някой го информира за правата му.“*

**(Lawyer, Bulgaria):** "My observations are that this poor practice of obtaining the so-called explanations and holding informal talks with the child before they have access to a lawyer, which is actually a problem because information is shared, which can later be harmful, without consulting a lawyer."

*„Моите наблюдения са, че не е спряла тази порочна практика да се снемат т.нар. обяснения и да се провеждат беседи с непълнолетния преди да има той достъп до*

*адвокат, което е всъщност проблем, защото се споделя информация, която после може да навреди, без да има консултация с адвокат.“*

**(Lawyer, Bulgaria):** “In one of the cases where I represented an accused child, before charges were brought against them, where I joined the proceedings, the child had been detained for 24 hours by the police. Only later did I find out that during their stay with the police ‘talks’ had been held with them, informal conversations of police officers with the accused child, who had no capacity whatsoever at that moment. Two police officers, who later testified as witnesses and said the accused approached them informally and told them everything upon their own initiative.”

*„В един от случаите, когато представлявах непълнолетен обвиняем и подсъдим, преди да се стигне до повдигане на обвинение, когато аз се включих в производството, непълнолетният е бил задържан за 24 часа в полицията. Впоследствие установих, че при престоя в полицията с непълнолетния са извършвани т.нар. „беседи“, неформални разговори на полицейски служители с непълнолетния извършител, който към момента не е никаква фигура. Двама полицейски служители, които бяха впоследствие разпитани като свидетели и бяха заявили, че в неформален разговор непълнолетният се обърнал към тях и им разказал, по негова собствена инициатива.“*

In terms of **adapting the information** to the needs and background of the child, lawyers emphasised understandable language and the presence of a holder of parental responsibility or a police officer (inspector) from the children’s pedagogical unit (*детска педагогическа стая*).<sup>18</sup>

According to lawyers, information about **additional entitlements** like bringing a parent is given, mostly orally and less in writing. Children also receive information on the right to privacy and the right to have their hearing behind closed doors, although information about their cases is often leaked to the media. One lawyer from Plovdiv thought accused children do not have to be informed about those additional rights, because they are always assisted by a lawyer and all lawyers are aware of those rights.

In the opinion of lawyers, **children’s understanding is assured** by asking them about their feedback, asking control questions, talking to the child in private, speaking slowly and explaining rights to parents. Children seem to understand what is happening when they are presented with the possible consequences of proceedings.

**(Lawyer, Bulgaria):** “They start understanding with the passage of time. They are kids, sometimes they feel like heroes from what happens to them, others feel indifferent, think that it is some type of game, until they are practically explained what the consequences of the whole thing may be. Then they start to understand.”

*„С течение на времето започват да разбират. Те са деца, понякога се чувстват герои от това, което им се случва, друг път им е безразлично, мислят, че е някаква игра. Докато на практика не им се обясни до какво може да доведе цялата тази работа. Тогава започват да разбират.“*

One lawyer from Sofia noted that the sensitivity towards the individual abilities of a child to perceive information is very low. Another lawyer from Plovdiv made the caveat that if children are scared,

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<sup>18</sup> Children’s pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

threatened or otherwise 'motivated' by police not to share something with the lawyer, the lawyer cannot counter that talking to a child they hardly know at first.

**(Lawyer, Bulgaria):** "As a whole, procedures are such that the sensitivity towards the individual abilities of a child to perceive information is very low. A 14-year-old child is one thing, a 17-year-old is another, a child who speaks Bulgarian well is one thing, a child who speaks Bulgarian badly or barely speaks it is another thing, a child who is literate and can write is one thing, another who is illiterate and has never set foot in school is another thing."

*„Като цяло процедурите са такива, че чувствителността към индивидуалните способности на едно дете да възприеме за какво става въпрос е много ниска. Едно дете на 14 години е едно, на 17 години е друго, едно дете, което знае добре български език, е едно, а като не знае добре или почти не знае български език, е друго, дете, което е грамотно и може да пише, е едно, а неграмотно и непосещавало училище е друго.“*

A lawyer from Sofia noted that a lawyer must always explain to children and to their parents their procedural rights and the general conduct of the proceedings in an understandable way, corresponding to the personal characteristics of the child. According to the same lawyer, most children in such situations (as well as most adults too) are very frustrated and it is difficult for them to process any information.

**(Lawyer, Bulgaria):** "Depends on the person. Sometimes I try to make the information more accessible. Usually, people in such a situation are so worried that it is difficult to absorb real information. That is why I try to explain it in the most accessible way, and not the whole one, but in some short steps, so that there can be information about everything that follows, and so that there can be a little mental calm. Then I ask them if they understand, I judge by the way they look at me, as well as if they have questions, because sometimes when the information is not perceived, there are no questions."

*„Зависи от човека. Понякога се опитвам да давам информация по-достъпно. Обикновено хората в такава ситуация са до такава степен притеснени, че трудно поемат реална информация. Затова се опитвам по най-достъпен начин да я обясня, и то не цялата, а в някакви кратки стъпки, за да може да има информация за всичко, което следва, и да може да има малко психическо успокояване. След това ги питам дали разбират, преценявам по начина, по който ме гледат, както и по това дали имат въпроси, защото понякога, когато информацията не се възприеме, няма никакви въпроси.“*

Although entering proceedings much later, all **judicial interviewees** agreed accused children must be immediately informed by the police about their procedural rights, including the right to be assisted by a lawyer. However, some judges pointed out that children are informed only when formally charged, because at earlier stages they do not have a procedural capacity.

Judicial interviewees noted that children must be informed in a way corresponding to their age, in an understandable language and with a more sympathetic attitude, but in practice the information is provided in the same manner as for adults.

**(Prosecutor, Bulgaria):** "The investigating authorities inform the children. They are the first to actually work with them. The children are informed orally and in writing: the rights are explained orally and are also given to them as a written protocol where they can see them and read them."

*„Разследващите органи информират децата. Те са първите, които на практика работят с тях. Информират се устно и писмено: разясняват се устно и на протокол им се дават правата написани и те ги виждат и могат да си го прочетат.“*

Children are informed about additional entitlements too.

All interviewed prosecutors check if the police have provided the necessary information to the child by checking the signed written document, certifying accused persons have received the information. Another way is asking police personally what information they have provided. A prosecutor from Sofia mentioned the mandatory participation of a lawyer as the main guarantee that children are properly informed about their rights.

**(Prosecutor, Bulgaria):** “We do not have any specific system for checking, everything is very subjective. There are no formalised criteria. We mostly rely on the lawyer, qualified lawyers are appointed, they are our biggest guarantee. And parents too. Whether the child understands, we do not have a system to check whether the child has understood all their rights in view of their mental and intellectual development.”

*„Нямаме някаква система за проверка, всичко е много субективно. Няма никакви формализирани критерии. Ние най-вече разчитаме на защитника, назначават се квалифицирани юристи, те са най-голямата ни гаранция. И отделно родителите. Дали разбира самото дете, ние нямаме система да проверим дали детето е разбрало всички свои права с оглед на психичното им и интелектуално развитие.“*

Judges have little way of knowing whether and how persons have been informed at the pre-trial stage. They only receive the questioning minutes with a note that the person has been informed. Nevertheless, according to a judge from Plovdiv, information is provided in the form of a written template and then it is up to the police to decide how to further explain this information. Judges themselves inform accused children about their rights and the general conduct of the proceedings as one of the first tasks in the beginning of the trial. A judge from Sofia noted they have never had a case, in which the accused child has stated they do not understand the explanations. The mandatory participation of a lawyer as well as the presence of a parent, and an educational specialist, also help children understand their rights. Parents were also mentioned by a judge from Plovdiv as the only ‘mediators’ they are aware of making sure that the child understands the provided information.

**(Judge, Bulgaria):** “From what can be seen in the case, at the moment the person is formally charged, if the person is a child, their specific rights are clarified and this is the earliest moment when they can, in some way, use these rights. Prior to that moment, the person has an unidentified status in the case, even if they have given some information, and therefore no rights are explained to them.”

*„От това, което се вижда по делото, в момента, в който лицето бъде привлечено като обвиняем, ако то е непълнолетно, се разясняват специфичните права и това е най-ранният момент, в който те могат по някакъв начин да ги използват. Преди този момент лицето е с неустановен статут по делото, дори да е давало някакви сведения, и затова никакви права не му се разясняват.“*

The **(non-legal) specialists** continued the line of lawyers about the **police undertaking some actions with the children outside of criminal proceedings without providing information or calling a lawyer**. One specialist from Sofia spoke of the so-called ‘preliminary checks’ (*предварителни проверки*) whereby children may be informally called in to supply information in the absence of parents or social workers. Another specialist affirmed it often takes several hours between children’s detention by the police and the notification of their parents or provision of information. During the three-four hours of ‘talks’ without giving information about their rights, the police tries to ‘motivate’ the scared children to cooperate.

**(Non-legal specialist, Bulgaria):** “I mean the practice the police have to call children as a broader group on their records and to ‘casually’ ask them about something. Those are usually children in their records who are offered, in exchange of information given, some improvement of their situation, they often call them for some alleged participation in crimes saying ‘We saw you on the video surveillance’. But this does not mean that it is a practice everywhere. And it most often means that the police officers are ill prepared and are in difficulty when working with children.”

*„Имам предвид тази практика, която полицаите имат, да привикат децата, като някакъв по-широк контингент, „случайно“ да го подпитат нещо. Най-често са деца, които се водят на отчет, и им предлагат, за сметка на дадена информация, да им подобрят положението, често ги търсят и за съпричастност към престъпления „Видяхме те на камерата“. Но това не значи, че навсякъде се действа така. Това най-често означава, че и полицаите не са подготвени и им е доста трудно да работят с деца.“*

Fewer specialists thought information is also given when children are called in as witnesses.

According to some **(non-legal) specialists**, children’s lawyers do most of the informing and their capacity in that direction is being built. Each police officer informs differently, but usually both orally and in writing, or mostly orally. Children are also informed by the forensic psychologists and the psychologists from the children’s pedagogical units (*детски педагогически стаи*),<sup>19</sup> and by social workers. Some social workers mentioned they inform, orally, mainly about their own procedure of doing social reports.

According to (non-legal) specialists, information about additional entitlements is given depending on the stage of proceedings: more often orally by judges and lawyers during the trial and less often at the pre-trial stage. Children are mostly informed about the right of parents to be informed and to accompany them, and less about privacy. Another (non-legal) specialist just presumed authorities do provide the information, but added that psychologists give such information as an inherent part of their work.

Some (non-legal) specialists were critical to the process of adaptation of information to the needs of children. One mentioned the language used by authorities may often be the same for adults and children. Also, the level of training and specialisation among authorities, psychologists and educational specialists, remain insufficient. There is also lack of understanding about the vulnerability of children and their status as particular holders of rights.

According to (non-legal) specialists, children understand the provided information differently due to their level of literacy and development. Fear of proceedings and lack of an accompanying adult also play a role. The effect of stress, and the beneficial role of parents was also mentioned by another specialist. Yet another specialist continued that thought by saying specialists try to ensure children’s emotional coping with the proceedings, not so much the legal side. According to a specialist from Plovdiv, poorer or minority families and their accused children do not seem to have information about the children’s rights and can even share personal data quite haphazardly, being afraid that ‘the law is after them’. At the same time, higher income families directly hire a lawyer who ‘does all the job for them’.

**Good practices** most often lie in the good professional attitude of specific inspectors from children’s pedagogical units (*детски педагогически стаи*).<sup>20</sup> They use a lot of examples to explain difficult

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<sup>19</sup> Children’s pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

<sup>20</sup> Children’s pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.



concepts to children, and jokes to relieve the child's tension, although NGO specialists are better trained to perform those functions. Another specialist's entity has special consultations preceding each child's appearance in court to clarify procedural rights. Another specialist noted they go to accused children's questionings to gather information about their own social report but in practice are also facilitating the conduct of the questioning. A specialist from Sofia affirmed that the greatest assurance lies in psychologists explaining rights themselves. Two specialists believed in customising the information they are offering in an understandable language with simpler words and examples.

iii. Information about the general conduct of the proceedings

As one police officer pointed out, **informing about the general aspects of proceedings** is not a formal requirement towards investigative authorities. It is even rather seen as a task for the child's lawyer. Information is given orally.

In the absence of a formal obligation, police practices in the area differ. One officer from Sofia has done it only once, in a case of interest by the accused child. Another officer from Sofia thought such information is mostly given upon the child's first, not subsequent, encounters with the police. An officer from Plovdiv conditioned such information on investigative secrecy.

**(Police officer, Bulgaria):** "When it is their first time with us, we always inform them. When you work with someone you have already met and you know they have previous experience with the police, we explain again, of course, but they do not have too many irrelevant questions we should clarify."

*„Когато им е за първи път, задължително им се дава информация. Когато работиш с човек, който вече си срещал, и знаеш, че е минавал по тези пътища, пак му се разяснява, разбира се, но той вече и не задава излишни въпроси, по които да уточняваме.“*

All interviewed lawyers were skeptical about authorities giving such information to accused children. They emphasised the role of the lawyer in explaining it orally, or at least motivating authorities to do so. A lawyer from Plovdiv critically noted necessary aspects of information, for example how to reach an agreement with the prosecution, are being skipped. The argument of the police is that children already know it being regular 'visitors' of police stations or courts.

**(Lawyer, Bulgaria):** "In my experience, they are not informed, authorities even skip essential information with the argument 'You know that, you are a regular visitor with the police, in court'. For example, on the options for agreement, they say 'You know that, you have been through the agreement procedure before'. So, I would not say such information is given, but this is the lawyer's job, I explain to them in detail all the rights and options."

*„Според моя опит не се информират, даже информация, която е необходима, се прескача с аргумента „ти вече знаеш, ти си редовен посетител в полицията, в съда“. Например за възможността да се сключи споразумение казват „ти знаеш, ти си правил споразумение“. Не бих казала, че им се дава, но пък това е работа на адвокатите, аз подробно разяснявам всички права и възможности.“*

Judicial interviewees were fairly general on the issue of informing about the conduct of proceedings. The reason is they join the proceedings later than the moment, at which information is provided by the police. Two prosecutors from Sofia were nevertheless convinced that the police always explain their situation to accused children. A prosecutor from Plovdiv, however, said that such information is never provided, because the police are obliged to inform the children only about their rights. A judge from Sofia spoke about the trial, where judges always inform the children about the conduct of proceedings as well as about their rights. A judge from Plovdiv noted that it is very important that the

child is properly informed about the nature and content of remand measures so that they can understand correctly their inherent obligations (for example, supervision by the parents) and the consequences of not observing them.

**(Judge, Bulgaria):** “At the very least, if a remand measure is taken, the child should be aware, for example, that they will be under the supervision of the parent, and if they deviate from that supervision, a more severe measure will follow.”

*„Най-малкото, ако се вземе мярка за неотклонение, детето трябва да е наясно, например че ще е под надзор на родителя и ако избегне този надзор ще последва по-тежка мярка.“*

(Non-legal) specialists expressed different views. One specialist from Sofia noted that such information is incomprehensible to the children and they often confirm they have understood it without actually having done so. This is often dictated by state-appointed lawyers, while hired lawyers work much more with the child’s parents and explain to them the conduct of proceedings. Another specialist from Sofia affirmed the role of psychologists in explaining. Information is given also by social workers. Another specialist from Plovdiv affirmed children are rather informed about the possible outcomes of proceedings and what their sentences may be. Yet another specialist from Plovdiv thought only higher income families have such information.

- b. Right to have the holder of parental responsibility informed
  - i. Legal overview

In Bulgaria, Article 5 of Directive (EU) 2016/800 is not fully transposed.<sup>21</sup> According to the current legal framework, the investigative authority is obliged to inform the parents or the guardians of the accused child only when the investigation is over and the results are presented to the accused. The law does not require that parents or guardians be informed with the child's consent. The parents and the guardians are allowed to attend the presentation, but are not obliged to do so.<sup>22</sup> The presentation of the investigation is one of the last stages of the pre-trial proceedings. It takes place after the presentation of the charges. After the accused person is formally charged and questioned, the investigative authority may carry out additional investigative actions. They are usually used to verify the information obtained during the questioning. When all these actions are completed, the investigative authority presents the case to the prosecutor. The prosecutor checks the case for procedural violations and if no such violations are found gives permission to the investigative authority to present the investigation to the accused person. When all these steps are completed, the investigative authority carries out the presentation of the investigation.<sup>23</sup>

The other case, in which the law obliges the authorities to inform the parents or the guardians, is when the child is detained.<sup>24</sup>

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<sup>21</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>22</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 389.

<sup>23</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Articles 226 and 227.

<sup>24</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 386.

