

Social Fieldwork Research (FRANET)

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

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PART A. EXECUTIVE SUMMARY

The report presents the findings of the study on application of procedural safeguards for children who are suspects or accused persons in criminal proceedings in Estonia. These safeguards are prescribed in 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. The Directive (EU) 2016/800 was transposed into Estonian legal system in 2019 by amendments to four laws – the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), the Imprisonment Act (*Vangistusseadus*), the Probation Supervision Act (*Kriminaalhooldusseadus*), and the Code of Misdemeanour Procedure (*Väärteomenetluse seadustik*).¹ The main amendments concerned the right to individual assessment and medical examination, audiovisual recording of questioning, the right to informing of the holder of parental responsibility and their participation in the proceedings. According to the explanatory memorandum to the transposition bill, Article 6 (assistance by a lawyer), Article 10 (limitation of deprivation of liberty), Article 11 (alternative measures), Article 14 (right to protection of privacy), Article 16 (right to participate in trial), Article 18 (legal aid) and Article 19 (remedies) of the Directive already existed in the Code of Criminal Procedure and did not require amendments.²

This report gives an overview of the law in force in Estonia as of April 2021 and the findings of 20 interviews conducted with various professionals who encounter the child suspects and accused. The report follows the structure of the questionnaire used to interview the experts. It covers the topics of age assessment, the right to information, legal aid, individual assessment, safeguards for children who are deprived of their liberty and the right to effectively participate in the trial.

The **age assessment** of children using other means than documents or public registers does not seem to be a concern in Estonia. There were very few professionals who had heard of any cases where the child's age could not have been determined without the help of experts. Based on the interviewees' responses, it seems that child suspects and accused typically have their documents or data in the public registers (e.g. Population Register), and age assessment is done routinely by the officials who come into contact with the children.

The groups of professionals gave differing answers regarding how children are **informed of their rights** in Estonia. The right which was most often mentioned was the right to have a lawyer. The professionals also reported different views on who the main person informing the children is. The police officers were perhaps most confident that they are the primary source of the information on rights for the child suspect. The written declaration of rights was mentioned many times and it seems to be a well-established practice to show or read the declaration to a child. The accounts on whether children understand the information vary. The legal professionals were more certain that this depends on the child, while the interviewed other professionals were slightly more critical as to the accessibility of the information given to the children.

There do not seem to be unified guidelines outside of the law which the professionals would follow when in contact with a child in criminal proceedings. The professionals seem to have a considerable freedom to decide how to conduct the proceedings, as long as they follow the law in force.

¹ Estonia, Riigi Teataja, [Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmine\)](#), 4 December 2019.

² Estonia, Ministry of Justice (*Justiitsministeerium*), [Explanatory memorandum to the bill "Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmine\)"](#), 11 July 2019.

A state paid lawyer is always appointed to accused or suspected children by law. The lawyer usually meets with the child before the first questioning by the police, and they can always have private and confidential meetings, if necessary. The questioning and court hearings cannot happen without the presence of a lawyer, however, there have been cases where the police have pressured the child to write a sincere confession without the lawyer being present. According to the interviewees, the lawyers can always effectively participate in all stages of the proceedings and there are no challenges regarding that.

The **individual assessment** is understood very differently by different groups of professionals, depending on the area of their work and which stage of the criminal proceedings they are familiar with. The interviewees named several different assessments when asked about an individual assessment. Based on the findings, some form of assessment or collecting of information on the child is carried out by the police. If the case is taken to court, a pre-trial report is prepared upon the request of the prosecutor. If the officials so decide, the child may be subjected to a forensic psychological assessment. Also, a risk assessment of a child was mentioned as one form of assessments which is carried out for children on probation.

According to all interviewees, **deprivation of liberty of a child is used as a last resort** and used very rarely. The most common alternative measures to deprivation of liberty include placing a child in a closed childcare institution, house arrest, electronic surveillance, community service, different types of therapy and social programmes. According to the interviewees, everyone (including the child, their parents, or the lawyer) has the right to request a medical examination throughout the procedure, however, children or their parents may not be aware of that right. Medical examination is always performed when a child arrives in prison, however, there are challenges related to lack of medical staff in detention houses and closed childcare institutions.

The interviewed experts' experiences and opinions vary regarding children having access to health care services, physical and mental development measures, education, and training, as well as programmes that foster their personal development and reintegration into society. While most agree that there is appropriate access to education and training, as well as urgent health care services and physical development measures, there is room for improvement in the provision of mental health care and mental development measures. Furthermore, most importantly, there is a need for programmes that help with reintegrating children into society, which are currently lacking or rely on the child's own motivation to participate.

The child is offered a chance to **speak their mind at the courtroom** if their procedure is of a type that there is a court hearing with the defence and prosecution invited to express their views. The courtrooms are the same for all – adults and children alike. The judges make an extra effort to make sure that the child understands what is going on and what is talked about during the hearing. The child is accompanied at the court by a lawyer and a parent.

There are conflicting opinions among the professionals on whether the **court hearing is declared closed**, some interviewees claimed that the hearing is closed, some said that the hearing is declared closed only if there is a need for it.

PART B. INTRODUCTION

The present research studied the application of procedural safeguards for children who are suspects or accused persons in criminal proceedings in Estonia. These safeguards are prescribed in 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.

The study aimed to learn from the professionals involved in criminal proceedings of children how the procedural safeguards of children are respected in practice in the period after the expiry of the transposition deadline of the Directive, i.e. after 11 June 2019.

For data collection purposes, in total, **20 eligible interviews** were carried out in the timeframe of March 2021 to June 2021. The sample is described below.

All the interviews were conducted via internet due to the COVID-19 pandemic.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

Two interviewers from Praxis Center for Policy Studies have prior experience in interviewing experts, one of the two is a trained sociologist, the other a lawyer.

Recruitment was managed by the lead of the consortium – Estonian Human Rights Centre. The experts were contacted via email and asked for their consent to be interviewed. Recruitment of the interviewees took place also during the interviews with the professionals. The professionals were asked to point out colleagues whose experience could be useful for the study.

It was particularly challenging to find defence lawyers who would have the necessary experience with working with children and who would agree to an interview.

○ SAMPLE AND DESCRIPTION OF FIELDWORK

The sample size was determined by the Fundamental Rights Agency who is tasked to carry out a comparative research on procedural safeguards of children in criminal proceedings. 20 interviews were to be conducted.

The sample was further formed taking into account the following criteria: profession of the person (e.g. lawyer, prosecutor etc), the region where the expert works, the extent of experience with the criminal proceedings of children. The goal was to reach out to experts who had considerable experience with children in criminal proceedings.

There are many more women in the sample than men because more women specialise in juvenile matters – gender stereotypes and segregated occupational choices are behind this phenomenon. Also, in Estonia many judges (in 2020 in Estonia 157 women and 84 men were judges³) and prosecutors are women, and in the police force the gender balance is better than in most European countries. Already in 2006 Estonia had the highest proportion of women in the police force (33%) in Europe. The reasons behind this are historically low salaries and/or low prestige of these professions which allows women to have a career in these institutions and experience less gender related barriers.

Initially, the analysis was supposed to compare the findings of interviews with children with the findings of experts' study to establish regional differences and to verify and validate the findings of

³ The data from the 2020 yearbook of Estonian courts: <https://aastaraamat.riigikohus.ee/taiskogust-taiskoguni/>

the two studies. However, this criterion of the sample was dropped during recruitment of children due to difficulties of finding any children who would correspond to the requirements and who would agree to participate in the study. Therefore, this analysis does not feature any regional particularities or commonalities.

The sample was sufficiently large to achieve information saturation. With all professional groups, after 2-3 interviews there was little new information that came up in the last interviews.

The professional classification of the sample professionals is following:

Police officers:

Requested: 4, completed: 4

Defence lawyers:

Requested: 5, completed: 4

Judges/prosecutors:

Requested: 5, completed: 5

(Non-legal) Specialists (or below referred often as “the other professionals”):

Requested: 6, completed: 7

Table 1: Sample professionals

Group	Expertise in juvenile criminal justice	Gender
Police officer	10 years of experience with children’s cases.	M
Police officer	In the field of juvenile criminal proceedings 7 years.	F
Police officer	Has been working with children since 2006. First, in the field of law enforcement, from the beginning of 2020, in criminal police in the field of crimes committed by and against children.	F
Police officers	Interviewees are investigators who deal with children suspected and accused in criminal proceedings, and conduct pre-trial proceedings.	F
Defence lawyer	As a judge 15 y of experience with some encounter with juvenile cases. Now since 28 y a lawyer specialising in family law, this includes juvenile cases.	F
Defence lawyer	20 years as a lawyer, specialising in cases with children.	F
Defence lawyer	The interviewee has worked as a lawyer for about 20 years. A few years ago, she started to deal more with juvenile criminal law.	F
Defence lawyer	Experience as a lawyer in juvenile criminal cases for 3 years.	F
Judge	Has worked as a criminal judge for 11 years. Specialising in children suspects/accused for several years. Every month she comes in contact with a child at the court.	F
Prosecutor	Started working with children in 2010. More specifically, in her work she deals with child suspects and accused children as well as victims.	F
Judge	Experience as a judge specialising in children for 24 y – this involves cases where the accused or the victim is a child.	F
Prosecutor	Has worked in the prosecutor's office since 2019. In the field of juvenile criminal justice, the interviewee has worked since the beginning of 2021.	F
Prosecutor	15 years of experience at the Prosecutor's Office with children who are accused of crime.	F
(Non-legal) Specialist –	Has had professional experience since 2014 when she started working in a youth unit in a prison. She also deals with young people primarily as a multidimensional family therapy (MDFT) supervisor-therapist in an educational institution, where children with mental disorders and behavioural problems are referred to.	F

therapist		
(Non-legal) Specialist – therapist	Has been working as a supervisor of the multidimensional family therapy programme since 2015.	F
(Non-legal) Specialist – probation officer	Has 5 years of experience as a police inspector. and more than a year as a probation officer in the juvenile justice area.	F
(Non-legal) Specialist – clinical psychologist	Conducts forensic examinations since 5 years.	F
(Non-legal) Specialist – probation officer	For 5 y has worked as a probation officer for children and young people in a prison.	F
(Non-legal) Specialist – consultant at a prosecutor's office	14 years of experience of working with children in different units at the police, prison and the prosecutor's office.	F
(Non-legal) Specialist – official at a child protection unit	Has 3 years of experience in the field of juvenile justice. The interviewee has more experience with children against whom crimes have been committed and less experience with children who have committed crimes themselves.	F

The average length of interviews was about 80 minutes.

The cooperativeness and openness of the interviewees varied – some were very open and ready to talk about their experiences, including the challenging cases and practices, while others were more laconic and appeared to maintain an official policy line when answering. The atmosphere was mostly calm and professional. There were no interviewees with visible signs of distrust towards the interviewer.

Several interviewees expressed that they are very interested in the results of this research project to grasp the so-called big picture of juvenile criminal system in Estonia.

○ DATA ANALYSIS

The responses of the 20 interviewees were broken down to smaller occupational groups to be compared under each topic of the interview (e.g. access to information about procedural guarantees, experience with deprivation of liberty, etc) in order to establish patterns, overlaps, or inconsistencies in answers provided. The patterns of answers in the professional groups were then compared between the groups. If there were no significant differences between the professional groups, the findings were presented discussing the professionals as such without the references to the subgroups (e.g. police officers or lawyers).

Since the questionnaire was very detailed and covered a wide range of topics, no coding was used to analyse the data.

○ BRIEF OVERVIEW OF THE REPORT'S CONTENTS

The report will present the study results organised by topics discussed at the interviews. Each topic is an individual chapter divided into subparagraphs. The key findings are found in the end of the chapter side by side with the suggestions given by the interviewees.

The report features following topics: age assessment, right to information, right to individual assessment, right to a lawyer, deprivation of liberty and, right to be heard in court.

The conclusions, including challenges and promising practices, and reoccurring suggestions are presented in the end of this report.