The draft amendments to the Criminal Procedure Code of November 2020 meant to complete the transposition of the Directive (EU) 2016/800, envisaged the introduction of the right of the accused child to have their parent, guardian or another person legally obliged to take care of them fully informed about the rights of the child in the criminal proceedings. The draft also envisaged special rules on when and how these persons must be informed. Instances where the information must be provided to another appropriate adult were also regulated. These amendments, however, have not yet been adopted.<sup>25</sup>

ii. Informing the holders of parental responsibility

Table 5: Informing the person having parental responsibility about the child's rights as a suspect or accused person

	Orally or by telephone	In writing (including by official summons)
Police	4	3
Judges and prosecutors		3 prosecutors
Lawyers	5	1 (brochures), 1 (separate summons)
(Non-legal) specialists	6	
Total by factor	15/20	8/20

*Note: The table summarises the responses of the interviewees to the interview question 'Is the person having parental responsibility informed about the child's rights as a suspect or accused person? If yes, by whom and how?', showing the number of interviewees from each group who said that, based on their own experience, the persons having parental responsibility are (a) informed orally (including by phone) and/or (b) in writing (including by official summons).*

Interviewed police officers were unanimous that **holders of parental responsibility must be informed** about the proceedings against their children as soon as they are suspected of committing a crime, and by all means upon the child's detention. Some mentioned also informing the director of the child's school. An officer from Sofia also mentioned that, in accordance with the law, parents and guardians are also called in for the presentation of the investigative file to the accused child and their lawyer, and have the right to make notes and objections. A police officer from Plovdiv said that parents are informed what children are charged with, what their rights are, what procedures follow, and what compulsory measures are taken against the child. The same officer also described questioning parents as witnesses immediately after bringing charges against the child. The officer mentioned they have had cases of parents having given up trying to reform their children and asking the police to do so.

Parents and guardians may be informed **orally or by telephone** and/or in writing by **official summons**.

Interviewed police interviewees mentioned different **motivations** to inform parents and guardians. Among them are the fact that they are responsible for the child's upbringing and education; gathering further information about the child's family, social and educational environment, including information about possible influence by adults, reforming the child not to fall into illegal ways again, etc.

<sup>25</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020.

Interviewed police interviewees could think of **few grounds, if any, for parents and guardians not to be informed**. Only one officer from Sofia still thought that there are cases, in which only one of the parents may be informed, if there is information that the other one can endanger the child's safety.

Interviewed lawyers were unanimous that persons having parental responsibility are informed about the rights of the accused child by the investigative authorities and the child's lawyer. That is done mostly orally, but also through brochures in some police stations and by official summons.

Like police officers, lawyers could think of no reasons not to inform the holder of parental responsibility. Exceptions include children brought in only as witnesses or parents living abroad.

Interviewed prosecutors were unanimous that parents and guardians are always informed regardless of any reasons not to inform them. A prosecutor from Sofia even said that in each case involving an accused child, the first thing prosecutors do is to check if the parents are informed.

**(Prosecutor, Bulgaria):** "Our criminal procedure is very formal and we are obliged to call the parent no matter what relationship they have with the child. The possibility not to notify the parent is not in our legislation. That is why there is mandatory participation of a lawyer. For example, if the accused child's parent does not live with them or has an adverse influence on them, then the idea is for a qualified lawyer to protect the child, but we always call the parents."

*„Нашият процес е много формален и ние сме длъжни да призовем родителя независимо от това в какви отношения са с детето. Възможността да не се уведоми родителят я няма в нашето законодателство. Именно затова е и задължителната защита. Например, ако родителят на обвиняемия не живее с него или му оказва неблагоприятно влияние, тогава идеята е квалифицираният адвокат да го защитава, но ние призоваваме родителите винаги.“*

**(Prosecutor, Bulgaria):** "There is no reason for parents not to be informed. Parents are always notified. They are not notified only when they are deprived of parental rights. The case cannot go from the prosecutor's office to the court if the parents are not notified. If we receive such a case, we return it to the investigating authorities and tell them – notify the parents and then send the case to us to proceed."

*„Няма основания родителите да не бъдат информирани. Родителите винаги се уведомяват. Не се уведомяват само когато са лишени от родителски права. Делото не може да тръгне от прокуратурата към съда, ако родителите не са уведомени. Ако получим такова дело, ние го връщаме на разследващите органи и им казваме – уведовете родителите и тогава изпратете делото на нас, за да продължи нататък.“*

Judges affirmed that informing the holders of parental responsibility is mandatory by law and no grounds exist for not doing so. Nevertheless, as explicitly noted by a judge from Sofia, judges usually get involved in the proceedings at a point, when it is impossible to check when, how and by whom the parents of the accused child have been informed. One advantage of having the parents and guardians informed, mentioned by a judge from Plovdiv, is that they could serve as 'mediators' in communicating information to the child.

The only exception mentioned by judges and prosecutors is delaying the provision of information, when there are reasons to believe that the parent or guardian is also involved in the criminal activity, which may be done in cases of very serious crimes and only within the timeframe specified by the law.

A few (non-legal) specialists were sceptical about the police informing holders of parental responsibility. One specialist from Sofia and one from Plovdiv noted that in cases of 24-hour police detention (not considered part of criminal proceedings), parents are advised to get in contact, or actually get called, only on the following day when they are allowed to collect their children. Parents are informed by police, mostly orally, but not always in a timely manner. Another specialist noted that parents are usually informed but the information is not provided in an understandable way and how much of it is actually understood often depends on parents' capacity to comprehend and process such information. Much of the information is given by the child's lawyer, but the qualification and specialisation of lawyers also differ. Three other specialists from Sofia affirmed that parents are informed so that they can guarantee safeguarding children's rights and a specialist from Plovdiv even informs them personally.

Specialists could not think of any grounds for parents not to be informed, except for the delay in providing information allowed by the law or cases where the parent has allegedly induced the child towards illegal acts.

iii. Having a nominated/designated person informed

The law postulates for **no additional persons to be informed** about the proceedings against the accused child. However, all police interviewees mentioned the cases where children live with grandparents and other relatives. In those cases, those persons have to be informed, but the police will continue to seek the parents as well. One officer from Plovdiv thought the obligations of police 'end' with informing one parent. It is then 'a family matter' whether and who that parent will inform. The same officer added that child protection departments are informed if their intervention is needed via further coordination meetings.

Like police officers, lawyers could not think of any other persons to be informed either, except for grandparents if children live with them when their parents are abroad.

Only one case was mentioned by a judge where a child is living in an institution and the person informed is the director of that institution. No support persons are envisaged in Bulgarian law.

Some (non-legal) specialists could not think of substitute persons to be informed either. Others mentioned other relatives in the direct line or other persons with a parental function. One was sceptical of the practical presence and participation of child protection services, although it was said that they are informed and present social reports.

iv. Involvement of parents or designated persons in the criminal proceedings

**The level of involvement of parents and guardians in the proceedings** against children is assessed by police as relatively high, especially in cases of a child's first clash with the law. One officer from Sofia mentioned parents' level of involvement differ.

**(Police officer, Bulgaria):** "If one parent is informed, our obligation ends. Whether the parent will inform the other parent, grandmother, grandfather, this is already family business."

*„Ако е информиран родителят, за нас ангажиментът приключва. По-нататък дали родителят ще информира другия родител, баба, дядо, това вече е семейна работа.“*

According to lawyers, the degree of involvement of parents varies significantly, with only one lawyer thinking that they cooperate to a large extent.

A prosecutor from Sofia noted that in most of their cases, the parents are very actively involved, while a prosecutor from Plovdiv said they have witnessed only a few cases of active involvement on the part of parents and many more cases of parents not being interested at all in what is going on with their child. One judge from Sofia and one prosecutor from Sofia have witnessed an equal number of cases

of very interested and totally disinterested parents (parents who attend the hearings and are obviously worried about the situation of their child and parents who never show up and the child is assisted only by a lawyer).

**(Judge, Bulgaria):** “By law, the role of these individuals is relatively passive. In practice, much depends on the family situation. In cases of children who have committed a crime, but still have a stable family environment, parents are usually present, even if they do not take any part, but just sit on the side-lines. Children who do not have such a family come alone. There are both cases, maybe 50:50 are the cases in which the parents are present and those in which they are not.

*„Законово ролята на тези лица е сравнително пасивна. На практика много зависи от семейната ситуация. Децата, които са извършили престъпление, но все пак имат някаква стабилна семейна среда, родителите обикновено присъстват, макар да не взимат някакво участие, а само да седят от страни. Децата, които нямат такова семейство, идват сами. Има ги и двете хипотези, може би 50:50 са случаите, в които родителите присъстват, и тези, в които не присъстват.“*

Some specialists estimated the overall degree of participation of holders of parental responsibility is not sufficient and they do not understand their role as the child’s representatives. Another specialist continued that the involvement of parents is a major societal problem and parents are unable to deal with children’s problems or communicate with them. Others thought the degree of inclusion of parents is sufficient although sometimes for reasons like avoiding covering substantial damages. Some noted that parents, although involved, may be confused about children’s rights.

- c. Audio-visual recording of questioning and due verification of written records
  - i. Legal overview

In Bulgaria, Article 9 of Directive (EU) 2016/800 is not fully transposed.<sup>26</sup> There are no special rules on the audio or video recording of questionings of accused children. There are general rules that apply to the recording of all questionings regardless of the age of the questioned person and their role in the proceedings (accused persons, witnesses, etc.). Audio or video recording of the questioning can be done upon request of the questioned person or upon decision of the prosecutor or the investigative authority. However, the right to request audio or video recording is not included in the list of procedural rights of accused persons.<sup>27</sup> Because of that, the prosecutor and the investigative authorities are not obliged to inform the accused person about that option and can reject their request for recording, if such is made.<sup>28</sup> Questionings can be recorded only in their entirety. It is forbidden to record only part of the questioning or to repeat part of the questioning solely for the purpose of recording it. After the end of the questioning the record must be played in full to the questioned person. After that the questioned person must be provided with the opportunity to give additional

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<sup>26</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>27</sup> Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, last amended 18 May 2021, Article 55.

<sup>28</sup> Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, last amended 18 May 2021, Article 219.

explanations, which must also be recorded. The recording must end with a statement of the questioned person confirming that what was said was correctly reflected.<sup>29</sup>

The draft amendments to the Criminal Procedure Code of November 2020, meant to complete the transposition of the Directive (EU) 2016/800, envisaged special rules for the recording of questionings of children. According to these rules, audio and video recording of questionings is mandatory in all cases when the child is detained in custody or accused of a crime punishable by not less than 10 years of imprisonment, unless they are accompanied during the questioning not only by their lawyer but also by an appropriate professional (psychologist, medical doctor, pedagogue, etc.). These amendments, however, have not yet been adopted.<sup>30</sup>

## ii. Implementation in practice

Interviewed police officers had generally not encountered audio and video recordings of accused children's questionings. One officer from Sofia thought this option is rarely used, although it is recommended by psychologists to certify how the questioning is conducted. Moreover, according to the same officer, a recording will spare the children the psychological strain of multiple questionings. A police officer from Plovdiv mentioned that recordings may be done in the so-called blue rooms (with child friendly environment), but they have not encountered accused children being questioned in such rooms. As of 2020, a total of 40 blue rooms were opened across the territory of the country. However, there is no available information about the actual use in practice of these premises and the number of children questioned in them.<sup>31</sup>

**(Police officer, Bulgaria):** "There is an option for recording in the Criminal Procedure Code, but it is used very rarely. And recordings of children's questionings are one of the recommendations given by psychologists, because they can be used to certify what happened at the interview, besides the minutes, and to certify how the questioning was conducted, because a recording would include everything that happened during the questioning. And you would avoid a new questioning if some claims arise, since questionings of children should be kept to a minimum to spare them the psychological strain."

*„Има такава предвидена в НПК възможност за запис, но според мен много рядко се използва. А иначе това е една от препоръките, които се дават от психолози, да се ползват записи при разпити на деца, за да се използва записът като удостоверяващо средство освен протокола, да се удостовери начинът, по който е проведен самият разпит, тъй като по този начин се фиксира всичко, което се случва по време на самия разпит. И се избягва нов разпит, ако възникнат някакви претенции, тъй като разпитите на непълнолетни и малолетни следва да се сведат до минимален брой, за да се щадят психиката им.“*

Interviewed lawyers unanimously affirmed that audio and video recordings are not done. One lawyer mentioned recordings done during court hearings, while another said they have heard of recordings being made by investigative authorities, but they have not personally witnessed such interviews. None of the interviewed lawyers have requested a recording of their client's questioning, nor have they advised their clients to request such a recording themselves.

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<sup>29</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Articles 238-240.

<sup>30</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020.

<sup>31</sup> Konstantinova, M. (2021), 'Every child has the right to be questioned in a blue room' (['Всяко дете има право на разпит в синя стая'](#)), *News.bg*, 7 March 2021.

Judicial interviewees gave few practical examples of audio and video recordings, but a prosecutor from Sofia was convinced that if a recording is requested by the parties (the child or their lawyer) such an option will be provided. A judge from Plovdiv has had a case of a questioning and a court hearing being filmed, but noted it is quite difficult both consent-wise and logistically. They affirmed audio-visual recordings (of investigative actions or court hearings) are occasionally made, but this is not a widespread practice, because of the complicated procedure.

**(Judge, Bulgaria):** “We had a case of a video recording of the questioning. We also had a case where the court hearing itself was filmed. But it must be with the consent of the person. And the video recording procedure itself is not simple, because this thing has to be recorded on a magnetic carrier, the persons have to certify that things are ok, this action is quite demanding for the court and the pre-trial authorities, because there has to be full agreement with the parties.”

*„Имахме случай на видеозапис на даването на обяснения. Имали сме случай и самото съдебно заседание да се заснема. Но трябва да е със съгласието на лицето. И самата процедура по видео заснемането не е проста, защото това нещо трябва да се запише на магнитен носител, лицата трябва да удостоверят че са ок нещата, доста е ангажиращо за съда и за органите на досъдебното производство това действие, защото трябва да има пълна съгласуваност със страните.“*

(Non-legal) specialists hardly knew of recordings being done. They used the occasion to express various criticisms towards the police. One is that police officers do not want to become vulnerable for procedural violations they may have committed during the questioning. Only one specialist from Sofia noted that audio recordings are done of questionings of children during the trial phase for facilitating the work of court secretaries, and by forensic psychologists for their assessments.

#### d. Discussion of findings

The general obligation of investigative authorities (the police) to inform both children and their parents about procedural rights seems to be complied with. However, several problems have been identified, which lessen the degree of compliance.

Firstly, the informal ‘talks’ and ‘preliminary checks’, for which children are often called in first, often take place without giving any information. Children are sometimes even detained for several hours before lawyers (or parents) are notified. They are questioned ‘informally’ to elicit information about possible crimes without being informed about and enabled to benefit from their rights. Notification surely happens upon bringing charges against the child. However, even afterwards, written forms and (formalistic) oral explanations are usually provided, practically treating children in the same manner as adults.

Information about the general conduct of proceedings is rarely provided and, in the absence of explicit legal obligation, is left entirely within the discretion of authorities. Thus, children may get confused about what is going to happen to them and what rights do they have.

The level of understanding of the provided information varies depending on the child’s age and maturity. Fear and absence of a trusted adult are also factors contributing to the lack of understanding. Few good practices have been outlined in the area, with most practitioners admitting they usually resort to talking to children and asking about their feedback.

Informing holders of parental responsibility is mandatory, but is also hampered by the ‘talks’ held with the children as well as by the parents’ low level of understanding and lack of interest. No substitute persons can be informed, and Bulgarian law does not formally recognise support persons. The level of involvement of parents varies, ranging from active participation to total lack of interest in the proceedings.



Audio and video recordings of questionings and hearings are done very rarely, because they are not mandatory, the authorities are not obliged to inform the accused person about that option and there are practical difficulties in organising and implementing such recordings.

#### C.4 The rights to be assisted by a lawyer and legal aid

##### a. Legal overview

In Bulgaria, Article 6 and Article 18 of Directive (EU) 2016/800 are fully transposed.<sup>32</sup> According to the law, when the accused person is a child the participation of a lawyer is mandatory.<sup>33</sup> Unlike other cases of mandatory participation of a lawyer (e.g., when the accused person does not speak Bulgarian), accused children cannot refuse to have a lawyer.<sup>34</sup> Free legal aid is available to all accused children who do not have a lawyer hired by their parents or guardians. In such cases, the lawyer is paid by the state according to the legal aid legislation and appointed by the investigative authority.<sup>35</sup>

Within the framework of criminal proceedings, the lawyer can participate from the moment of the accused person's detention or from the moment they are charged.<sup>36</sup> Outside criminal proceedings, children can also be accompanied by a lawyer and have the right to free legal aid each time when they get in contact with a public authority, including the police.<sup>37</sup>

According to studies, the current legal framework of legal aid of accused children does not provide guarantees for the quality of the assistance (the special training of lawyers). No guarantees are present either for the holding of preliminary meeting between the child and the lawyer, or for the right of the child to choose the lawyer, or to request the appointed lawyer to be replaced with another one.<sup>38</sup>

##### b. Assistance by a lawyer and legal aid

The opinion of all interviewees was largely influenced by the legal provisions on the **mandatory nature of accused children's defence**.

All police interviewees confirmed that **children can be assisted by a lawyer at all stages and actions of the criminal proceedings against them**. Children have the right to a lawyer already at the moment of their detention and by all means upon bringing charges against them. No valid procedural action can be taken against the child within criminal proceedings without the participation of a lawyer. Children's lawyers are either hired by parents or appointed by the state. Information about the right to a lawyer and to legal aid is given under the general regime for informing children about procedural rights.

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<sup>32</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>33</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 94.

<sup>34</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 96.

<sup>35</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 94.

<sup>36</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 97.

<sup>37</sup> Bulgaria, Child Protection Act ([Закон за закрила на детето](#)), 13 June 2000, last amended 20 November 2020, Article 15.

<sup>38</sup> Fartunova, D. (2014), Analysis of the legal framework of the terms and conditions for placement of children in closed institutions in Bulgaria ([Анализ на правната рамка на реда и условията за настаняване на деца в затворени институции в България](#)), Sofia, Bulgarian Helsinki Committee.

Differing opinions arose as to **whether children must have lawyers if called only as witnesses**. According to one officer from Sofia and two from Plovdiv, in those cases authorities are only bound to allow a lawyer to consult the child on questions, which would incriminate them or their relatives. Another officer from Sofia, however, said that the police make every effort to secure the presence of a lawyer even though defence is not obligatory before the formal bringing of charges.

**(Police officer, Bulgaria):** “If the child is called as a witness, there is no requirement to call a lawyer. They only have the right to consult a lawyer at any time, but only when answering questions, which would incriminate them or their relatives. There is no harm in appearing with a hired lawyer, but whether the lawyer would be allowed at the questioning is within the discretion of the investigative authority, because the lawyer is only present to consult on the issues I mentioned.”

*„Ако детето се вика като свидетел, няма такова изискване да има адвокат. Има само право да се консултира с адвокат по всяко време, но само при отговорите на въпроси, които биха уличили него или негови близки в извършване на престъпление. Не пречи да се яви с упълномощен адвокат, но дали той ще бъде допуснат да присъства на самия разпит е оставено на преценката на разследващия орган, защото участието му се свежда само до консултирането по въпросите, които споменах.“*

As for **challenges in ensuring lawyers to accused children**, according to an officer from Plovdiv, police cannot possibly know whether the duty state-appointed lawyer appearing at proceedings is specialised in such types of cases. In most cases, however, lawyers act with professionalism, explain to children the procedures in an understandable manner, and consult them on their rights. The same interviewee has encountered unprofessional attitudes by lawyers, but not in cases against children.

Interviewed **lawyers** affirmed that defence by a lawyer is obligatory for accused children and no valid procedural actions can take place without the presence of a lawyer. Children are informed of that right both in writing and orally most often upon the bringing of charges against them, when lawyers are involved as well. Some lawyers expressly mentioned that defence is obligatory also when the child is called as a witness, if some of their answers would incriminate them or their close ones. However, in practice lawyers are rarely called to questionings of witnesses. A lawyer from Plovdiv noted that a lawyer must join the proceedings from the moment the child is detained.

Lawyers outlined several challenges in the legal representation of children. One lawyer from Sofia pointed out to the legal norms envisaging lighter criminal responsibility, if the crime has been committed due to passion and frivolity (*увлечение и лекомислие*). This is a psychological issue, not a legal one, so criminal responsibility is based on the assessment of a non-legal issue. Two lawyers from Sofia pointed to the lack of specialisation of lawyers, and of other authorities, to work with accused children. Another problem is the psychological immaturity of children, such as in cases of conflicts among them. Thoughts were expressed about the quality of state-appointed legal aid as well, and the (inappropriate) links between state-appointed lawyers and the police.

**(Lawyer, Bulgaria):** “In the worst case, the so-called state-appointed lawyers sit at the café besides the police station and the investigator, with whom they are friends or relatives, calls to appoint them.”

*„Лошият вариант е стоят така наречените служебни адвокати в кафенето до районното и ги вика разследващият, който им е или роднина или приятел.“*

One lawyer from Plovdiv reiterated their criticism about the manipulative use of informal 'talks' with the children and their written explanations done without a lawyer, for which officers later testify. According to the same lawyer, the explanations are always attached to the case file and usually contain confessions, which prove the charges long before the lawyer appears.

**(Lawyer, Bulgaria):** "We do make a distinction between a 'talk' and a questioning. The so-called talk is practically a questioning, it is demagogical to call this questioning a talk, whereas it is then reproduced by the police officer as a witness."

*„Нали правим разлика между „беседа“ и разпит. Така наречената беседа на практика си е разпит, чиста демагогия е да наричаме този разпит беседа, която впоследствие бива възпроизведена от полицейския служител в качеството му на свидетел.“*

According to a lawyer from Sofia, a similar problem exists at the stage of police detention, which is not considered part of criminal proceedings. During police detention, which lasts up to 24 hours, there are cases where children are not assisted by a lawyer. At this stage, children are sometimes questioned in the absence of a lawyer, which, according to the interviewee, is a problem, although the results of such a questioning cannot be used in the course of the proceedings.

**(Lawyer, Bulgaria):** "The problem comes from the police detention, which is not part of the criminal proceedings and there is no notification and appointment of a lawyer within these 24 hours, during which explanations can be taken and informal talks can be held."

*„По-скоро проблемът идва от полицейското задържане, което не е в рамките на наказателното производство и няма уведомяване и определяне на защитник в рамките на тези 24 часа, в които могат да се снемат обяснения и да се провеждат беседи.“*

Judicial interviewees unanimously thought that the mandatory participation of a lawyer, provided by law, is the most important guarantee for the right of children to be assisted by a lawyer. If children do not have a lawyer, or cannot afford one, they get a state-appointed lawyer.

**(Prosecutor, Bulgaria):** "There are definitely no instances where the child is not assisted by a lawyer. Everyone knows from the investigating police that the participation of a lawyer is obligatory for any action that is undertaken regarding the accused child."

*„Категорично няма случаи, в които детето да няма адвокат. От разследващите полицаи всеки знае, че участието на адвокат е задължително каквото и действие да се извършва по отношение на обвиняемия непълнолетен.“*

Children cannot renounce defence either. One judge could not say how informed children are of that right at the pre-trial stage, another one said they are informed from the moment of formal charges. During the trial, the participation of a lawyer is definitely obligatory. A judge from Plovdiv affirmed that once the person is identified and it becomes clear that they are under 18 years of age, the mandatory participation of a lawyer is always observed.

Some (non-legal) specialists continued with their criticism towards police practices. One claim was that (poorly specialised) state-appointed lawyers are often called in, and only when formal charges are brought against the child. This is much later than the child's first (informal) questioning, where officers may manipulatively claim they will be witnesses to one another before the court and thus give the extracted information the value of evidence. Others combined criticisms towards police with such towards lawyers. One specialist said lawyers join only when it is 'clear' that there will be formal

proceedings. Parents do not really trust state-appointed lawyers thinking that they may be part of the 'system'. Hired lawyers, on the other hand, tend to prolong proceedings and appear more times before the court (to increase their pay), which is often painful for the accused child. Accused children often change their lawyers, and cases with accused children are not really 'desired' neither by the hired lawyers nor by the state-appointed ones.

**(Non-legal specialist, Bulgaria):** "Police may well say that they do not need a lawyer, that they are only going to talk and that it is a procedure under the police law and not a criminal case, that They have seen them doing something and they should just clarify. During the so-called checks, I don't know how they formulate that under the law, children say that one policeman says the other policeman will be a witness and the talk will acquire procedural value. Children tell that as a story, they do not understand that this is wrong, that this is done to scare and manipulate them."

*„Полицайте са способни да кажат, че не им трябва адвокат, че само нещо ще разговарят и че е по Закона за МВР, а не наказателно дело, че са го видели, че прави нещо, и че трябва да разяснят обстоятелствата. По време на така наречената проверка, не знам как го оформят точно, децата казват, че полицаят им казва, че другият полицай ще му стане свидетел, и така разпитът ще придобие процесуална стойност. Но децата го разказват като една история, те не разбират, че това е нередно, че е манипулиране и сплашване.“*

**(Non-legal specialist, Bulgaria):** "I am sorry to say that, but lawyers often look at cases through the lens of their own interest, not the interest of the client. We have often encountered efforts to prolong proceedings, to have more appearances and to get higher honorarium. This is not well regulated. I am speaking of hired lawyers here, where each appearance is paid separately so they look for options to prolong proceedings and this is very painful for a child who has committed a crime."

*„Адвокатите, съжалявам да го кажа, гледат на делата през собствения си интерес, а не през интереса на клиента. Често сме се сблъскали с това да се протака, да има повече явявания, за да се взема хонорар, така че си мисля, че това не е много добре регулирано. Говоря за наетите адвокати – всяко едно явяване се заплаща, търсят се варианти да се удължи, а това е много мъчително за едно дете, извършило престъпление.“*

Other specialists were positive that authorities observe children's right to a lawyer, because defence of children is obligatory for all procedural actions. Most interviewed specialists were convinced that lawyers enter the proceedings from the moment charges are brought against the child.

### c. Effective participation of a lawyer

**Table 6: Professionals' understanding of the term "effective participation of a lawyer" in the context of criminal proceedings against children**

	Informing accused children about their rights	Participate actively in criminal proceedings against accused children
Police	2	4
Judges and prosecutors		3 prosecutors, 2 judges

Lawyers	1	5
(Non-legal) specialists	1	5
Total by factor	4/20	19/20

*Note: The table summarises the responses of the interviewees to the interview question ‘What do you understand by the term “effective participation of a lawyer” in the context of criminal proceedings against children?’, showing the number of interviewees from each group who said that, based on their own experience, effective participation includes (a) informing the children about their rights and/or (b) participating actively in the proceedings.*

Police interviewees tackled different aspects of lawyers’ **effective participation in proceedings** against accused children. For most, effective participation means informing children about their rights and participating actively in every procedural action.

Police officers also mentioned different dimensions of the **quality of legal assistance**, and comparisons were made between hired and state-appointed lawyers. One officer from Sofia talked of very rare cases where police officers themselves see that the lawyer is unable or unwilling to provide assistance properly. State-appointed lawyers prove themselves unable to defend the children more often than hired ones. In contrast, two officers from Plovdiv mentioned that, in cases against children, lawyers are usually interested and caring.

**(Police officer, Bulgaria):** “Apart from going with the child everywhere, to all investigative actions, effective participation also means to clarify whatever the child has not understood, or the police has skipped, to clarify to parents what follows within the criminal proceedings, and even give advice to the child, if you wish. I have personally heard a lawyer telling a child they should not continue this way, that this is their first criminal act and they shouldn’t allow such in the future. We are all humans and, when we see that it is a child, everybody somehow gets involved. Especially if it is a first time. I have never encountered a formalistic presence by a lawyer, when it comes to children.”

*„Освен да присъства с него навсякъде, по всички процесуални действия, ефективното участие означава също да му разяснява това, което не е разбрал, или което някой от нас е пропуснал, разяснява и на родителите какво следва по наказателното производство, дава съвети на детето, ако щете. Аз лично съм чувала адвокат да дава съвети на детето, че то не трябва да продължава по този начин, че това му е първа проява и дано да няма нататък такива. Всички сме хора и, когато се види, че това е дете, всеки по някакъв начин е съпричастен. Особено когато е за първи път. Не съм срещала бездушно присъствие на адвокат, когато става въпрос за деца.“*

According to a prosecutor from Sofia, lawyers can and must participate in all stages of the proceedings. According to a judge from Sofia, when the accused person is a child, their lawyers have a more protective attitude and explain more. The lawyers of accused children more often advise them what to say, if they are not sure. As a judge, the interviewee has often given breaks during hearings to allow the accused child and the lawyer to go outside the court room and talk in private. If the security guards have objected against the child leaving the court room (usually when the child is a detainee), the interviewee has even asked the other persons present at the hearing to leave, so that the child can talk to their lawyer inside the court room.

Although one (non-legal) specialist could not elaborate on the meaning of lawyers’ effective participation, others outlined different aspects. All agreed that lawyers can effectively participate in

all investigative actions. In the opinion of a specialist from Sofia, lawyers must be able to guarantee the children's rights within the proceedings and make clear that the alleged perpetrator is a child. According to others, a lawyer must ensure in the best way the interests of the accused. A specialist from Plovdiv said that the effective lawyer must be a person who the children and their families trust and rely upon, without changes throughout the proceedings.

Interviewed lawyers emphasised on lawyers being able to acquaint themselves with all case materials and have effective access and contact with the accused child. Correct information, facilitation of questionings by specialists and access to assistance by a lawyer are also key to the child's interests. A lawyer from Sofia talked about the necessary qualifications by the lawyer and ensuring resources for good legal assistance, such as interpreters for the meetings with the lawyers. The additional expertise needed for assisting children with mental disabilities or dependencies was also mentioned. A lawyer from Plovdiv summarised that the lawyer must just 'do their job', which is to consult on and explain the rights. A lawyer from Sofia elaborated further that 'effective participation of a lawyer' includes holding a preliminary conversation with the accused child, accompanying the child at all procedural actions, in which they are involved, advising the child whether or not to respond to questions by the police (especially at the early stages of the proceedings, where the police has not yet presented to the accused child the evidence they have collected so far).

Interviewed lawyers unanimously affirmed they can participate effectively in all procedural actions.

- d. Communication with the child and other important aspects when defending and assisting a child who is suspected or accused of a crime

Interviewed lawyers outlined a number of aspects of communicating with the accused children. A lawyer from Sofia mentioned cases of children feeling completely invincible and continuing doing illegal acts after the lawyer has managed to get them an acquittal, often due to procedural violations or leniency by the judge. Thus, according to the same lawyer, the most important aspect of communicating with the child is to establish a close and friendly relationship while continuing to behave like an adult. Another important aspect is the attitude of authorities, who may show differing degrees of specialisation or sympathy. However, they are usually harsh on children with previous clashes with the law.

**(Lawyer, Bulgaria):** "With children we have a psychological specificity: they get away from the situation, get an acquittal, but you know they are guilty, while in their head it is like 'I got away with it, nobody can touch me anymore' and they continue with this way of life and activity. So, I try to say 'My dear, you were lucky because somebody just did not do their job right or the judge was lenient and acquitted you so that you can continue school, but you were guilty and next time you won't be able to get away'."

*„При децата е друга психологическата особеност – той излиза, например, от ситуацията, оправдават го, и ти знаеш, че е виновен, а в неговата глава е „ето тук се измъкнах, значи никой не може да ме закача“, и продължават една такава дейност и живот да си водят. И съм се опитвал да му кажа „Момченце, имаше късмет, защото някой по веригата не си е свършил работата или съдията ти влезе в положението и те оправда само и само да не те изключат от училище, но ти си си виновен и следващия път ще го отнесеш“.“*

A lawyer from Sofia emphasised the role of trust to communicate with the child adequately and doubted the level of trust state-appointed lawyers can build. Another lawyer continued this line by noting the importance of listening to the child's every word which may help their defence. A lawyer

from Sofia highlighted as the most important aspect in providing legal assistance to accused children the provision of information in an understandable manner. Another issue, pointed out by a lawyer from Sofia, is the assessment of children's individual characteristics. Lawyers must be able to determine whether they can handle the child's defence by themselves or additional expertise is needed. A lawyer from Plovdiv reiterated that children with mental disabilities present a particular challenge in communication.

e. Confidential and private consultations and meetings

Interviewed police officers were unanimous that children always have the right to confidential and private consultations with their lawyer, especially children deprived of their liberty.

Lawyers affirmed children deprived of their liberty are always able to consult their lawyer privately and confidentially. A lawyer from Plovdiv noted that COVID-19 restrictions have posed a lot of challenges relating to communicating in private and confidentially, with phone lines and glass screens used for the communication between lawyers and accused persons, which, according to a lawyer from Sofia, does not sufficiently safeguard the privacy of the communication, because there are no guarantees that the conversations are not recorded.

**(Lawyer, Bulgaria):** "Meetings in private take place depending on the conditions available at the detention facility, usually through a glass and telephone connection. It is clear to everyone that with this phone system it is not certain that no recordings are made."

*„Срещите насаме се осъществяват при възможностите, които има съответният арест, обикновено през стъкло и телефонна връзка. На всички е ясно, че при тази система през телефон не е сигурно, че не се правят записи.“*

The availability of confidential consultations was also affirmed by all interviewed prosecutors. According to a prosecutor from Sofia, the lawyer can visit the detained child at any time in accordance with the internal rules and visiting hours of the detention facility. During these visits the children are allowed to meet their lawyer in private. The lawyer is always allowed to consult the child in private, even during ongoing investigative actions. Judges did not have direct observations to what extent accused children deprived of their liberty are allowed to consult their lawyer.