PART C. RESEARCH FINDINGS

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

a. Transposition of the Directive (EU) 2016/800

The Directive (EU) 2016/800 was transposed in 2019 by amendments to four laws – the Code of Criminal Procedure, the Imprisonment Act (*Vangistusseadus*), the Probation Supervision Act (*Kriminaalhooldusseadus*), and the Code of Misdemeanour Procedure (*Väärteomenetluse seadustik*).⁴ The amendment to the Code of Misdemeanour Procedure provided that underage subjects (children aged 14 to 17) to misdemeanour proceedings have the rights provided for in the Code of Criminal Procedure in two cases: when being detained or during court proceedings.⁵ The amendment to the Probation Supervision Act clarified the right to individual assessment when preparing a pre-trial report, which is a report containing a summary of the personal characteristics, social circumstances, biographical facts and a psychological-social prognosis of the suspect or the accused. It is prepared by a probation officer from the probation department of the place of residence of the suspect or accused person at the request of the court or the prosecutor.⁶ The changes to the Imprisonment Act outlined the exception to the requirement of segregation of children and adult detainees (in case it is contrary to the interests of the child), as well as the purpose of the medical examination.⁷ The amendments to the Code of Criminal Procedure clarified the rights of a child defendants, including the right to an

⁴ Estonia, Riigi Teataja, [Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmine\)](#), 4 December 2019.

⁵ Estonia, Riigi Teataja, [Code of Misdemeanour Procedure \(Väärteomenetluse seadustik\)](#), § 19 (1¹), 22 May 2002.

⁶ Estonia, Riigi Teataja, [Probation Supervision Act \(Kriminaalhooldusseadus\)](#) § 23, § 24, 17 December 1997.

⁷ Estonia, Riigi Teataja, [Imprisonment Act \(Vangistusseadus\)](#), §12 (5), § 14 (1¹), 14 June 2000.

individual assessment and a medical examination, as well as the right to informing of the holder of parental responsibility and their participation in the proceedings.⁸

According to the explanatory memorandum to the transposition bill, Article 6 (assistance by a lawyer), Article 10 (limitation of deprivation of liberty), Article 11 (alternative measures), Article 14 (right to protection of privacy), Article 16 (right to participate in trial), Article 18 (legal aid) and Article 19 (remedies) of the Directive already existed in the Code of Criminal Procedure and did not require amendments.⁹

Until 2018, juvenile offence matters were heard in juvenile committees, regulated by the Juvenile Sanctions Act (*Alaealise mõjutusvahendite seadus*).¹⁰ This act was repealed, and the committees were eliminated in 2018, when amendments to the Penal Code (*Karistusseadustik*), the Code of Criminal Procedure and other laws entered into force, changing the treatment of juvenile offenders. These amendments aimed to ensure faster and more effective response to offences committed by children and to establish a system of special treatment for child defendants. The principles of the Directive were also taken into account in preparing the implementation of these changes.¹¹

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

In Estonia, proceedings against children who are suspected or accused of a crime are considered criminal proceedings, regulated by the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*).¹² In Estonian legislation, a child is defined as every human being below the age of 18 years, and the capacity for criminal responsibility starts from the age of 14.¹³ The Directive did not change anything in this respect.

c. Special training

i. Legal overview

The explanatory memorandum to the bill transposing the Directive explains that because significant changes were made in the juvenile criminal justice field already in 2018 based on the principles of the Directive, the changes introduced by the Directive are not substantially new to practitioners and do not lead to fundamental changes in training activities and other development activities already planned.¹⁴

According to the 2018 prosecutors' agreement "Special treatment of juvenile offenders in criminal proceedings", in order to achieve its objectives, the Prosecutor's Office ensures the specialisation of prosecutors in juvenile and young adult (age group 18-21) criminal matters, placing significant emphasis on personal characteristics in the selection of prosecutors, and provides special training.¹⁵

⁸ Estonia, Riigi Teataja, [Code of Criminal Procedure \(*Kriminaalmenetluse seadustik*\)](#), 12 February 2003.

⁹ Estonia, Ministry of Justice (*Justiitsministeerium*), [Explanatory memorandum to the bill "Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmine\)"](#), 11 July 2019.

¹⁰ Estonia, Riigi Teataja, [Juvenile Sanctions Act \(*Alaealise mõjutusvahendite seadus*\)](#), 28 January 1998, repealed on 1 January 2018.

¹¹ Estonia, Ministry of Justice (*Justiitsministeerium*), [Explanatory memorandum to the bill "Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmine\)"](#), 11 July 2019.

¹² Estonia, Riigi Teataja, [Code of Criminal Procedure \(*Kriminaalmenetluse seadustik*\)](#), 12 February 2003.

¹³ Estonia, Riigi Teataja, [Penal Code \(*Karistusseadustik*\)](#), § 33, 6 June 2001.

¹⁴ Estonia, Ministry of Justice (*Justiitsministeerium*), [Explanatory memorandum to the bill "Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmine\)"](#), 11 July 2019.

¹⁵ Estonia, Alaealistele spetsialiseerunud prokuröride kokkulepe, [Kuriteo toime pannud alaealiste erikohtlemine kriminaalmenetluses](#), p. 16, Narva-Jõesuu, 21 February 2018.

There is no comprehensive overview about specific training offered to the relevant authorities publicly available. However, the “Child-friendly proceedings” website of the Ministry of Justice outlines some of the training offered to the attorneys of the Bar Association. Recent training has included topics such as questioning children and the psychology of child development. These training courses were mandatory for state legal aid attorneys who represent children in criminal matters.¹⁶

In the period of 2019-2023, the Ministry of Justice is implementing a project in cooperation with the Social Insurance Board, the Prosecutor’s Office, as well as the Oslo Police District and the Norwegian Mediation Service, funded by the Norwegian Financial Mechanisms 2014-2021. The aim of the project is to support the specialised juvenile justice approach. One of the project activities is competency development of professionals working in the juvenile justice system.¹⁷ For this purpose, in July 2020, the Ministry of Justice announced a tender for the development of a training programme. As a result of the training programme, the professional knowledge of police officers, prosecutors, child protection workers and other professionals should be further developed and cooperation between parties involved in the various stages of the juvenile criminal justice should become more effective.¹⁸

ii. Special training received by interviewees

Most of the interviewed **police officers** working with children were either themselves certified to work with children or knew about this practice. The Estonian Academy of Security Sciences (Estonian police academy) organises training courses which last about three weeks, and which give police officers the right to question children. One of the interviewees explained that the police structure has a standard training with lecturers from different backgrounds, including child protection workers, psychologists, and prosecutors. The training teaches to assess the child’s health and mental condition, teaches to communicate with and listen to children.