The only (non-legal) specialist, who has worked with children deprived of their liberty, confirmed they are able to consult their lawyers confidentially and privately.

f. Cooperation with the child's holder of parental responsibility

Interviewed lawyers outlined a few aspects of communicating with the accused children's parents. A lawyer from Sofia mentioned cases of parents giving up on trying to help the child and letting them have a state-appointed lawyer. Parents also have contrasting feelings about the dimensions of what the child has done.

Another lawyer from Sofia presented the interesting case of a 16-year-old child, who wanted to have a state-appointed lawyer and to admit possession of drug substances. However, the parents preferred to hire a lawyer and to avoid admission by all means. The case, according to the lawyer, is indicative in that neither the law nor the authorities have an answer whose wish must be prioritised in such cases: the one of the children or the one of their parents, who are representing the child's interests.

g. Discussion of findings

The findings related to the right to a lawyer are heavily influenced by the mandatory nature of defence of children who are formally charged in the criminal procedure. No investigative action or hearing can take place without the presence of a lawyer. If the child cannot afford a lawyer of their choice, they always get a state-appointed lawyer. Lawyers are allowed, and in principle participate actively, in each procedural action. Children can always communicate with their lawyers confidentially and in private.

Fewer practical problems were reported compared to other procedural rights. One recurring issue is the practice of the police in holding informal 'talks' with children without the presence of a lawyer. In contrast to most other interviewees, one (non-legal) specialist expressed a lot of criticism towards hired lawyers for seeking to prolong proceedings in order to obtain higher remuneration. The good faith, competence and specialisation of state-appointed lawyers was put in doubt by a number of interviewees from across the different categories.

Effective participation by lawyers is defined by effective participation in all procedural actions, regular communication with and provision of information to children (and their parents), and protection of the child's rights and interests.

Some interesting psychological aspects of the communication between lawyers, children, and their parents were outlined. Those include the overall frustration of children and parents from getting in contact with the criminal justice system, the psychological reaction of children to acquittal sentences, and the occasional contradictions between the will of children and their parents.

## **C.5 The right to an individual assessment**

### **a. Legal overview**

In Bulgaria, Article 7 of Directive (EU) 2016/800 is not fully transposed.<sup>39</sup> The right of the accused child to individual assessment is fairly limited. It consists of the obligation of the criminal justice authorities to collect evidence about the accused person's education, and about the environment and conditions in which they live. Evidence is also collected as to whether the crime has been committed under the influence of adults.<sup>40</sup> The law also authorises the criminal justice authorities to request the performance of a forensic psychiatric and/or psychological examination of the accused person. This is done when it is necessary to check whether the maturity of the child corresponds to their age. Such an assessment is mandatory only when there is uncertainty as to whether the person is capable of bearing criminal liability (i.e., whether the child has understood the nature and importance of their actions and has been able to control them).<sup>41</sup>

The draft amendments to the Criminal Procedure Code of November 2020, meant to complete the transposition of the Directive (EU) 2016/800, envisaged the introduction of the right to individual

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<sup>39</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>40</sup> Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, last amended 18 May 2021, Article 387.

<sup>41</sup> Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, last amended 18 May 2021, Article 144. For the rules and procedure for conducting psychiatric and psychological expert assessments, see Bulgaria, Ordinance № 2 of 26 October 2011 on the terms and conditions for carrying out forensic, forensic psychiatric and forensic psychological examinations, including the payment of the costs of medical establishments ([Наредба № 2 от 26 октомври 2011 г. за условията и реда за извършване на съдебномедицинските, съдебнопсихиатричните и съдебнопсихологичните експертизи, включително и за заплащането на разходите на лечебните заведения](#)).



assessment and a procedure for its performance. These amendments, however, have not yet been adopted.<sup>42</sup>

b. Individual assessment and exceptions in practice

**Table 7: Assessment by specialised experts of the individual characteristics and situation of children suspected or accused of committing a criminal offence**

	Forensic psychological and/or psychiatric expert assessment	Character reference by children's pedagogical units	(Extended) social report	Other
Police	3	4		
Judges and prosecutors	3 prosecutors, 2 judges	2 prosecutors, 1 judge	1 judge	1 prosecutor (reference from the police officer responsible for the neighbourhood) 1 prosecutor (reference from the child's school)
Lawyers	5	1		
(Non-legal) specialists	2	1	3	1 (specialised risk assessment instruments)
Total by factor	15/20	9/20	4/20	3/20

*Note: The table summarises the responses of the interviewees to the interview question 'Do specialised experts assess the individual characteristics and situation of children suspected or accused of committing a criminal offence? If so, who specifically is conducting such an individual needs assessment, what does it include and at which stage of the proceedings is it usually conducted?', showing the number of interviewees from each group who said that, based on their own experience, the individual characteristics and situation of children are assessed (a) forensic psychological and/or psychiatric expert assessment, (b) character reference by children's pedagogical units, (c) social report (including extended reports), and/or (d) other means.*

In the absence of specific provisions, obliging authorities to conduct an independent individual assessment of the accused child, the interviewees elaborated on different tools used during the proceedings to collect information about the child.

The **obligatory forensic psychological and/or psychiatric assessment** of accused children was the most often mentioned tool. It is done upon the launch of proceedings or even before charges are brought, when just an allegation is present. It aims to establish whether the act has been done by the

<sup>42</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code (*Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс*), 10 November 2020.

child due to passion and frivolity (*увлечение и лекомислие*) and to delimit their criminal responsibility. In practice, it consists of psychologists and psychiatrists talking to the child in private and administering tests. The information gathered concerns the child's social and family environment and dynamics, school, etc. According to a police officer from Plovdiv, the assessment of the family environment, which is part of the psychological and/or psychiatric assessment, starts from the very pregnancy of the mother (whether there were complications during pregnancy, whether the child was born prematurely) and covers relationships in the family, conduct of other children (if any), family members' educational level, and social and material conditions. The information is usually collected through interviews with the child, their parents and other persons who know the child. According to the same officer, the assessment also finds out whether the child suffers from a mental illness or disability (also verified by checking the registers of the local psychiatric medical establishment).

Interviewed lawyers also mentioned mostly the obligatory psychological and/or psychiatric assessment. According to most of them, it is done straight after charges are brought against the child. However, one lawyer from Sofia noted that sometimes the psychological and/or psychiatric assessment is done before the child is formally charged, which is a problem, because such assessments are conducted in the absence of a lawyer and in violation of the child's right to legal assistance.

**(Lawyer, Bulgaria):** "A real problem I encounter in my practice is that psychological and psychiatric examinations are carried out not after the person has been formally charged, but sometimes before that, using explanations given to police officers at a stage that is not part of the criminal proceedings, and conclusions are drawn from these explanations. Thus, the right to defence is violated by extracting information through a procedure, which is not part of the criminal proceedings. All expert assessments must refer to and rely on the evidence in the case, and the explanations given to the police are preliminary and should never be used."

*„Реалният проблем, който аз срещам в практиката е, че психологическо-психиатричните експертизи се правят не след привличането на лицето като обвиняем, а понякога преди това, като се ползват обяснения, които са дадени пред полицаите, които не са в рамките на наказателното производство, и въз основа на тях се правят изводи. Т.е. по нарушава се правото на защита чрез извличане на информация по един ред, който не е част от наказателното производство. Всички експертизи трябва да се позовават и да стъпват на доказателства по делото, а обясненията, дадени пред полицаите, са предварителни и не би следвало да се ползват.“*

One lawyer from Sofia confirmed the assessment is multidisciplinary. It is done both ex officio and upon request of the child and their lawyer. One lawyer from Sofia and one from Plovdiv raised concerns that the assessments do not deal with the child's specific needs such as lesser cognitive disorders, insufficient language knowledge, etc.

Judicial interviewees also affirmed the obligatory nature of the psychological and psychiatric assessment. A judge from Sofia affirmed it is usually done at the pre-trial stage of proceedings, but if it has not been done at this stage, the court assigns it during the trial.

(Non-legal) specialists also mentioned the psychological and/or psychiatric expert assessments, which are obligatory according to all but one specialist.

According to interviewed police officers, the **reference by children's pedagogical units** (*детски педагогически стаи*),<sup>43</sup> if the child has had encounters with the unit, is also mandatory and is usually given early on in the proceedings as part of gathering of data about the child's personality. Inspectors from the unit monitor all children who have allegedly committed illegal acts. Data is also gathered from family and friends, and the child's school(s). A police officer from Plovdiv preferred to have the educational advisors gather more information on the child. The officer noted that it may be intimidating for the police to talk to the child's friends, because they often think that talking to the police is betrayal. Possible influence by adults is always sought as well as information on previous illegal acts. References are also required by the psychologists and psychiatrists doing the expert assessments.

References from children's pedagogical units were also mentioned by one lawyer from Sofia. According to this lawyer, these references are rather formalistic and the child is not actively involved in their preparation. References are only done after charges are brought against the child (i.e., not at the earliest possible stage of proceedings), and they do not follow a multidisciplinary approach. They are generally done ex officio and the child and lawyer are not informed that they can ask for an assessment. No guarantees exist for granting their request either.

According to judicial interviewees, the reference by the children's pedagogical unit is a major component of the collection of information at the pre-trial stage. This was confirmed by a judge from Plovdiv, who thought that is the easiest way for the police. According to this judge, this is not always a good practice, because children's pedagogical units are practically police authorities, which makes them part of the system prosecuting the person. According to the same judge, for obtaining a more balanced assessment, information must also be collected from other sources such as the child's school, correctional boarding school (if the child is placed in such a school), persons from the neighbourhood, relatives, educational institutions, local authorities (especially in small locations), etc. The same judge recalled a case when such an assessment was not done at the pre-trial stage, so the child's lawyer requested suspension of the trial, but instead of suspending the trial the court itself collected the necessary information for the missing assessment. Thus, the child's lawyer can also request the collection of such data.

According to (non-legal) specialists, the references by the children's pedagogical unit list in a rather formalistic manner the children's encounters with law enforcement and basic details of their environment without any professional interpretation.

**(Non-legal specialist, Bulgaria):** "Frankly speaking, I have seen the assessments of the children's pedagogical units: which school the child goes to (if they go to school at all), what other acts they have on police records, whether their parents are divorced, small details you cannot interpret by themselves. 'The child lives with their mother', how do you interpret that? It is not that it is too short, but there is nothing professional in it, no interpretation, how do you point the court to any solution if you write that."

*„Честно казано, аз съм виждала на детските педагогически стаи оценката: къде учи (ако учи), за какви други прояви има регистрация, дали са му разведени родителите, някакви малки неща, които сами по себе си не подлежат на интерпретация. „Детето живее с майка си“, как се интерпретира това? Не е въпросът, че е кратка, но няма*

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<sup>43</sup> Children's pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

*нищо професионално, няма интерпретация, как ще насочиш съда към каквото и да е, като напишеш това.“*

A judge from Sofia emphasised on the so-called **social report**. The social report is done ex officio and includes an assessment of the family background, the school environment, personal characteristics, previous violations, behavioural specificities, etc. It is obligatory unless the child has meanwhile reached 18 years of age.

(Non-legal) specialists also mentioned the social reports done upon request of the court, the prosecution or the police. The social report has a strict format, valid for all types of cases, and the social workers only have to fill it in. No multidisciplinary approach is followed. The social report is done after the start of the trial. Even social workers admitted the report covers only minimally the specific needs and vulnerabilities of the child. If the court requires a more detailed assessment, a referral is made to a provider of social services for a multidisciplinary assessment. Social authorities may update their social report within six months, if the court so requests.

Lastly, one specialist from Plovdiv spoke about the specialised risk assessment instruments they used to apply in the past. Those assessments were done ex officio for each child, identified as a child at risk, including children with anti-social behaviour who came into contact with the police. The assessments were also done ad hoc on some criminal cases upon request of the prosecutor. They included meeting with the children, families and investigative police on the concrete cases, and gathering information from schools, general medical practitioners and children's pedagogical units (*детски педагогически стау*).<sup>44</sup> The risk assessments covered aspects like the child's personality and family, style and way of life, possible drug use. The tool used a scale of points to assess the risk of re-offending and listed factors to reduce that risk. The assessment was updated every six months or upon a significant change of circumstances. According to the same specialist, these risk assessment instruments are no longer applied, because they were used under a license and this license expired about two years ago.

**For the police, parents and guardians** are usually involved. Closer friends may be interviewed as children may have shared more details with them than with their parents. A **multidisciplinary approach** is in place due to the involvement of psychologists and psychiatrists, as well as the children's schools.

One lawyer from Sofia noted that the assessment rather engages the child and not the parents or guardians. A lawyer from Plovdiv said that both the child and the parents are involved, but the parents are usually contacted only for more serious cases. Another lawyer from Plovdiv was generally sceptical of the level of inclusion of both children and parents.

According to (non-legal) specialists, children and their parents are interviewed when preparing the psychological and psychiatric expert assessments.

Interviewed police officers were generally positive about the **level of detail of the assessments**. One officer from Sofia noted one can get an impression of the child when reading the references. One officer from Plovdiv assessed them as very detailed and comprehensive. Another police officer from Plovdiv highlighted the difference between children, who are better known to the police and for whom the reference can be more detailed, and children encountering the police for the first time.

**(Police officer, Bulgaria):** "For children, who are better known to us, we are more useful and can write more things. For those, whom we meet for the first time, we might not be so

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<sup>44</sup> Children's pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

objective. But, to be comprehensive, we talk to parents, to teachers. When a child comes to me for the first time, our experience has taught us to recognise a thing or two, but we can be wrong. I personally prefer the advisor to gather more information and send it to us, because talking to a child's friend, when you are the police, can be a bit intimidating, they feel they are betraying their friend when talking to us."

*„Деца, които са ни по-познати, за тях сме по-полезни и можем да напишем повече неща. За такива, които срещаме за първи път, сигурно не сме толкова обективни. Но, за да сме изцяло изчерпателни, разговаряме с родителите, с учителите. Когато едно дете идва при мен за първи път, опитът ни е научил да разбираме вече някои неща, но можем и да сбъркаме. Аз лично предпочитам самият педагогически съветник да събере повече информация за детето и да ни я даде, защото разговорът с приятел на това дете, когато си полицай, е малко неприятен за тях, понякога го приемат като предателство.“*

One lawyer from Sofia gave a positive evaluation of the objectivity of the assessment. However, two other lawyers said they are rather formalistic, also doubting the level of expertise of those performing the assessments.

**(Lawyer, Bulgaria):** "In my personal opinion, I am highly skeptical there are specialists, especially in the child protection departments, and the assessments by social services are rather formalistic. The same is valid for the psychological and psychiatric assessments. They always consider the accused as being fit for bearing criminal responsibility, that they understood the nature and meaning of what they had done and were responsible for their conduct."

*„Личното ми мнение е, че съм изключително скептична, че има специалисти, особено в отделите „Закрила на детето“, по-скоро са формални оценките на социалните служби. Същото е мнението ми и за психолого-психиатричните експертизи. Обвиняемите винаги се изкарват вменяеми, винаги разбират свойството и значението на извършеното, винаги могат да отговарят за постъпките си.“*

According to (non-legal) specialists, the assessments done by authorities, in contrast to the ones done by NGOs, are rather formalistic and concern mostly the child's understanding of the nature and meaning of their actions and their ability to bear criminal liability. A specialist from Sofia, who had been practically involved in such assessments, was more positive of their multidisciplinary nature saying that they can also involve other medical specialists, like for example neurologists. According to that specialist, the coverage of the children's needs, vulnerabilities, personality and maturity very much depend on the questions posed to experts by the authority requesting the assessment. Specific questions and areas include cases of sexual crimes or crimes related to terrorism committed by children.

Similar opinions, with some nuances, were shared in terms of **updating the assessment**. According to a police officer from Sofia, cases involving children must be completed as swiftly as possible, so the chance for change of circumstances is relatively low. Still, the same officer saw no problem with ordering a new, or more expanded, assessment. Specifically for character references, one officer from Sofia noted they are constantly updated, as inspectors monitor children with anti-social criminal

behaviour on a regular basis.<sup>45</sup> An officer from Plovdiv added additional expert assessments may be requested in case of change of circumstances. According to another officer from Plovdiv, the references are updated mainly when the proceedings last for a longer period or when a new proceeding is launched.

For some lawyers, it seems possible to update the assessment. A problem may arise in this respect with assessing passion and frivolity (*увлечение и лекомислие*), which may change with time. For others, no updates are done, which is a significant problem as children change very quickly. For a lawyer from Plovdiv the assessment can in principle be updated, but most accused children prefer expedited proceedings, so there is usually no time for such an update.

**(Lawyer, Bulgaria):** “On the passion and frivolity: one expert opinion says, and this is a true story, ‘there is passion and frivolity’; the other opinion, given one year later, says ‘no passion and frivolity can be seen because the accused is well aware of the legal consequences’. They are well aware because the case is going on for already a year, but does that mean they were well aware at this previous moment also?”

*„За увлечението и лекомислието: едната експертиза казва, пример от живия живот, „има увлечение и лекомислие“; другата експертиза е правена една година по-късно, тя казва „няма увлечение и лекомислие, защото е достатъчно добре запознат с юридическите последици“. Той е достатъчно добре запознат, защото делото се влечи вече година, но това значи ли, че е бил запознат към предната дата?“*

According to (non-legal) specialists, the assessments and social reports are updated in case of need, mostly upon request of the lawyer.

According to the interviewed police officers, psychological and psychiatric assessments at the pre-trial stage are **ordered by investigative authorities**. Character references are also done ex officio. The accused child and their lawyer can also request an expert assessment, or character reference, from the prosecutor. Granting the request is within the prosecutor’s discretion.

A prosecutor from Sofia mentioned that investigative authorities collect information about the accused child from different sources, including information about personal characteristics and/or potential influence by adults. However, the parents and the lawyer can independently present information. This is mostly done during the trial in order to influence the final decision of the judge.

**(Judge, Bulgaria):** “The principle is ex officio, but there is no obstacle for the defence lawyer to request independently such characteristic data. Even sometimes the defence lawyers themselves bring such data, say, to ensure the favourable development of the proceedings for their client, for example with a lighter remand measure, or further on, if the characteristics are positive, a lighter sentence, a lighter punishment.”

*„Принципът е служебно, но няма пречка самият защитник адвокат да поиска такива характеристични данни. Даже и понякога и самият защитник носи, да речем за да обезпечи благоприятното развитие на процеса за неговия подзащитен, например с*

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<sup>45</sup> According to the law, all children, who have committed a crime or an anti-social act, are registered at the respective children’s pedagogical unit and are subject to regular monitoring by the inspectors from that unit. To exercise the monitoring, inspectors are authorised to visit the place where the child lives, studies or works, or to call the child for a meeting at the premises of the unit. For more information, see Ministry of the Interior (*Министерство на вътрешните работи*), Rules on the children’s pedagogical units ([Правилник за детските педагогически стаи](#)), 7 August 1998.

*по-лека мярка за неотклонение, или по-нататък, ако са положителни характеристикните данни, да е по-лека присъдата, по-леко наказанието.“*

**(Prosecutor, Bulgaria):** “In the pre-trial proceedings, as well as during the trial, the lawyer and the parents present information, most often witnesses who say that the child is a good child, etc. But this is only upon their own initiative, we do not look for the child’s relatives and friends to ask them. However, if they are active, the provided information is accepted.”

*„В досъдебното производство, а и в съдебното производство, адвокатът и родителите представят информация, най-често свидетели, които казват че е добро дете и т.н. Но при процесуална активност от тяхна страна, ние не търсим неговите близки, роднини и приятели да ги разпитваме. При тяхна активност обаче се приемат.“*

A lawyer from Sofia also shared the opinion that lawyers are able to independently present information about the accused child. According to the same lawyer, the lawyers usually collect and present information about the participation of the child in organised sports activities, volunteer activities or child clubs, information about the child’s performance in school, and information about the child’s family (mostly in view of whether the family can support the child and in relation to the potential application of parental supervision as alternative to detention).

According to (non-legal) specialists, the lawyer has a key role in requesting the assessment of specific details of the child’s background and lawyers know that right in principle.

According to most interviewed police officers, lawyers are **aware of the right to request an assessment**. Some thought the child and their lawyer are also informed about that right.

The majority of interviewees shared the opinion that there are no cases, in which assessments are not typically done. According to a police officer from Sofia, an assessment may only be **skipped** if the case is terminated after charges are brought against the child, but before the assessment has started. According to a prosecutor from Plovdiv, assessments are not done only occasionally, usually when the accused child is very close to reaching 18 years of age at the time when the crime has been committed.

- c. How and for what purposes are the results of the individual assessment used by national authorities in practice?

According to most interviewed police officers, **findings** from the psychological and psychiatric expert assessments are used to determine the child’s criminal responsibility and the sentence, their mental and psychological capacity and whether they are susceptible to influence by adults.

According to a police officer from Sofia, the assessment can rarely be used in the procedure for imposing detention in custody, because at this point the court does not examine the issue of guilt. In contrast, another officer from Plovdiv thought the assessment can be consulted when deciding on whether or not to impose detention.

On a more general protection level, findings from the reference are used to gather impressions on the child and child protection departments may be notified if a risk is established. Protection measures can in principle be taken, such as placing the child in a residential service.

Like other groups, interviewed lawyers listed a number of aspects for which individual assessments are used. Those are to establish the modalities of criminal responsibility or treat a possible mental disease, to terminate the investigation, to decide on detention and sanctions, or to place the child in a residential service. Additional language or psychological support, or measures to address the special

needs of female and migrant child defendants, must also be decided upon. One lawyer from Sofia expressed concerns that authorities may also use the confessions of the child before the psychiatrist as indirect evidence against them.

**(Lawyer, Bulgaria):** “Because the assessment is actually a talk, experts ask the accused ‘what happened?’ and they start making confessions. Courts in the capital would never credit that, but I have heard, outside of Sofia, ‘please refer to what they said in the expert assessment’. This can also give a lead to the investigative authorities as to who may be involved in the crime. The psychiatrist earns the accused person’s trust, but this is to do their job, not extract information.”

*„Понеже експертизата е беседа, и го питат „какво стана?“, и той започва чистосърдечно да прави самопризнание. Софийските съдилища никога не кредитират това, но съм чувал извън София „вижте в експертизата какво е казал“. Отделно това може да даде и насока на разследващия орган кой може да е въввлечен. Предразположи те психиатърът, то е за да свърши своята работа, не да ти изтръгне нещо.“*

Similarly, judicial interviewees shared the opinion that the main purpose of the individual assessment is to decide on the course and outcome of the proceedings: how to proceed with the case (continue criminal proceedings or divert the child to correctional measures); what remand measures to apply; what sentence to deliver, etc. A prosecutor from Sofia explained that the results of individual assessment are most often used to assess the accused child’s personality and the extent to which they are dangerous for the society. According to the same prosecutor, if the results show that the child lives in a poor environment and communicates with inappropriate people, the prosecutor may decide that the child alone is not dangerous (because their behaviour has been influenced by others) and can be released from criminal responsibility.

**(Prosecutor, Bulgaria):** “In practice, as a prosecutor, I need this characteristic to assess the personality of the accused. We evaluate two components. First, whether the act is criminal, which is the public danger of the act. But the other is the public danger of the individual. For example, if we see from this characteristic that this child is in an unfavourable environment, moves with some "bad guys", etc., we will consider that the child is not a socially dangerous person and may even come to the conclusion that what they have committed is not a crime.”

*„На мен като прокурор практически тази характеристика ми трябва за да преценя личността на обвиняемия. Ние преценяваме два компонента. Първо, дали деянието е престъпно, което е обществената опасност на деянието. Но другото е обществената опасност на личността. Например ние от тази характеристика ако видим, че това дете е в неблагоприятна среда, движи се с някакви „лоши батковци“ и т.н., ние ще преценим, че то не е обществено опасна личност и може дори да се стигне до заключението, че извършеното от него не е престъпление.“*

**(Prosecutor, Bulgaria):** “If the person is a child, we need to find out if the crime was not committed out of unreasonableness and frivolity. All the things that are collected about the personality of the perpetrator are needed precisely to make that assessment. And if we find that the person has acted out of unreasonableness and frivolity, we terminate the case and send it to the relevant commission for combating anti-social behaviour of minors and juveniles at the municipality for applying correctional measures.”



*„Ако лицето е непълнолетно, ние трябва да установим дали престъплението не е извършено поради лекомислие или увлечение. Всички неща, които се събират за личността на извършителя, е точно за да направим такава преценка. И ако установим, че лицето е действало поради лекомислие или увлечение, ние прекратяваме делото и го изпращаме на съответната комисия за борба с противообществените прояви на малолетните и непълнолетните към общината за налагане на възпитателна мярка.“*

Regarding any special needs, interviewed judges and prosecutors mentioned only the appointment of interpreters in cases of accused children, who do not speak Bulgarian, and the mandatory participation of a lawyer for all other special needs.

**(Prosecutor, Bulgaria):** “We notify the State Agency for Child Protection. We have no mechanisms to provide the child with any additional assistance. The Agency has programmes, under which they can provide some assistance to the child and their parents. And if the child does not speak Bulgarian, an interpreter is appointed. Many people, especially the Roma population, do not know Bulgarian well.”

*„Уведомяваме Агенцията за закрила на детето. Ние нямаме механизми, по които да му окажем някаква допълнителна помощ. В Агенцията имат програми, по които могат да окажат на детето и на неговите родители някаква съдействие. Ако детето не говори български, се назначава преводач. Много масово, особено ромското население, не знае добре български.“*

A judge from Sofia explained further that, in cases of illiteracy or reading/writing difficulties, lawyers read and/or explain to children the requisite documents. In relation to interpretation, a judge from Plovdiv recalled a case from their own experience, where, to avoid potential problems with the hearing of an accused foreign child, one interpreter was with the child and another was with the judge. According to the same judge, the participation of interpreters always complicates the proceedings, but is the only way to ensure the effective participation of the accused.

(Non-legal) specialists gave examples for assessments being used for placing children with foster families or generally administrating sanctions, but not for detention in custody. A specialist from Sofia thought assessments can be used for the ordering of police protection, part of which is the placement in the so-called home for temporary accommodation of minors and juveniles. Social authorities and another specialist confirmed they may establish a risk for the life or health of the accused child and undertake a protective measure, like placing them under police protection, or in a crisis centre, or subsequently with relatives or in foster care. A specialist from Plovdiv thought support measures cannot practically be taken, because there are no suitable services or institutions where to place such children, including children with dependencies, to separate them from their criminal environment and offer them some support. As a result, children in conflict with the law are placed in services like crisis centres, together with victims of crime, with no suitable specialists to work with them.

Regarding children with special needs, one specialist from Sofia mentioned medical help, when needed, or placing the child in a specialised detention facility for children (such as the reformatory for convicted children in the town of Vratsa, which is also used for accused children with pending criminal proceedings). Children with mental disorders are given their prescribed therapy.

As regards interpretation, one specialist had certain doubts that interpreters are not always appointed at the initial stages of proceedings. A specialist from Plovdiv noted that children of minority background, not knowing enough Bulgarian, usually come with their parents, or grandparents who

speak the language better. According to the same specialist, in such cases it is a common practice not to appoint a professional interpreter and ask the accompanying family member to do the interpretation.

#### d. Challenges

Not all interviewed police officers mentioned challenges related to specific groups of children. According to an officer from Plovdiv, hurdles arise when children do not have sufficient command of the Bulgarian language. In such cases, the assessment is done based on information provided by parents. More practical hurdles were also mentioned. According to an officer from Plovdiv, psychologists and psychiatrists are very busy and can sometimes not come at short notice. Another problem is posed by the delayed payment of honoraria from the police to experts.

A lawyer from Sofia mentioned foreign children and children of different religions as the groups most often facing challenges with regard to the individual assessment. Another lawyer from Sofia affirmed this by mentioning children with no sufficient language knowledge. A lawyer from Plovdiv pointed to children of minority origin and children with intellectual disabilities.

For a (non-legal) specialist from Plovdiv, the most difficult group are highly educated children from richer families, who show arrogance towards both the police and the social workers. According to another specialist from Plovdiv, the challenges with refugee, or unaccompanied children, or children with lower socio-economic status lie in the inability to gather all the information needed for delivering the assessment in due time. A specialist from Sofia mentioned assessment of migrant children in view of the language barrier and the specifics of foreign educational systems, and in view of the psychological assessment methodologies, standardised for the Bulgarian context.

#### e. Discussion of findings

In the absence of specific provisions concerning individual assessment, interviewees talked about at least three distinct types of such assessment. One is the psychological and psychiatric assessment done for each child to delimit their criminal responsibility. It is done *ex officio*, but also upon request of the child and their lawyer. The other two types of assessment are the character reference by the children's psychological units (*детски педагогически стаи*)<sup>46</sup> and the social reports by child protection authorities. Both types of assessments look at the child's environment and the factors having led to their previous and current criminal activities, and tend towards the *ex officio* side. Additionally, some specific assessments were mentioned like the expanded social reports and the structured risk assessment instruments, which some (non-legal) specialists have encountered.

All main types of assessments (the psychological and psychiatric assessment, the character reference and the social report) are subject of polarised views throughout the spectrum of interviewees. Police officers tend to be more positive on the assessments' specificity and the involvement of the child and their parents. (Non-legal) specialists and lawyers are mostly critical and think the assessments are formalistic and hardly related to the children's needs. Social reports are looked at unfavourably even by social authorities themselves due to the strict framework under which they are made.

### **C.6 Deprivation of liberty as a last resort and safeguards for children who are deprived of their liberty**

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

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<sup>46</sup> Children's pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

### i. Legal overview

In Bulgaria, Article 10 of Directive (EU) 2016/800 is not fully transposed.<sup>47</sup> The law stipulates that accused children can be placed in detention only in exceptional cases. However, the maximum duration of detention of children during the pre-trial investigation is the same as the one of adults (two months in general, eight months for serious crime and one year and six months for crimes punishable by not less than 15 years of imprisonment). Moreover, some studies note that the use of detention “in exceptional cases” is not equal to detention “as a measure of last resort”.<sup>48</sup>

Article 11 of Directive (EU) 2016/800 is fully transposed.<sup>49</sup> The law envisages different alternatives to detention when the accused person is a child, which include various forms of supervision: by the parents or guardians; by the personnel of the correctional facility where the child is accommodated; or by an inspector from the children’s pedagogical unit (*детска педагогическа стая*)<sup>50</sup> or a member of the local commission for countering anti-social behaviour of juveniles and minors (*местна комисия за борба с противообществените прояви на малолетните и непълнолетните*).<sup>51</sup> The alternatives to detention, envisaged for adults (bail, house arrest and mandatory reporting to the police), do not apply to children. Some studies assess as a gap the fact that Bulgarian legislation does not provide for any lighter form of isolation as alternative to detention (similar to the house arrest applicable to adults). This practically means that all accused children, for whom the different forms of supervision are not considered sufficient, would automatically end up in detention.<sup>52</sup>

The draft amendments to the Criminal Procedure Code of November 2020, meant to complete the transposition of the Directive (EU) 2016/800, envisaged some changes to the rules on detention of children, including a decrease of the maximum duration of pre-trial detention and detailed rules on the right to medical examination. These amendments, however, have not yet been adopted.<sup>53</sup> In the course of the public consultation of the draft amendments, both the Ombudsman and UNICEF Bulgaria raised concerns in relation to the suggested maximum duration of pre-trial detention of accused

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<sup>47</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>48</sup> Fartunova, D. (2014), Analysis of the legal framework of the terms and conditions for placement of children in closed institutions in Bulgaria ([Анализ на правната рамка на реда и условията за настаняване на деца в затворени институции в България](#)), Sofia, Bulgarian Helsinki Committee.

<sup>49</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>50</sup> Children’s pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

<sup>51</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 386.

<sup>52</sup> Fartunova, D. (2014), Analysis of the legal framework of the terms and conditions for placement of children in closed institutions in Bulgaria ([Анализ на правната рамка на реда и условията за настаняване на деца в затворени институции в България](#)), Sofia, Bulgarian Helsinki Committee.

<sup>53</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020.

children. They argued that despite being shorter than the one for adults, it is still excessive and does not correspond to international and European standards.<sup>54</sup>

- ii. Deprivation of liberty as a last resort measure and the application of measures alternative to detention

**Table 8: Specific situations of the child or of a particular group of children that might influence a decision about deprivation of liberty**

	Previous sentences and/or encounters with the police	High societal danger of the act and/or the alleged offender	Danger of absconding and/or committing another crime	Other
Police	1	4	4	
Judges and prosecutors	1 judge	2 prosecutors, 2 judges		
Lawyers	3	3	2	1 (children without parents), 1 (media coverage), 1 (drug related cases)
(Non-legal) specialists	1	2		
Total by factor	6/20	13/20	6/20	3/20

*Note: The table summarises the responses of the interviewees to the interview question ‘From your experience, is there any specific situation of the child or of a particular group of children that might influence a decision about deprivation of liberty?’, showing the number of interviewees from each group who said that, based on their own experience, a detention decision may be influenced by (a) previous sentences and/or encounters with the police, (b) high societal danger of the act and/or the alleged offender, (c) danger of absconding and/or committing another crime, and/or (d) other factors.*

Interviewed **police officers** affirmed that **deprivation of liberty is imposed on children as an exceptional measure**. They outlined various reasons for imposing detention in custody on children. Among those are previous sentences or police registrations, other pending cases, high societal danger of the act and/or the alleged offender, and risk of committing another crime or absconding. A police officer from Plovdiv has even witnessed parents insisting that their child must be detained (for 24 hours by the police) to hopefully reform after they have taken a ‘wrong path’.