Only one of the interviewees (police officer) was not aware of any special training regarding accused or suspected children.

All of the **lawyers** knew and had attended special training on how to interact with children and on children’s rights. They all pointed out that the Estonian Bar Association diligently conducts trainings. In 2020, there were three training sessions offered by the Bar Association: children's rights, communication with children and psychosocial training. The trainings were interdisciplinary. Among the trainers are the staff of the Chancellor of Justice's office, the author of the handbook on questioning children, psychologists, and others. Training topics include the UN Convention on the Rights of the Child, child development and psychology, how to consider the age, and the special needs when a child is questioned.

Lawyers have a duty to attend the trainings to maintain and improve their qualifications. One of the interviewees said that without attending these trainings it is not allowed to represent children from 2021 onwards in criminal or in civil cases.

The **prosecutors** seem to have good training programmes to keep the knowledge of professionals working with children up to date. Several of the interviewed prosecutors said that they have received several different trainings every year or that there have been many training courses at the prosecutor's office in the last few years, and some of them also concerned the rights of suspected or accused children.

¹⁶ Estonia, Ministry of Justice (*Justiitsministeerium*), Lapsesõbralik menetlus, [Koolituste kontaktid](#).

¹⁷ Estonia, Ministry of Justice (*Justiitsministeerium*), [Establishment of Specialised Youth Justice Approach](#).

¹⁸ Estonia, Ministry of Justice (*Justiitsministeerium*), [Justiitsministeerium soovib kaasajastada alaealiste kohtlemist süüteomenetluses](#), 15 July 2020.

Two interviewed prosecutors said that they have received specific training on the rights of children. Two said they have been trained on how to communicate effectively – roleplaying through communication situations with children being played by actors.

Several interviewees (prosecutors) mentioned an all-Estonian roundtable which is held for all prosecutors dealing with children once a year. The roundtable always includes some training. It was also said that so-called joint trainings are increasingly taking place, in which different parties, including the police, who work with children take part together.

One of the two **judges** pointed out that finding training on this topic is up to the judges themselves, the Judicial Training Council does not systematically offer training on this topic. The interviewed judge had participated in following trainings: “Interviewing children” (training programme for experts working with victims) and “Child psychology”.

„Q: Did [the training] address the question of how to communicate effectively with children?

A: (EE) Jah, mängime isegi olukordi läbi, kus näitlejaid mängivad lapsed ja koolitusel osalevad ka prokurörid ja kaitsjad. Väga kasulik koolitus.

A: (EN) Yes, we even play through situations with actors playing children, and prosecutors and lawyers participate in the training as well. Very useful training.“

Judge, Estonia

Four of the seven interviewed **other professionals** had not received any special training and were not aware of these trainings. One had participated in one training a long time ago (on rights of children in criminal proceedings). One claimed that there are many trainings. They also said that as people specialising in children are well aware of children's rights, the trainings are very specific, e.g. trainings on children who are addicts, children with autism spectrum disorders etc. One of the professionals had been trained on how to communicate effectively with children.

d. Effectiveness of measures / Monitoring

No information is publicly available on how Estonian state institutions assess and/or monitor the effectiveness of the rights of and measures imposed on children in view of the Directive's obligations.

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

a. Legal overview

Age assessment or the presumption of minority is not mentioned in the Code of Criminal Procedure, the bill transposing the Directive, its explanatory memorandum, or any other relevant documents. However, according to the Child Protection Act (*Lastekaitseadus*), if the age of a person is unknown and there is reason to believe that the person is below the age of eighteen years, the person shall be deemed to be a child until proven otherwise.¹⁰ The Child Protection Act is applied to all officials who are in contact with children in their activities.¹¹ As no amendments regarding age assessment or the presumption of minority were deemed necessary when adopting the Directive, it follows that the Estonian state authorities assessed the existing provision in the Child Protection Act as sufficient to comply with the Directive.

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

None of the four **police officers** interviewed had come across a case where it was difficult to assess the age of the child or where any extra effort was required. Three of the interviewees said that this data is available in the registers and databases which are used by the police.

One of the police officers described what would happen if a situation would occur where the age of a child is unknown. In this case, the child is asked their age, if the child is able to speak or point to pictures, etc. If the child is handed over to the police, the person transferring the child will be asked for information, and the police information database will also be used. If the identification document does not exist or the name is not known, the registers are used on the basis of available information and the information is connected with the population register or another database. The database used is also indicated in the procedural document. Acquaintances and family members can also be interviewed to identify the person in the proceedings. The police can also try to contact the parents to get the child's document from them.

“Q: For young persons whose age cannot be verified by official documents: Who determines their age how and when?”

A: (EE) Juhul kui peaks selline olukord juhtuma, siis lapselt küsitakse vanust, kui laps on suuteline rääkima või osutama piltidele. Kui laps antakse üle politseile, siis küsitakse üleandjalt informatsiooni, kasutatakse ka politsei infobaasi.

A: (EN) Should such a situation occur, the child will be asked their age, if the child is able to speak or point to pictures, etc. If the child is handed over to the police, the transferring person will be asked for information and the police information database will also be used.”

Police officer, Estonia

Another interviewee said that the age of people is usually already determined in criminal proceedings when they come in contact with a police investigator. As soon as a person encounters the police, their identity is determined based on a document. If there is no document, an identity report is drawn up before the proceedings begin. In this case, data from registers and databases are used.