Interviewed police officers unanimously agreed that **the alternative measures** provided for by the law are often used instead of detention. An officer from Plovdiv clarified that supervision by a parent is imposed, if it is assessed that the parent has sufficient parental capacity.

<sup>54</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Summary of the notes, proposals and findings received during the public consultation under Art. 26, para. 3 of the Normative Acts Act of the documents regarding a draft decision of the Council of Ministers for approval of Draft Amendments to the Criminal Procedure Code ([Справка за отразяване на бележките, предложенията и констатациите, получени при общественото обсъждане по реда на чл. 26, ал. 3 от Закона за нормативните актове на документи относно проект на решение на Министерския съвет за одобряване на проект на Закон за изменение и допълнение на Наказателно-процесуалния кодекс](#)).

**(Police officer, Bulgaria):** “We try to only impose detention as an exceptional measure. But the most interesting aspect is that we have had parents saying ‘We insist you detain them’, because they think that, if the child has a rogue nature, they have had some conversations to no avail, this would help re-educate them to some extent. It does not happen very often, but it happens.”

*„Опитваме се да спазваме това да е крайна мярка. Но най-интересното е, че сме имали родители, които казват „Ние държим да го задържите“, защото смятат, че, ако детето е буйно, те са водили някакви разговори с него, но не могат да постигнат резултат, смятат, че това ще му помогне за превъзпитание в някаква степен. Не е често, но се е случвало.“*

Interviewed lawyers were on opposing ends of the spectrum as regards detention of accused children. One lawyer from Sofia thought children are routinely detained and alternative measures are applied only in parallel with detention, not primarily. A lawyer from Plovdiv also thought authorities use detention routinely to make sure children do not abscond or defer. Conversely, two lawyers from Sofia and one from Plovdiv said detention is fairly rarely used and alternatives are applied. Courts order detention for more serious crimes and for children who have previously come into the view of authorities, in cases covered by the media and in cases of children who have previous convictions.

**(Lawyer, Bulgaria):** “My observations are that when it comes to a serious crime, with a media coverage, detention is not applied as an exceptional measure. It is more a matter of looking for some kind of expectation of society to be satisfied than to take into account the best interest of the child.”

*„Моите наблюдения са, че когато става въпрос за тежко престъпление, с медиен отзвук, задържането под стража не се прилага като изключителна мярка. По-скоро се търси някакъв тип очакване на обществото да бъде удовлетворено, отколкото да се съобразява интересът на непълнолетния.“*

Another group of children that more often end up in detention are the children without (the care of) parents, for whom alternative measures can hardly be applied. Drug related cases may also warrant detention. According to a lawyer from Plovdiv, detention is imposed to secure children’s presence and they are usually set free by the court at the end of the proceedings.

**(Lawyer, Bulgaria):** “I think it is a lot more probable for a child without parents, or whose parents do not take care of them, to be detained in custody. Or some unaccompanied child without documents, no parents, no placement in a social service. It is not because they would abscond or commit another crime, but because the other alternative measures are not applicable.”

*„Според мен е много по-вероятно под стража да бъде задържано дете, което няма родители или родителите му не полагат грижи. Или някой непридружен непълнолетен без документи е много по-вероятно да бъде задържан, няма родители, не е настанен в заведение. Не защото е налице опасност да се укрие или да извърши престъпление, а защото другите мерки не са особено приложими.“*

Judicial interviewees basically agreed that detention is applied rarely, usually for more serious crimes, repeated offences or in case of previous convictions. In comparison with other groups, judicial interviewees elaborated more substantially on alternative measures applied. Two prosecutors from Sofia explained that supervision by the director of the correctional institution, where the child is

accommodated, is rarely applied in practice, because in the majority of cases the accused child is not accommodated in such an institution. According to the same prosecutors, accused children are most often placed under supervision by an inspector from the children's pedagogical unit (*детска педагогическа стая*).<sup>55</sup> This measure is preferred to the supervision by the parents for two reasons: the fact that child has already done something wrong is an indication that the parents are not capable of exercising proper supervision, and because the inspector is not part of the child's family and thus has a greater chance of having a positive impact on the child.

**(Prosecutor, Bulgaria):** "Most often, according to my observations, supervision by an inspector at the children's pedagogical unit is applied, as the logic is that after an illegal act has been committed by the child, it may be a little late to exercise parental supervision. The inspector at the children's pedagogical unit is a person external to the family, with some authority that could influence the person and in the course of this measure it could lead to some re-education, prior to the sentence."

*„Най-често по мои наблюдения се налага надзор от инспектор при Детска педагогическа стая, тъй като логиката е, че след като се е стигнало до някакво противоправно деяние може би е малко късно да бъде упражнен надзор на родителите. Инспекторът при Детска педагогическа стая е външно за семейството лице, с някакъв авторитет, който би могъл да повлияе на лицето и в хода на тази мярка да се стигне до някакво превъзпитание, а не само след това с присъдата.“*

**(Prosecutor, Bulgaria):** "The lightest measure is parental supervision. It is applied if we consider that the parental environment is appropriate. This is the lightest measure because the parent is already looking after the child. The next measure is the supervision of the administration of a correctional institution. This is when the child is placed in a correctional institution and the director of this institution takes responsibility for monitoring the behaviour of the child. This is rarely used. What we do most often is the supervision of an inspector in the children's pedagogical unit. They are professionals and they monitor the children, call them, talk to them, etc."

*„Най-леката мярка е надзор на родителя. Тя се налага, ако преценим, че родителската среда е подходяща. Това е най-леката мярка, защото родителят и без друго си гледа детето. Следващата мярка е надзор на администрацията на възпитателно заведение. Това е когато непълнолетният е настанен в някакво възпитателно заведение и директорът на това заведение поема отговорност да следи за поведението на непълнолетния. Това рядко се използва. Това, което най-често ние правим, е надзор на инспектор по Детска педагогическа стая. Те са професионалисти и те си ги наблюдават, викат ги, четат им беседи и т.н.“*

A judge from Sofia explained that children who are not deprived of their liberty are either sent to their parents for supervision or are left with no remand measure. The same judge explained that when children reach adulthood during the proceedings (and the specific alternatives for children are no longer applicable), detention is still rarely imposed and mandatory reporting to the police is usually applied (a remand measure applicable only for adults). A judge from Plovdiv confirmed that the authorities are very careful when dealing with criminal cases against children. In most cases, an alternative measure is applied, which, depending on the situation of the child, is usually supervision

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<sup>55</sup> Children's pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

by the parents or guardians, or supervision by the director of the social service, in which the child is accommodated (for children deprived of parental care). The same judge and one prosecutor also noted that the available alternatives are not sufficient and the authorities do not have many options to choose from.

**(Judge, Bulgaria):** “It is very rare for us to resort to this most severe measure. We always aim to place the child under supervision of a parent, guardian, official from the respective institution, if the person is placed in a home for children deprived of parental care. But the available remand measures do not provide many options. The range of measures is, I would say, at both extremes: either the lightest possible measure, or detention. There is not much in the middle. It is just that our law is imperfect, not up to date.”

*„Много рядко са случаите, когато стигаме до тази най-тежка мярка. Винаги търсим поставянето под надзор на родител, настойник, възпитател от съответното заведение, ако лицето е настанено в дом за деца, лишени от родителски грижи. Просто те не са и много мерките за неотклонение като възможности. Диапазонът на мерките е бих казал в двете крайности – или най-леката възможна, или задържане. Няма много средно положение. Просто нашият закон е несъвършен, не е съвременен на сегашните условия.“*

Only two (non-legal) specialists had experience with children deprived of their liberty. One of them thought the courts indeed impose detention in custody only as an exceptional measure. However, the prosecution attempts to prove higher societal danger via listing previous acts committed by the child and to convince the court to impose detention. The same specialist has encountered children with quite long stays in detention, with impact on their schooling. Alternative measures like supervision by parents or by children’s pedagogical units (*детски педагогически стаи*) are also applied.<sup>56</sup> Children are typically detained for acts like robbery, possession and distribution of drugs or (xenophobic and football) hooliganism. Roma ethnicity is also taken into account as Roma children are more likely to be detained. The other specialist thought children are detained mainly for acts of larger public outcry to be shown ‘the power of the law’, but also to be protected by possible retaliation.

**(Non-legal specialist, Bulgaria):** “Usually an ‘aggregation’ of crimes is done. I had such a case recently. One element they claimed was stealing some jeans, then some vodka and they added ‘and has a long history of other illegal acts against property’, and the court rejected the motion of the lawyer for imposing a lighter measure.”

*„Там най-често се прави една „съвкупност“. Скоро имах такъв случай. Едното беше откраднал дънки, другото откраднал водка и добавено „има много дълга история на други прояви срещу собствеността“, и съдът отхвърли молбата на адвоката за намаляване на мярката.“*

**(Non-legal specialist, Bulgaria):** “Juvenile criminality is clear; we know what types of crimes children commit. As regards particularly serious crimes, authorities consider robbery, possession and distribution of drugs, also hooliganism (serious, xenophobic and football hooliganism), very typical of youth, often committed under the influence of drugs. This is what they detain for. Roma ethnicity would be taken into account, but we have different crimes

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<sup>56</sup> Children’s pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

with different groups of perpetrators, all children involved in possession and distribution of drugs are from the majority. If you visit a detention facility, both groups will be present.”

*„Детската престъпност е много ясна, знаем какви престъпления извършват децата. За особено тежки се считат грабежът, притежание и разпространение на наркотици, също и хулигански прояви (но те често са сериозни, ксенофобски, футболни), те са типични за младежите. Много често се извършват под влияние на наркотици. Това е, за което задържат. Ромският етнос влияе, но пък имаме определени таргет групи, защото пък всички, замесени в притежание и разпространение на наркотици, са от мнозинството. Ако влезете в ареста, има и от двете групи.“*

b. Medical examination

i. Legal overview

In Bulgaria, Article 8 of Directive (EU) 2016/800 is not fully transposed.<sup>57</sup> There are no special rules on the right to medical examination of detained children. A general rule for all detainees, regardless of their age, stipulates that upon their arrival at the detention facility they undergo a mandatory medical examination for establishing their general health condition.<sup>58</sup> This applies to all persons detained in custody in the framework of criminal proceedings. Detention at police stations is not considered part of criminal proceedings. Persons in police detention, including children, also have the right to medical examination, which it is laid down in a different piece of legislation.<sup>59</sup>

ii. The medical examination in practice

Interviewed **police officers** were fairly unanimous that **children, parents or guardians, and lawyers have the right to request a medical examination**. It is done obligatorily before the child is placed in detention. The right to medical examination is listed in the children’s detention order and is one of the rights they are acquainted with. Detainees must indicate expressly whether they wish medical help, what illnesses they have and/or what medicines they need. In urgent cases, emergency services are called.

If there is information that the child has a medical problem, or visible traces of injuries, a forensic medical assessment may also be ordered to identify the causes of those injuries.

The examination is conducted by a physician and includes both the physical and the mental state of the child.

**(Police officer, Bulgaria):** “Not only do children have a right to request a medical examination, the medical examination is obligatory upon detention of the person. A declaration is also filled

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<sup>57</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>58</sup> Bulgaria, Execution of Penalties and Detention in Custody Act ([Закон за изпълнение на наказанията и задържането под стража](#)), 3 April 2009, last amended 11 December 2020, Article 242.

<sup>59</sup> Bulgaria, Instruction № 8121з-78 of 24 January 2015 on the procedure for detention, equipment of the premises for accommodation of detainees and the procedure in them in the Ministry of the Interior ([Инструкция № 8121з-78 от 24 януари 2015 г. за реда за осъществяване на задържане, оборудване на помещенията за настаняване на задържани лица и реда в тях в Министерството на вътрешните работи](#)), 3 February 2015, last amended 7 December 2018, Article 21.



in where this is stated. If there is information that the person has a health problem, or has visible traces of injuries, medical examination is always done and a forensic medical assessment may be ordered to see what these injuries are caused by.”

*„Не само имат право, а е задължително при задържане на лицето да му се извърши медицински преглед. Попълва се и декларация, в която това е вписано. Ако пък има данни, че има здравословен проблем или видими следи от нараняване, задължително се извършва медицински преглед, при необходимост се назначава и съдебно-медицинска експертиза от какво са причинени тези увреждания.“*

According to interviewed **lawyers, children, parents or lawyers can request a medical examination.** Children are acquainted with that right as part of their rights upon detention. Medical examinations are done upon detaining the child or in case of deterioration of their condition. The examination is done by a doctor and, according to some interviewed lawyers, includes the physical and mental state of the child. However, according to other lawyers, it is rather formalistic and most often reports the child is healthy. It does not include the child’s mental condition and, only if visible problems are observed, the child is either not detained or a psychiatrist is called.

One lawyer from Sofia explained that detained children also have the right to go to a medical examination outside the detention facility (with the permission of the prosecutor) or to be visited and examined by a doctor of their choice inside the detention facility. The same lawyer expressed concerns that examining the child’s mental condition, although generally possible, is rather delicate, because the child may share some information about the committed crime at a relatively early stage of the proceedings, which sometimes may not be in their favour (because the results may be used by the prosecutor later in the proceedings).

All interviewed judges and prosecutors confirmed that children are subjected to a medical examination upon detention, but none of them had direct observations how this is done in practice and whether the child is allowed to independently request or trigger such an examination.

A (non-legal) specialist confirmed that children, lawyers and parents have the right to request and trigger a medical examination and information about it is included in the detention order. Examinations of newly detained children are always conducted, although the interviewee has heard of detention facility officers neglecting children’s medical complaints. The examination is conducted by a general practitioner, who will usually recognise a psychotic condition, but it is another matter whether they will make a proper referral to a specialist.

iii. How and for what purposes are the results of the medical examination used by national authorities in practice?

Interviewed police officers listed different, yet similar purposes to use the results of medical examinations. Among them are to determine whether the child could be placed in detention and to customise investigative actions. Moreover, medical examinations are used to determine whether the child should be offered some medical help and/or medicines, for which the staff of the detention facility should be informed, or be placed under guard in a medical establishment. Similarly, interviewed lawyers affirmed that the results of the medical examination are used for possibly changing the detention measure and offering medical assistance or for deciding how to question the child.

The majority of interviewed judges and prosecutors had no direct observations if and how the results of the medical examinations are used the authorities. A prosecutor from Plovdiv explained that the results of the medical examination are not used unless the detainee has claimed that they have been

injured either by the police (during the arrest) or by the detention staff (during their stay in the detention facility). In these cases, the results of the medical examination are sent to a prosecutor for carrying out an investigation into the potential use of violence on the part of the authorities.

**(Prosecutor, Bulgaria):** “The results of medical examinations are not used. They remain in the detention facility. Only if any traumatic injuries have been identified that the medical specialist has registered and the detainee says that they were caused to them during detention or by police officers while working with them, a copy of these documents is sent to us and we are investigating potential police violence. This applies to both adults and children.”

*„Резултатите от медицинския преглед не се използват. Остават си в ареста. Единствено ако са установени някакви травматични увреждания, които медицинското лице е регистрирало, и лицето, което е задържано, каже, че те са му причинени при задържане или от полицейски служители по време на работата с него, копие от тези документи се изпращат при нас и ние извършваме проверка за упражнено полицейско насилие. Това важи и за пълнолетните, и за непълнолетните.“*

One judge from Plovdiv noted that, if the medical condition of a detainee has to be assessed by the court (usually in relation to requests for replacing detention with a lighter measure), the judge will usually request an independent medical assessment instead of relying solely on the results of the medical examination carried out in the detention facility.

A (non-legal) specialist confirmed that the authorities mostly use the results of the examination to refer to treatment if needed. Court hearings or questionings may also be postponed.

### c. Special treatment in detention

#### i. Legal overview

In Bulgaria, Article 12 of Directive (EU) 2016/800 is not fully transposed.<sup>60</sup> According to the law, in detention facilities, children must be held in appropriate premises, separately from adults. The law does not provide for the option of accommodating the child together with an adult when this is considered to be in the child's best interests. The authorities are obliged to immediately notify the parents or guardians of the detained child (and the director of the school, if the child is a student). The notification to a particular person (including parents and guardians) can be delayed by up to 24 hours in order to protect the best interest of the child, when there is an urgent need to prevent the occurrence of severe adverse consequences for the life, liberty or physical integrity of a person or when the investigative authorities have to undertake actions, the obstruction of which would seriously hamper the criminal proceedings. According to the law, such a delayed notification should apply in the light of the particular circumstances of each case, without exceeding what is necessary and without being based solely on the nature or gravity of the committed offence. In such cases, the State Agency for Child Protection (SACP) (*Държавна агенция за закрила на детето, ДАЗД*) must be immediately informed both about the detention and about the delay of notification.<sup>61</sup> According to some lawyers, the right of authorities to delay the notification of the child's parents or guardians by

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<sup>60</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>61</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 386.

up to 24 hours violates their right of defence. This is because, when the parents or guardians are not aware that their child has been detained, they cannot appoint a lawyer of their choice and the child must be assisted by a lawyer appointed by the state (the child cannot appoint a lawyer alone).<sup>62</sup>

All detainees, including children, have the right to be visited by their lawyer and their parents or other family members. The lawyer can visit the child at any time,<sup>63</sup> while visits from family members, including parents, are restricted according to a schedule (with a minimum of two visits per month of 40 minutes each).<sup>64</sup> The law, however, allows parents to formally join the proceedings as their child's second defence counsel (in addition to the professional lawyer) and thus obtain the right to visit their detained child without restrictions.<sup>65</sup>

## ii. The special treatment in practice

All interviewed police officers were unanimous that children in detention are held separately from adults. Moreover, they are under constant supervision by the detention facility personnel to monitor their status, especially if they are detained for the first time. Children are informed about their rights regarding detention as part of the procedure of detention itself. Information is given by the investigative authorities and by the children's lawyers. As for access to services, according to the interviewed police officers, detained children mostly have access to a doctor. No other services are offered, because, according to an officer from Sofia, the time spent by children in detention is fairly limited.