Unlike the other professionals, the **lawyers** had heard of cases where the child's age could not be assessed without the help of experts. One of them talked about a case in the 1990s, when there was an abandoned child, whose parents emigrated to Russia, the grandparents died, and the child had no documents. The child's age was determined by a child psychologist. Another lawyer knew of a case where the police had to perform an expert examination to determine the correct age of a child sex worker in a brothel who claimed to be an adult.

Two of the interviewed lawyers said that if the child has no documents, then it is possible to check the population register, which also includes a photo identifying the person. Two lawyers mentioned that the police and the prosecutor's office can determine the age with an appropriate expert examination.

One of the lawyers said that the problem with age assessment can arise if the child is an immigrant.

None of the interviewed **prosecutors nor judges** had ever experienced a case where the age of the child could not be assessed. Some of them tried to theorise how the age would be assessed in this case. One said that in such circumstances doctors would be consulted who are able to determine the child's age based on other characteristics. One interviewee said that there are often situations where the young person does not have their document with them during the questioning, but the police can identify the person through the information system.

“Q: For young persons whose age cannot be verified by official documents: Who determines their age how and when?”

A: (EE) Et selles mõttes, et tihti on selliseid olukordi, kus näiteks noor on ülekuulamisele süüdistatava või kahtlustatava rollis ja tal ei ole dokumenti kaasas. Aga siis mis ma olen tähele pannud, on ikkagi see, et nad tuvastavad selle isiku politsei infosüsteemi kaudu, et nime kaudu, eks ole. Ja siis tihti sealt saadakse teada selle isiku vanus. Aga kuidas täpselt siis on olukorras, kus meil ei ole sellist võimalust ja kui see süsteem ei ütlegi ning me ei tea, kes see isik on ja mis ta vanus on. Et tõenäoliselt siis ikkagi sellele peab järgnema mingisugune pikem protsess, et võetakse ühendust siis alustuseks mingisuguse piirkonnaga, kust see laps tuleb, et äkki seal on informatsiooni ja siis kuidagi hakatakse vaatama, kuhu jõutakse. Praktikas mina küll ei tea, et väga niisuguseid olukordi oleks olnud.

A: (EN) There are often situations where, for example, a young person is in the role of an accused or suspect during a questioning and does not have a document with them. But then what I've noticed is that they still identify the person through the police information system, by name, right. And then the age of that person is known. But what exactly is the situation where we do not have this opportunity and when the system does not say, and we do not know who that person is and what their age is. That will probably have to be followed by some longer process to get in touch with the area where the child is coming from, maybe there will be information and then somehow they start to see where they are going. In practice, I do not know that there have been very many such situations."

Prosecutor, Estonia

One interviewee (judges and prosecutors) pointed out that representatives of the juvenile justice system are usually already in contact with the local children whose personal details are known. The police can always identify their age and person.

None of the **other professionals** had any experiences with cases where the age of children cannot be verified on the basis of official documents. Most of them said that once they come in contact with children, their personal identification code and age is already known. The other professionals mostly did not know how and by whom the identification takes place in case there are no identification documents. Two of them suggested that it is done by the police and/or child protection workers and that the age is checked from the population register. One of the professionals told of how they start the conversation when doing a forensic examination by getting to know the child and determining whether the child understands their own identity and age. The other pointed out that the practice of the prosecutor's office is such that the file arrives, in which all the information is available. There can be no such situation that the child's age is missing.

One of the interviewees drew attention to their working context, pointing out that they work in a small municipality where the names of most children are known.

c. Discussion of findings

The age assessment of children using other means than documents or public registers does not seem to be an issue in Estonia. There were very few professionals who had heard of any case where the child's age could not have been determined without the help of experts. Based on the interviews, it seems that the children usually have their documents or it is possible to access their data in the public registers (e.g. the population register), and the age assessment is done routinely by the officials encountering children. Most of the experts said that once the child comes into contact with them, they have all the necessary personal data on the child. There does not seem to be any practice of asking the child for their age – this information is available for the professionals from the file of the child.

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

The general right to information of suspects and accused was outlined in the Code of Criminal Procedure before the transposition of the Directive and also applied to child defendants. According to § 35¹ of the Code of Criminal Procedure, the suspect or accused must be immediately provided information orally or in writing on their rights in plain and intelligible language, and the fact that the rights were explained is confirmed by signature. A suspect or accused who is detained or taken into custody must be immediately provided with a written declaration of rights. If the suspect or accused is not proficient in the Estonian language, they are provided with the declaration of rights in their mother tongue or in a language in which they are proficient.¹⁹

The transposition bill of the Directive supplemented this provision in 2019 with a subsection stating that rights of a suspect and accused who is a minor are also to be introduced to their legal representative or another designated person, meaning they are to be provided with the same information about the rights as the child.²⁰

In addition, a template of the declaration of rights of children was created during the transposition process, in addition to the previously existing general declaration of rights of suspects and accused persons.²¹ The declaration explains the rights listed in § 34, § 34¹ and § 35¹ of the Code of Criminal Procedure in simple, child-friendly language, and also outlines additional rights, such as the right to be informed about the progress of the proceedings.²²

ii. Information about procedural rights and safeguards in practice

This section discusses the key findings from the answers of the four categories of experts' (police officers, lawyers, judges and prosecutors and other professionals) regarding how children are informed about their rights, who does it, when and in which form. More information on individual answers can be found in the tables 2-5 in the Annexes. The tables also contain the data on whether the experts perceive the children to understand the information and which methods they use to verify whether a child understood what they were told.

All the **police officers** mentioned that the suspected or accused child is informed of their right to a state paid lawyer. The other rights the police officers mentioned varied (see Table 2 in the Annexes). Unlike the other experts, the police officers only mentioned the police as the primary informer of the child of their rights.

“Q: From your experience, are suspected or accused children informed about their procedural rights, including the right to be assisted by a lawyer?”

A: (EE) Kahtlustatavale lapsele räägitakse, milles teda kahtlustatakse, et tal on õigus keelduda ütlustest või neid anda, et ta ei kannu vastutust, kui keeldub ütlustest. Talle selgitatakse, et kõike, mida ta ütleb võidakse kasutada tema vastu, et menetluses osaleb kaitsja ning talt ei küsita nõusolekut, kas

¹⁹ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 35¹ (1), (2), (3), 12 February 2003.

²⁰ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 35¹ (1¹), 12 February 2003.

²¹ Estonia, Riigi Teataja, Minister of Justice (*Justiitsminister*), [Õiguste deklaratsiooni näidisvormi kehtestamine](#), 17 July 2014.

²² Estonia, Minister of Justice (*Justiitsminister*), [Alaalguste õiguste deklaratsioon](#), Annex 3 to the Regulation “Õiguste deklaratsiooni näidisvormi kehtestamine” of 17 July 2014 (amendment entered into force 30 December 2019).

ta tahab kaitsjat, sest riik on selle määranud, et vanem ei saa teda kaitsta, sest pereliikmel ei ole juristi haridust. Seletan talle isegi kaitsja leidmise protsessi. Kuidas just konkreetne kaitsja talle valiti.

A: (EN) The suspected child is told what they are suspected of, that they have the right to testify or to refuse to testify, that they will not be held liable if they refuse to testify. The child is explained that anything they say may be used against them, that a lawyer is involved in the proceedings, and that the child is not asked for their consent if they want a lawyer because the state has appointed the lawyer, that the parent cannot defend them because a family member does not have a law degree. The process of appointing a lawyer is also explained. How a particular lawyer was chosen for them.”

Police officer, Estonia

The child is provided with information about their rights at the first interrogation by the police, none of the police officers mentioned that the rights are explained at the first encounter. However, often the interrogation is the first meeting between the child and the police.

The answers to the question as to how the rights are explained varied a great deal. Some of the interviewed police officers said that the child is informed orally, one mentioned that the informing takes place gradually during the course of the procedure. The declaration of rights was explicitly mentioned just once. Several of the interviewees claimed that the informing process takes into account special needs, such as a disability of a child. Most of the police officers said that children are informed in simplified language which does not contain complicated legal terminology. The police officers emphasised that the level of understanding of the information on rights depends on the child.

Only one police officer was aware of number of methods to verify whether the child understood their rights. They mentioned using the reference method – more complex expressions or parts of words are associated with easier words that are known to the child, also the method of reflecting information (reflecting back to the police officer what was understood). The others mentioned simply repetition or asking the child whether they understood as the means to check the child’s understanding.

The **lawyers** emphasised the child’s right to have a lawyer and that the child cannot waive this right. This right seems to be the key right which is explained to the child. One of the lawyers claimed that, in essence, the rights of adult and child defendants are the same. All the lawyers mentioned the declaration of rights explicitly or indirectly (e.g. “rights in writing to read”). The written declaration is not the only means of informing the child. All the interviewees said that the rights are also explained to the child by the police and in some cases by the lawyer or the judge.

„Q: Can you share any good examples of information provided in a simple or child-friendly way – using straightforward language or images for example?

A: (EE) Uuriija menetlustoimingul alati korrektselt selgitab õigusi. Antakse kirjalikult õigustest lugeda ja küsitakse, kas noor saab aru, kas on küsimusi. Uuriija kontrollib, kas laps loeb ikka, kui nt laps kiirelt paberi tagasi annab. Palub, et laps loeks ikka päriselt läbi.

A: (EN) The investigator always correctly explains the rights during the procedural act. They are given the rights to read on paper and asked if the young person understands, whether there are any questions. The investigator checks whether the child actually reads it. If, for example, the child returns the paper quickly, they ask the child to actually read it.”

Lawyer, Estonia

All the lawyers said that the children are told about the rights in simple language and usually the person telling about the rights asks the child whether they understood what was said.

According to the lawyers, the children mainly understand the information on rights and the legal professionals invest sufficient effort in explaining the rights to the children.

Only one of the lawyers shared an experience concerning a case from 2020 in which a child abused someone physically at school, and the child had been questioned at the police station without anyone explaining the child their rights. The initial statements and explanatory letter confessing to the offence were taken from the child at the station, and only then the proceedings were officially initiated. The lawyer doubted whether such an explanatory letter or statement could be used as evidence in the proceedings.

The **judges and the prosecutors** also demonstrated some variety in their answers about how children are informed. Some said children are informed orally and in writing, the others were not sure who does it and how. Four of the judges and prosecutors mentioned the declaration of rights.

Only one of the five judges and prosecutors listed a number of additional rights that children have in comparison to adult defendants, demonstrating a good knowledge of the rights of children. The judges and prosecutors do not see themselves as having a key role in informing the children.

„Q: What specific rights are children informed about?

A: (EE) Selgitamegi, mis need õigused siis on kriminaalseadustiku seadustikus § 34. Ja täiendavalt on täiendatud seda paragrahvi § 34 lg 1¹. Et ikka selgitame, mis seal täiendavalt on, et lisaks teavitada seaduslikku esindajat või muud isikut, õigust seadusliku esindaja või muu isiku viibimiseks menetluse ajal toimingute juures ja kohtuistungil.

A: (EN) We explain what these rights are in § 34 of the Code of Criminal Procedure. And in addition, this provision has been supplemented with the section § 34 (1¹). We explain what is further there, such as the right to inform the legal representative or other person, the right of the legal representative or other person to be present during the proceedings and at the hearing.”

Judge, Estonia

The rights mentioned most often by the judges and prosecutors were the right to a lawyer and the right to have the parent present. Similarly to the rest of the professionals, this group of experts claimed that children’s understanding of their rights depends on the particular child (their development, their previous encounter with the legal system etc).

“Q: 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?

A: (EE) Lapsi teavitatakse. Formaalses mõttes teavitatakse. Toimikustes näeme, et lapselt on võetud allkiri alaealiste õiguste deklaratsiooni lehele, mida seadus ette näeb. Sisuline teavitus jääb meile [st kohtunikele] teadmata.

A: (EN) Children are informed. In a formal sense, they are informed. In the case files, we see that the child has signed the page of the declaration of the rights of minors, which is required by law. The substantive part of informing remains unknown to us [i.e. the judges].”