**(Police officer, Bulgaria):** "Access to services is within the competence of other structures and rather refers to convicted persons. Those measures are mainly applied in prisons. Police detention is up to 24 hours and after that, depending on the crime, children can spend in detention up to eight months or up to a year and six months. So, their time in (pre-trial) detention is fairly limited. And within such a short period we cannot apply any particular measures, mainly healthcare."

*„Достъпът до мерки вече е от компетенцията на други структури. И се отнася по-скоро при постановена присъда, като мерките се прилагат в затворите. Полицейското задържане е до 24 часа и след това, в зависимост от престъплението, е до 8 месеца или до година и 6 месеца. Самият престой на тези лица е много ограничен. В този кратък период няма как да се прилагат чак такива мерки, преди всичко здравеопазването.“*

Interviewed lawyers affirmed that children are held separately from adults. Children are informed about the particularities of detention and the possibilities for getting an alternative measure. The lawyers were unanimous that no educational measures are offered to children in detention.

The majority of interviewed judges and prosecutors were aware that children in detention have to be kept separately from adults, but had not direct observations whether and how this is applied in practice. Only one prosecutor from Sofia confirmed that the requirement for holding children separately from adults is strictly observed. The same interviewee explained that, for example, all

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<sup>62</sup> Petkova, S. (2020), Detention of a juvenile: rules and protection ([Задържане на непълнолетен: правила и защита](#)), Sofia, Petkova Law Firm.

<sup>63</sup> Bulgaria, Execution of Penalties and Detention in Custody Act ([Закон за изпълнение на наказанията и задържането под стража](#)), 3 April 2009, last amended 11 December 2020, Articles 250 and 256.

<sup>64</sup> Bulgaria, Ministry of Justice ([Министерство на правосъдието](#)), Order on internal order is arrests ([Заповед за вътрешния ред в арестите](#)), 6 October 2016, Article 48.

<sup>65</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 91.

detention facilities in Sofia have separate premises for accommodating children and children are always placed separately from adults, even when they are moved from one detention facility to another. None of the interviewed judges and prosecutors was aware of any specific programmes or measures available to detained children. A prosecutor from Sofia even mentioned that if a detained children wishes to take part in any form of education the only option is through self-learning materials brought to them by someone else (e.g., their parents).

A (non-legal) specialist confirmed that children are always held separately from adults. They are informed orally by the authorities about the option to use alternative measures or limiting the time of detention, and about their right to challenge the detention decision. The rights of detained children in the social sphere are usually neglected. As detained children are usually above the obligatory school age (16), no particular importance is put on their schooling. Any type of measure would only come as a result of advocacy on the part of lawyers, parents or other support persons.

#### d. Contact with family members during deprivation of liberty

According to all interviewed police officers and lawyers as well as the only (non-legal) specialist, who elaborated on the matter, **children have contact with their families during visitation times**. At least two lawyers mentioned that the COVID-19 situation created considerable difficulty with visitations. No particular observations were elicited from the interviewed judges and prosecutors as they had no direct observations as to when and how children maintain contacts with their family members.

According to a police officer from Sofia and a lawyer from Sofia, like with adult defendants, children's family members often participate in the proceedings as their child's defence counsel (the law allows accused children to authorise their parents to represent them as defence counsel in the proceedings together with the lawyer) in order to be allowed to visit their child every day (according to the law, lawyers, unlike parents, have unrestricted access to accused persons deprived of their liberty).

**(Prosecutor, Bulgaria):** "Children can meet their family under the same rules as adults, without preferential conditions. Parents, if authorised as defence counsels, because there is such an opportunity, can visit the child and meet with them every day. Otherwise, they must follow the general rules for visits of the respective detention place."

*„Децата могат да се срещат със семейството си при същите условия както възрастните, без преференциални условия. Родителите, ако бъдат упълномощени като защитници, защото има такава възможност, могат да посещават детето и да правят срещи с него всеки ден. Иначе трябва да спазват общите правила за свидания на съответното място.“*

#### e. Discussion of findings

Despite some opinions by lawyers that children are routinely detained, most interviewees, who could speak on the matter, confirmed that detention is indeed applied as an exceptional measure. Reasons for detention are mostly previous convictions or encounters with the law, gravity of the crime and the risk of absconding or committing another crime. Alternative measures are applied, mainly supervision by parents (if parents have sufficient capacity) and supervision by the children's pedagogical unit (*детска педагогическа стая*).<sup>66</sup> Medical examinations are held mostly as part of the mandatory detention procedure. They usually include the children's physical state and, according to the majority of the interviewees, their mental state as well. Children are held separately from adults, but receive

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<sup>66</sup> Children's pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

no special treatment or measures apart from medical care. Children have contact with their families only during visitation times (usually once a week or once in two week) or by phone.

### **C.7 The rights to effectively participate in and be accompanied during the trial**

#### **a. Legal overview**

In Bulgaria, Article 16 of Directive (EU) 2016/800 is fully transposed.<sup>67</sup> All accused persons, including children, have the right to participate in the trial, including the right to be heard and the right to speak last.<sup>68</sup>

In Bulgaria, there are several special rules governing the participation of accused children in the trial. However, they are primarily aimed at protecting the child rather than ensuring their effective participation. The court can invite to the hearing inspectors from the children's pedagogical unit (*детска педагогическа стая*)<sup>69</sup> or representatives of the school where the child is studying. The child's parents or guardians must be summoned to the hearing, but their absence is not an obstacle for holding the hearing unless the court decides that their presence is necessary. If the facts that are discussed at the hearing can have a negative effect on the child the court can temporarily remove the child from the court room (after consulting the child's lawyer, parents or guardians, and the prosecutor).<sup>70</sup> There are no special rules or guarantees aimed at allowing the child to understand better the proceedings or express themselves better.<sup>71</sup>

The rules on effective participation, introduced in line with Directive (EU) 2016/343, are the same for adults and children. When the conditions listed in the law are present, the court can decide to hold the trial in the absence of the accused.<sup>72</sup> The accused, who has not participated in the trial, has the right to request a new trial within six months after learning about the sentence.<sup>73</sup> These rules apply regardless of the age of the accused.

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<sup>67</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>68</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 55.

<sup>69</sup> Children's pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

<sup>70</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Articles 391, 392 and 393.

<sup>71</sup> Fartunova, D. (2014), Analysis of the legal framework of the terms and conditions for placement of children in closed institutions in Bulgaria ([Анализ на правната рамка на реда и условията за настаняване на деца в затворени институции в България](#)), Sofia, Bulgarian Helsinki Committee.

<sup>72</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 269.

<sup>73</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Articles 423-426.

Article 14 of Directive (EU) 2016/800 is not fully transposed.<sup>74</sup> According to the current legal rules, court hearings in proceedings against children must be held behind closed doors. However, the court is authorised to open the hearing to the public if this would be in the interest of society.<sup>75</sup>

The draft amendments to the Criminal Procedure Code of November 2020, meant to complete the transposition of the Directive (EU) 2016/800, suggested a more restrictive rule on public hearings. They stipulated that a hearing can be open to the public only upon request of the accused child. These amendments, however, have not yet been adopted.<sup>76</sup>

Article 15 of Directive (EU) 2016/800 is not fully transposed either.<sup>77</sup> According to the current legal rules, the right of the accused child to be accompanied by the holder of parental responsibility (or any other support person) during the proceedings is limited. At the pre-trial stage, the investigative authority is obliged to notify the accused child's parents or guardians only for the so-called presentation of the investigation. This is the point of the proceedings when the investigation is over and the results are presented to the accused. Before that stage, the law does not provide for the involvement of the parents or guardians in the investigation. The parents or guardians can be present at the presentation if they request so.<sup>78</sup> A pedagogue or a psychologist can participate in the questioning of the accused child, if the investigative authority finds it necessary. They can ask questions to the child with the permission of the investigative authority. They also have the right to review the questioning records and make notes on their correctness and completeness.<sup>79</sup> During the trial, the child's parents or guardians must be summoned to the court hearing. However, their absence is not an obstacle for holding the hearing unless the court decides that their presence is necessary.<sup>80</sup> The court can invite to the hearing inspectors from the children's pedagogical unit or representatives of the school where the child is studying.<sup>81</sup>

The draft amendments to the Criminal Procedure Code of November 2020, meant to complete the transposition of the Directive (EU) 2016/800, suggested more detailed rules on the right of the accused child to be accompanied during the court hearings (and in some cases at the pre-trial stage). The child

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<sup>74</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>75</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 391.

<sup>76</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020.

<sup>77</sup> Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2020), Table of compliance of Bulgarian legislation with 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 ([Таблица на съответствието на българското законодателство с Директива \(ЕС\) 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство](#)).

<sup>78</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 389.

<sup>79</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 388.

<sup>80</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 392.

<sup>81</sup> Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 29 April 2006, last amended 18 May 2021, Article 391.

can be accompanied by their parents, guardians or another appropriate adult chosen by the child and approved by the prosecutor or the court. These amendments, however, have not yet been adopted.<sup>82</sup>

b. Right to effective participation in practice

i. Enabling the child’s effective participations - Modifications of settings and conduct

**Table 9: Modifications concerning the settings and conduct of the proceedings to make it possible for the child to effectively participate in the trial, in comparison with proceedings against adults**

	Modifications of settings	Modifications of conduct
Judges and prosecutors	1 judge (isolated court room, if available)	2 prosecutors (hearing behind closed doors, lay judges of educational background), 1 judge (careful questioning and explanations of the judge), 1 prosecutor, 1 judge (hearing behind closed doors)
Lawyers		1 (hearing behind closed doors, careful questioning), 1 (lay judges of educational background, hearing behind closed doors), 1 (hearing behind closed doors), 1 (lay judges, hearing behind closed doors, careful questioning)
(Non-legal) specialists	1 (judges and prosecutors not wearing gowns)	2 (hearing behind closed doors), 2 (hearing behind closed doors, careful questioning)
Total by factor	2/16	13/16

*Note: The table summarises the responses of the interviewees to the interview question ‘Based on your experience, in comparison with proceedings against adults, are there any modifications concerning the settings and conduct of the proceedings to make it possible for the child to effectively participate in the trial? If so, which in particular?’, showing the number of interviewees from each group who said that, based on their own experience, there are (a) modifications of the settings and/or (b) modifications of the conduct of the participants in the trial.*

Interviewed lawyers could not think of modifications of settings in the court room and two of them affirmed that accused children are not questioned in blue rooms.

Modifications are done mainly on the part of judges who simplify their questions, and cases are heard behind closed doors. Two lawyers talked of the participation of lay judges of educational background in each case of an accused child. According to one lawyer, educational background is not sufficient and persons must have worked as teachers as well. Specialisation of lay judges is also problematic.

**(Lawyer, Bulgaria):** “In the proceedings against children we have lay judges who are of educational background, but this is not of much use. The existence of such background by itself, especially for someone who has never been a teacher or worked with children, would

<sup>82</sup> Bulgaria, National Assembly (*Народно събрание*) (2020), Draft Amendments to the Criminal Procedure Code ([Законопроект за изменение и допълнение на Наказателно-процесуалния кодекс](#)), 10 November 2020.

not make much sense. Maybe psychologists or something similar would be better. We should think more about the requirements towards the members of the court panel.”

*„В производствата срещу деца имаме съдебни заседатели, които са с педагогическо образование, но това не върши много работа. Наличието на самото педагогическо образование, особено при човек, който не е бил учител и не е работил с деца, не знам доколко има смисъл като изискване. Ако има психолог или нещо подобно, може би е по-подходящо. Дали да не се помисли повече за изискванията към състава на съда.“*

Judicial interviewees confirmed no modifications of settings exist for trials against accused children. They are not even heard in the so-called ‘blue rooms’, which are mostly used for child victims. A judge from Plovdiv confirmed that, saying that in their court building there are few court rooms and it is impossible to have one of them modified only for proceedings against children. Nevertheless, the practical measure most often applied is to choose a court room, to which the access is somehow (naturally) restricted, in order to indeed have non-public hearings.

**(Judge, Bulgaria):** “A court room is chosen, to which there is no free access, because for children the proceedings are usually held behind closed doors, i.e., without public access, except for close relatives and, exceptionally, with the consent of the parties, there may be other people. Usually, this room is isolated because there are many cases in the court, so that no other hearings are held in it or a certain time range is fixed, during which there are no other cases in this room. This leads to a well-intentioned isolation, so that the case is heard in a calm environment, without other persons present at the entrance or the exit, there are no people in the room, etc.

*„Избира се зала, до която да няма достъп, защото при непълнолетните обикновено производството е при закрити врати, т.е. без достъп на публика освен близки роднини и по изключение, със съгласието на страните, може да има външни лица. Обикновено тази зала се изолира, защото в съда има много дела, и в нея не се провеждат други заседания или определен часови диапазон се фиксира, през който в тази зала да няма други дела. Така се стига до една добронамерена изолация, така че делото да се гледа в една спокойна обстановка без да има външни лица при влизане и излизане, в залата да няма хора и т.н.“*

All interviewed judges and prosecutors emphasised on the exclusion of the public in cases against children. Only the judges, the prosecutor, the child, the child’s parents and the child’s lawyer are allowed to be present in the court room. Another emphasis is the special qualifications of lay judges, also mentioned by the lawyers. A judge from Sofia noted their efforts to try and explain to the child what is going on in simple and easy to understand language. This is so especially when a plea-bargaining agreement has been reached, where children are confessing their guilt, the case is closed and children receive a certain punishment. The same judge also cited practices in other countries for modifying court rooms and having judges in plain clothes, but none of these is applied in Bulgaria.

Like the other groups, most (non-legal) specialists could only think of modifications of conduct, not of settings. One specialist from Sofia nevertheless thought that judges and prosecutors do not wear gowns, but another said that they do.

In terms of conduct, three specialists from Sofia and one from Plovdiv gave the example of a hearing behind closed doors. For two specialists, ‘blue rooms’ with child-friendly conditions are only used for interviewing victims, not accused children. However, another believed that they are also used for accused children. According to the same specialist and one other, judges are careful about how they



phrase their interventions, and monitor how other parties phrase their questions and behave in general.

**(Non-legal specialist, Bulgaria):** “Judges are extra careful about how they phrase their interventions, and monitor carefully how other parties phrase their questions. I have never heard as many reprimands in court as judges make to lawyers about how they ask questions and how they behave in the court room during such cases.”

*„Съдиите са в пъти по-внимателни в изказа, както и съблюдают изказът на останалите страни да е подходящ. Толкова забележки, колкото са правени на адвокати за начина, по който питат и се държат в съдебна зала по такива дела, никога не съм виждал.“*

ii. How are children heard and their views taken into account?

According to interviewed lawyers, children’s views are fully taken into account, just like the statements of any other defendant. However, a lawyer from Sofia noted that, although children have the right to be heard, it should not be forgotten that, due to their age, they may misinterpret the situation and make a wrong decision.

**(Lawyer, Bulgaria):** “It should always be borne in mind that the child is always entitled to personal participation, but cannot always assess the situation. Therefore, the lawyer has the leading role and they decide whether the child should participate in some way. Thus, the participation of the child is rather through communication with the defence counsel.”

*„Винаги трябва да се държи сметка, че непълнолетният винаги има право на лично участие, но не винаги може да оцени ситуацията. Затова адвокатът е водещият и той взема решение дали непълнолетният да участва по някакъв начин. Така по-скоро участието на непълнолетния е чрез комуникацията със защитника.“*

One lawyer from Sofia noted that support persons are not known to Bulgarian law. The only type of ‘support person’, recognised by the legislation, are the inspectors from the children’s pedagogical units (*детски педагогически стаи*),<sup>83</sup> but they, according to the same lawyer, are not seen as proper support persons with whom children could build a relationship of trust. One lawyer from Sofia noted that many cases against accused children end with a plea-bargaining agreement, so children are practically never heard in court.