Judge, Estonia

Out of the seven interviewed **other professionals**, four had only limited knowledge with how children are informed of their rights in practice. Compared to the other experts, this group of professionals were more critical about the way the informing of the children is done. One claimed that the mental maturity of children is not always taken into account when explaining the rights. Another expert said that not enough information is provided to the children. Two of them were also critical about the question as to whether the children understand what they are told about the rights. In this group,

however, only two interviewees had decent knowledge on the rights themselves, with the majority having little or no knowledge.

iii. Information about the general conduct of the proceedings

All four **police officers** said that the children are informed about the course of the procedure. One of them said explicitly that this is done in a child-friendly manner.

Some said that the police investigator explains the course of the procedure, some police officers said that this is mainly the role of a lawyer, and one police officer listed experts possibly involved in explaining the conduct of the procedure: police investigators, child protection worker, prosecutor, psychologist.

One interviewee explained what is told to a child: the basis, on which the suspicion was compiled (previously collected information), why they are in the role of a suspect, what their rights are in this regard. The interviewee pointed out that the lawyer and the police explain different things according to their role in the proceedings, e.g. the lawyer explains the consequences of refusing to testify (in this case the criminal case may end up in court).

The judges and the prosecutors found that the primary role of explaining the conduct of the proceedings to a child lies with the prosecutors.

„Q: Are children informed about the general aspects of the conduct of criminal proceedings - i.e. the course and purposes of proceedings, the role of the parties taking part, etc.?

A: (EE) Mis on nagu selline see tehniline pool, ütleme siis, et kui on asi sealmaal, et on ütlused antud ja tõendid kogutud ja siis tuleb hakata mõtlema, et kuidas siis nüüd sisuliselt seda asja lahendada, siis selle poole teen mina. Ma seletan ära. Sõltuvalt noorest, et kes on varem kokku puutunud meiega, siis ma ei pea ära seletama, et kes on prokurör ja nii edasi. Kes on esmakordne, siis ma seletan lihtsamalt lahti, et kes ma olen, mis mu amet on, mis meist edasi saab, mis asi toimik üldse on, millised võimalikud lahendused on, mis tema arvab, et, et sellise poole ma teen ära siis, kui on aeg sealmaal, et ma pean nad enda juurde kutsuma. Tihtipeale ma siis eelnevalt telefoni teel, seletan siis emale või isale, et ei ole vaja nagu karta ja ei ole vaja hambaharja ja pesu kokku võtta ja sellisel kujul tulla. Et mis nagu toimuma hakkab ja mis see ajakulu näiteks on, et sellised asjad ma räägin telefoni teel ja muud sisulised asjad ma räägin koha peal, et kas ma näen, et ta saab aru, kas ma näen, et tal on mingi ärevus ja ta ei suuda tollel päeval näiteks minuga kontaktile üldse tulla. Siis ma seletan lahti, et nii täna meil ei tule midagi välja, teeme kalendrid lahti, vaatame, millal on mingi muu aeg. Et selle poole teen mina ja seletan mina.

A: (EN) When it comes to the technical side of this, let's say that if the case is so far that the testimony has been given and the evidence has been gathered, and then you have to start thinking about how to solve this thing now, that's the side that I do. I explain. It depends on the young person, if they have been in contact with us before, I do not have to explain who the prosecutor is and so on. If they are in the proceedings for the first time, then I explain in simpler terms, who I am, what my job is, what will happen, what the file is, what the possible outcomes are, what they think, this is what I do when the time is so far that I have to call them out. Often I then call the mother or father in advance, explain that there is no need to be afraid and there is no need to pack a toothbrush and clothes and come like that. What is going to happen and how much time it will take, such things I explain on the phone and other substantive things I talk about on the spot, so that I see that they understand, or if they have some anxiety and maybe cannot achieve contact with me at all that day, for example. Then I explain that nothing will come out of it today, we open the calendars, we pick another suitable time. This is the side I do and explain."

Prosecutor, Estonia

Only one of the experts in this group said that it is presumed that the lawyer has explained all the rights and the course of the proceedings to the suspect or the accused. One interviewee said that the general aspects of conducting criminal proceedings are explained by various experts: the investigative officer, the lawyer, and the prosecutor. One interviewee also mentioned lawyers in addition to the prosecutors and expressed an opinion on the shortcomings of the present situation. They said that training lawyers who defend children is a good development, however, lawyers often see their client for the first time in court. Nevertheless, the preparatory work before the court proceedings should be done by the lawyer, for example how to behave at the court hearing.

The interviewed judges and prosecutors gave different descriptions of what is explained to the child about the conduct of the proceedings. One of the judges and prosecutors explained that in case of sensitive data, the prosecutor explains to the child before the hearing in more detail who is waiting for them in the courtroom and why these people must be there, to reduce anxiety and fear the child might be feeling. The same interviewee said that the prosecutor usually explains to the child general aspects of the criminal proceedings, including the course and the objectives of the proceedings and the roles of the parties involved; for those children who meet the prosecutor for the first time, the interviewed prosecutor explains in simpler terms who is a prosecutor, what work they do and what will happen next, and what are the possible outcomes of the proceedings.

Another interviewee explained the content of the information as follows: the child is explained the content of the suspicion, what the offence is that the child has committed, how it is punished, how the proceedings are conducted, what the consequences may be, what sanctions can be applied.

Two of the four interviewed **lawyers** said that nobody goes into detail about explaining the conduct of the proceedings to child suspects and accused. The reasons behind this practice, according to the interviewees, is that it is in the interest of the officer conducting the proceedings to find out what happened, because the solutions can be very different, and at the beginning of the proceedings, the police officers do not know whether the case will become a "case". One of the two lawyers said that there is no point in explaining all the nuances to everyone, first the facts are clarified and then everyone is dealt with individually in terms of further proceedings. One lawyer also pointed out that all parties, meaning the investigator, the prosecutor, and the lawyer, explain to the child who they are, what they are going to do and why it is necessary.