According to two prosecutors from Sofia, children rarely speak during the hearings and it is usually the lawyer and the parents who have the active role (also confirmed by a lawyer from Sofia). The children usually intervene only when they have to answer a question. Whenever the child wants to speak, they are allowed to and their statements are taken into account as any other relevant evidence.

**(Prosecutor, Bulgaria):** “They have the right to be heard, but lawyers advise them not to give many explanations, because very often, when a defendant starts to give explanations, they always turn against them. That is why the right they have not to give explanations is more important. My personal opinion is that it is better for them not to give explanations. But they have that right, and if they decide to speak, what they say is always taken into account.”

*„Имат право, но защитниците ги съветват да не дават много обяснения, тъй като много често, когато един подсъдим тръгне да дава обяснения, те винаги се обръщат*

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<sup>83</sup> Children’s pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

*срещу него. И затова правото, което имат, да не дават обяснения, е по-важно. Моето лично мнение е, че е по-добре да не дават обяснения. Но имат това право и ако решат да се изкажат, това винаги се взима предвид.“*

In the same line, a judge from Sofia confirmed that children do not actively participate in the trial and often perceive themselves as the subject of the procedure rather than a participant in it. Children usually remain silent, leaving everything in the hands of the adults (the lawyer and the judge) and waiting to see what is going to happen. Nevertheless, accused children are always allowed to speak and what they say is always taken into account by the court, like with adults. A judge from Plovdiv noted that children are usually more active during the pre-trial stage. During the trial, they usually remain passive and their lawyers and parents predominantly speak during the hearings.

**(Judge, Bulgaria):** “Children usually do not distinguish whether the statement they make is on the merits of the case, whether it is on the facts, etc. They speak whenever and however they choose. Subsequently, I have to synthesise their statement and assess to which category this statement belongs: whether they plead guilty or say something on the merits of the case, etc. But what they say is taken into account as any other defendant who has made a statement on the same issue.”

*„Децата обикновено не правят разлика това, което казват, дали е по съществуването на делото, дали е по фактите и т.н. Те си го казват когато и както си преценят. В последствие аз вече го синтезирам и преценявам към коя категория е това изказване – дали се признава за виновен или казва нещо по съществуването на делото и т.н. Но това се отчита както се отчита казаното от всеки друг подсъдим, който е взел отношение по същите въпроси.“*

According to (non-legal) specialists, children are questioned cautiously as part of the proceedings. One specialist from Plovdiv noted that they have consulted children on how the hearing will take place. During the hearing they ask the child whether they understand the question. Another specialist from Sofia has participated in hearings, but was sometimes not allowed in the court room. According to a second specialist from Sofia, the role of psychologists as support persons is to make sure the child understands what is happening to them. A social worker underlined that the social authorities present their social report, facilitate the child's questioning and serve as support persons. The same specialist thought that children are quite stressed in the court room and the environment could be a little more inviting.

c. The right to be accompanied by the holder of parental responsibility

All interviewees confirmed children can always consult with their parents and lawyers if they wish, both before and during the hearings.

**(Lawyer, Bulgaria):** “Of course, they can consult with the lawyer at any time. In each court hearing, in all criminal cases, the defendant and the lawyer are next to each other. They communicate all the time; they exchange information all the time.”

*„Разбира се, могат по всяко време. Във всяко съдебно заседание по всички наказателни дела подсъдимият и адвокатът са един до друг. Те през цялото време комуникират, през цялото време обменят информация.“*

d. Discussion of findings

All interviewees confirmed that no modifications are made in terms of settings for hearing cases against accused children. They were also fairly unanimous that accused children, in contrast with child

victims, are not questioned in the so called 'blue rooms' (premises with child friendly settings) either. The main modifications concern the conduct of proceedings: hearings behind closed doors, careful questioning by judges, special qualifications of lay judges as required by law, etc. Children are always allowed to speak, and to consult with their parents and lawyers, but they usually remain rather passive throughout the proceedings.

## **PART D. GENERAL ASSESSMENT**

### **D.1 Challenges**

One main challenge before observing the procedural rights of accused children is the practice of the police holding extra-procedural informal ‘talks’ with children, as mentioned by the majority of interviewed lawyers and by some (non-legal) specialists. During those talks, children are not yet formally charged and are often left with no information about their rights and no access to a lawyer. At the same time, they are ‘motivated’ by various means to give the police information or to make confessions which can be used later in the proceedings, although they are not admissible evidence.

Another group of challenges refers to working with various vulnerable groups of children such as children with a poor education or low level of maturity (despite their age), children with mental disabilities or children from a minority or migrant background. Such children may often have difficulties understanding the procedure and the information about their rights. The options for collecting data for the individual assessment of such children are also more limited.

Yet another challenge concerns the qualification of lawyers working on cases involving accused children. Although many interviewees confirmed that even state-appointed lawyers are usually conscientious and good-willed when working with accused children, doubts arise about their qualification and specialisation. Those can, in turn, strongly undermine the observance of the children’s procedural rights.

In terms of challenges shared by interviewees in their final observations, police interviewees mentioned not taking into account children’s mental development or young age, and the possible exercise of coercion. On a more general level, an officer from Sofia thought that the social status of the population greatly impacts the level of crime and, if it improves, the crime situation will also improve. According to an officer from Plovdiv, the challenge lies in reforming children to avoid their involvement in criminal activities.

Interviewed lawyers also outlined various challenges. According to a lawyer from Sofia, the biggest challenges lie in the communication with the child, the child’s parents and the parents of other children (as illegal acts committed by children are often aimed against other children). Another challenge is the immaturity of some children. According to another lawyer from Sofia, the biggest challenges lie in the insufficient information stakeholders working with children have about their rights and needs. Moreover, the technical preparedness for working with children, e.g., for recording their questionings or questioning them remotely, is not sufficient either. A lawyer from Sofia highlighted as a challenge effectively identifying the moment at which children are allowed to have a lawyer, because the first contact between the child and the police often happens in the street and the police undertake some immediate actions (such as search and seizure), without allowing the child to call a lawyer. A lawyer from Plovdiv highlighted as the biggest challenge the insufficient experience of state-appointed lawyers working with children. This often results in parents replacing the state-appointed lawyer by a lawyer of their own choice, with the state still obliged to cover the expenses of the state-appointed lawyer for the time during which they participated in the proceedings.

According to a prosecutor from Sofia, the biggest challenge in relation to procedural safeguards for accused children is the maximum duration of detention, which is still the same as for adults. In the same line, a judge from Plovdiv referred to the outdated legal framework of remand measures. Prosecutors also mentioned as challenges the lack of internal specialisation within the prosecutor’s office and the fact that there are no prosecutors particularly trained to work on cases involving child defendants, the lack of audio-visual recordings of questionings and hearings and the insufficient

involvement of the accused children's parents during the proceedings. A judge from Sofia noted that the role of children in the proceedings is very formalised. This makes it difficult for them to participate effectively, because they do not understand what is going on and they are afraid.

According to a (non-legal) specialist, the biggest challenge is for authorities to grasp that accused children are still children and possess rights. Another specialist mentioned the specialised knowledge required to make expert assessments and the lack of statistics on the effect of the assessments given. A clear mechanism to do the certification and monitor the initial and continuing training of expert psychologists is also lacking. Moreover, according to the same specialist, there is no methodology to distribute the cases among first-line psychologists, for simpler tasks, and more specialised psychologists for more complex cases. There should be a unified register, from which experts can be selected and called regardless of the region they are registered in. Another specialist from Sofia highlighted as a challenge the efforts of the government to reform the juvenile justice system while preserving the old and ineffective institutional infrastructure for implementing preventive and corrective measures. Children accused of having committed antisocial or criminal acts are often placed in crisis centres and other (inadequately staffed) social establishments together with child victims, which is potentially detrimental for both groups. The creation of a specialised juvenile court was also recommended. According to the same specialist, judges should be further trained to communicate with children in the court room. Another specialist saw challenges with parents who, when their child comes into conflict with the law, do not have sufficient information about what is going to happen to them. Yet another specialist confirmed that there are no adequately prepared institutions to deal with such children and the procedure to place them in such institutions is too cumbersome and a lot of time is lost. Special centres should be built for children who come into conflict with the law, with swift placement procedures, to rehabilitate them towards personal development and help them overcome negative tendencies.

## **D.2 Improvements**

No particular improvements were mentioned by interviewees as Directive (EU) 2016/800 has not been transposed in Bulgarian law.

## **D.3 Promising practices**

In terms of **promising practices**, interviewees pointed to the good cooperation among institutions that work on cases involving accused children. According to two lawyers from Sofia, the promising practices lie in the attitude of judges and investigative authorities, who have obviously undergone specialised training and display a very humane attitude towards accused children. According to another lawyer from Sofia, Bulgaria is bound by a lot of standards by the EU and the Council of Europe, which leads to the setting of certain national standards and legislative changes improving the situation with children's rights. Another positive tendency is the raised awareness of professional communities about the necessity of training both on children's rights in general and on individual rights and their exercise during the various proceedings.

Judicial interviewees were in general agreement that the legal framework is adequate and provides sufficient safeguards for children's rights. A prosecutor from Sofia further noted the specialisation of investigative authorities and the fact that cases against children are investigated only by specifically trained police officers. Another prosecutor from Sofia highlighted the composition of the panel of judges (with pedagogues or psychologists sitting on the panel as lay judges), the mandatory assistance by a lawyer, and the collection of information about the personality of the child at the very beginning of the proceedings.

A (non-legal) specialist saw promising practices in the assessments made by their own organisation, proving that accused and sentenced children usually multiply the acts and community practices they have previously been victimised by. In the same line, another specialist praised the information materials developed by NGOs in the field of juvenile justice, but expressed concerns that they are not sufficiently known among children and parents. They also reiterated the usefulness of the structured risk assessment instruments they used to apply in the past. Another specialist thought that the participation of psychologists is in itself a promising practice in the cases against children. Yet another specialist saw a small number of judges treating accused children in a more humane manner. The same specialist also mentioned the good cooperation with the educational specialists and psychologists from the children's pedagogical units (*детски педагогически стаи*).<sup>84</sup>

#### **D.4 Suggestions**

In terms of **recommendations**, a police officer from Sofia mentioned that all authorities dealing with cases involving children should have thorough knowledge about the specifics of working with children. Another officer from Plovdiv recommended the introduction of other countries' practice of juvenile courts with fully specialised judges, prosecutors and investigators.

One lawyer emphasised the need to develop the children's individual assessment and give more thought to its functions. Children in conflict with the law should be adequately protected in view of their eventual reintegration in society. According to the same lawyer, a new regulation of alternatives to criminal proceedings is needed together with the introduction of restorative justice procedures. Children should also be able to resort to support persons other than parents and guardians. Another lawyer thought that specialised court panels as well as specialised prosecutors and investigators should be in place for cases against children.

Judicial interviewees also emphasised the need for specialisation and specialised trainings among their ranks.

A (non-legal) specialist recommended that social reports should have customised formats for criminal cases. Social authorities should also be given premises customised for children, more human resources and trainings in the area. More effort should also be put in the reintegration of children into society. Another specialist recommended accused children, just like child victims, be given a special representative (a lawyer) to protect their interests, especially in case their interests contradict the interests of their parents or guardians. Parents should have a physical or digital 'space' where they should be informed about all the rights and options children have when in conflict with the law.

#### **D.5 Additions**

None of the interviewed professional referred to any additional issues not covered by the interview.

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<sup>84</sup> Children's pedagogical units are specialised local authorities, which are coordinated by the police and consist of inspectors, who are police officers.

## **PART E. CONCLUSIONS**

Due to the incomplete transposition of Directive (EU) 2016/800 in Bulgaria, many of the interviewees were not aware of the requirements towards such proceedings set by EU law. Thus, the majority of interviewed professionals gave a positive assessment of the conduct of proceedings against accused children vis-à-vis the current legal framework. The problems that were mostly cited were also general to Bulgaria's whole criminal procedure rather than the application of the provisions of the Directive. Among them are the informal 'talks' the police invite accused children to participate in before getting any procedural capacity, information or a lawyer. During such talks, they are 'motivated' to share information and make confessions later included in the case files despite not being admissible evidence. Another problem is the low specialisation and scarce specialised training of authorities and lawyers dealing with accused children. Moreover, assessments of children's individual needs may be fairly formalistic and include few details and a low sensitivity towards children's vulnerabilities.

## ANNEX – Overview of national organisations working with children who are suspects or accused persons in criminal proceedings

Organisation	Focus	(Publically available) Contact details
State Agency for Child Protection (SACP) ( <i>Държавна агенция за закрила на детето, ДАЗД</i> )	The State Agency for Child Protection is the national child protection authority. It is a specialised body of the government responsible for the coordination and control of the implementation of the state policy in the area of child protection. The agency maintains the national child protection information system, which includes, among other data, information about children at risk. The agency also operates a national helpline for children.	Address: Sofia 1051, 2 Triaditsa Street Telephone: + 359 2 933 90 10 Fax: +359 2 980 24 15 Email: <a href="mailto:sacp@sacp.government.bg">sacp@sacp.government.bg</a> Website: <a href="https://sacp.government.bg">https://sacp.government.bg</a>
Social Assistance Directorate(s) (SAD) ( <i>Дирекция „Социално подпомагане“, ДСП</i> )	The Social Assistance Directorates are territorial units of the Social Assistance Agency (SAA) ( <i>Агенция за социално подпомагане, АСП</i> ). They are the specialised child protection authorities at local level. Each Social Assistance Directorate has a Child Protection Department (CPD) ( <i>Отдел „Закрила на детето“, ОЗД</i> ). When a child is involved in administrative or judicial proceedings, the respective Social Assistance Directorate (by the child’s place of residence) is notified and is authorised to send a representative (social worker) to participate in the child’s hearing.	A full list of all Social Assistance Directorates with their location and contact details is available at <a href="https://asp.government.bg/bg/kontakti/teritorialni-strukturi">https://asp.government.bg/bg/kontakti/teritorialni-strukturi</a> .
Local commission(s) for countering anti-social behaviour of juveniles and minors ( <i>Местна комисия за борба с противообществените прояви на малолетните и непълнолетните</i> )	The local commissions for countering anti-social behaviour of juveniles and minors are responsible for the implementation of correctional measures imposed on children, who have committed a crime, but	A local commission for countering anti-social behaviour of juveniles and minors exists in each municipality and in each region of bigger cities. A full list of all local commissions with their location and contact



	<p>are released from criminal liability and diverted to correctional measures. In some cases, the local commissions can exercise supervision on children accused in criminal proceedings as an alternative to detention. The work of the local commissions is coordinated by a Central Commission for Countering Anti-Social Behaviour of Juveniles and Minors (CCCASBJM) (<i>Централна комисия за борба с противообществените прояви на малолетните и непълнолетните, ЦКБППМН</i>).</p>	<p>details is available at <a href="http://www.ckbppmn.government.bg/localComission/">http://www.ckbppmn.government.bg/localComission/</a>.</p>
<p>Children’s pedagogical unit(s) (CPU) (<i>Детска педагогическа стая, ДПС</i>)</p>	<p>Children’s pedagogical units are local authorities, but their work is coordinated by the police and their staff consists of inspectors, who are police officers appointed by the Minister of the Interior. The tasks of the inspectors include, among other things, identification of children who have committed a crime, provision of assistance to investigative authorities in the investigation of crimes committed by children, registration of children who have committed a crime, etc. In some cases, the children’s pedagogical units can exercise supervision on children accused in criminal proceedings as an alternative to detention and can participate in court hearings involving such children.</p>	<p>Children pedagogical units are local authorities at municipal level.</p>
<p>Home(s) for temporary accommodation of minors and juveniles (HTAMJ) (<i>Дом за временно настаняване на малолетни и непълнолетни, ДВНМН</i>)</p>	<p>The homes for temporary accommodation of minors and juveniles are used for accommodating children, who have committed a crime or another unlawful act and who</p>	<p>The homes for temporary accommodation of minors and juveniles are units of the territorial police departments.</p>

	cannot be sent back to their parents or guardians. The maximum duration of accommodation is 15 days, in exceptional cases it can be extended up to two months. Accommodation for more than 24 hours must be approved by a prosecutor.	
Social Activities and Practices Institute (SAPI) ( <i>Институт по социални дейности и практики, ИСПД</i> )	The Social Activities and Practices Institute is a provider of social services for children and families at risk. The organisation operates three Child Centres for Advocacy and Specialised Services for Children in Conflict with the Law, which provide services such as legal consultation, information and assistance for participation in legal procedures, intensive socio-corrective support; psychological and psycho-therapeutic support, family consultation, etc.	Address: Sofia 1606, Kriva Reka, 1 Viktor Grigorovich Street Telephone: + 359 2 852 47 13 Fax: +359 2 987 98 03 Email: <a href="mailto:sapi@sapibg.org">sapi@sapibg.org</a> Website: <a href="https://sapibg.org">https://sapibg.org</a>