Three of the seven **other professionals** did not know how children are informed about the conduct of the proceedings. Three of them thought that the explanations are given by the prosecutor. Two of the interviewees said that this information is given to a child by the prosecutor as well as the police officer. One of the interviewees thought that children are fairly well informed about the general aspects of conducting criminal proceedings, even though they themselves did not know who is responsible for informing them. The same interviewee pointed out that the probation officers of the youth unit also provide explanations to the children about the course and purpose of the proceedings.

When asked what information children are given about the proceedings, the interviewed other professionals pointed out that the course and the objectives of the proceedings and the roles of the parties are explained. One of the interviewees said that the prosecutor's office explains pre-trial proceedings and the court proceedings to the child.

b. Right to have the holder of parental responsibility informed

i. Legal overview

The right of a child to have the holder of parental responsibility informed was added to the Code of Criminal Procedure with the bill transposing the Directive.²³ A new provision was created (§ 35²)

²³ Estonia, Riigi Teataja, [Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmine\)](#), 4 December 2019.

regarding the “notification of and participation in proceedings by legal representatives or other persons”. In the Estonian legislation, “legal representative” of a child means a parent who has the right of custody over the child²⁴, or a guardian if the child is under guardianship²⁵. The provision requires the authority conducting proceedings to inform the legal representative of a child defendant of the rights and obligations of the child, except in the situation where this is not in the interests of the child or may significantly damage the criminal proceedings.

ii. Informing the holders of parental responsibility

According to the interviewed **police officers**, the parents are informed of the criminal proceedings against their child. When a suspect is detained at the crime scene, then transported to the police, the parents are immediately informed so that there is no moment when the parents do not know where their child is.

According to one interviewed police officer, the suspected children are generally called to the police station by phone through their parents. The parent is told that the child needs to be questioned as a suspect. Meaning that the parent learns about the suspicion before the child. One interviewee pointed out that the notification depends on the situation and the children – e.g. whether they have a disability, whether the child has recidivism, impulsivity, whether it is the child's first case where they are a suspect. Parents are not informed if the parent is involved in the crime, or if informing them would in any way impede the preliminary investigation. If it is not possible to inform the parent, then according to the interviewees, the next contact person is the local government’s child protection worker. Information is shared with parents throughout the proceedings, but this also depends on the extent to which the parent shows interest in the proceedings.

One police officer said that typically the parent is questioned as a witness. This was mentioned also by other experts. One interviewee listed the rights of the child that are mentioned to the parent. These are: the right to the assistance of a lawyer, the suspect has the right to testify, but they may also refuse to do so.

The **lawyers** confirmed that the parent is informed by the police about the criminal case and the parents are involved in the proceedings. One of the lawyers said that it is a legal obligation to involve parents. The nuances about the notification and the information passed on to the parent that the interviewed lawyers pointed out differ somewhat.

One interviewee said that in practice, one parent is notified, both parents are not informed. The parent indicated in the Population Register is called. One of the interviewees said that the prosecutor explains to the parents of the suspected or accused child the different options of different procedures – settlement procedure, alternative procedure, etc. It is done orally. One interviewed lawyer said that they do not know whether the investigator explains the child's rights to the parent, but the lawyer does that.

According to one lawyer, the parent is not informed if the child is abused by the parent. Also in case the child would be in any way in danger if the parents are informed, or if the parents are known to be addicts. Parents are also not informed if the child lives in a substitute home and has no contact with the parents.

The **judges and prosecutors** gave similar information about the informing and involvement of the parents as did the lawyers and the police officers:

- During the pre-trial investigation, the legal representative participates in the proceedings.

²⁴ Estonia, Riigi Teataja, [Family Law Act \(Perekonnaseadus\)](#), § 120, 18 November 2009.

²⁵ Estonia, Riigi Teataja, [Family Law Act \(Perekonnaseadus\)](#), § 179, 18 November 2009.

- The holder of parental responsibility is not informed if it is contrary to the interests of the child or the criminal proceedings or if they have been deprived of parental rights.
- The parents attend the hearing as does the child, and it is explained to them that the proceedings may result in legal consequences also for them. For example, in case of a civil action, it is possible to order the parents to pay damages.
- The police and the investigator are the first to provide information to the holder of parental responsibility, and later the lawyer and the prosecutor.

The **other professionals** confirmed that the police will certainly inform the holder of parental responsibility of the rights of the child as a suspect or an accused. One of the interviewees described in more detail that the holder of parental responsibility is informed already at the first meeting. This is usually done by the police or the prosecutor, and the signature of the holder of parental responsibility is also taken confirming they have understood the information provided to them.

iii. Having a nominated/designated person informed

According to the interviewees, the parental data is checked from the Population Register. If parental rights are revoked, it is written in the register, as well as who is the guardian. According to one interviewee (lawyer), it is possible to inform a relative or a child protection specialist instead of the parents. Another interviewee (other professional) specified that in cases where the child's parents are not present in the child's life, then often the child protection worker or grandparents or, in some cases, the support person are informed.

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

Some professionals knew more than others about the parental involvement in the criminal proceedings. According to most of the interviewed **lawyers**, in the pre-trial phase, the parents are questioned as a legal representative. They are asked to describe the child, if there have been any problems with them at home. They are called to the court, and they are in the room during the hearing. They are asked for an opinion, although the court is not bound by it.

The interviewees (lawyers) gave different information about the interrogation. One said that the parent has the right to be present at the questioning (if the child agrees).

The other lawyer said that the lawyer is present when a suspicion is presented, the parent is not there. Parents are also subject to civil liability, in this case the parents may be civil defendants. In the past, usually only the mother was determined as the civil defendant, now both parents. Parents are present when the criminal proceedings are terminated, the lawyer is not, and the lawyer will receive a message stating that the case is closed. Upon termination of the case, an agreement is also concluded as to what obligations are to be assigned to the child. The lawyer does not know this unless the parent informs them.

According to one interviewee from the group of **judges and prosecutors** the holder of parental responsibility may be involved in the whole procedure as much as they wish. Theoretically, they have the opportunity to be present at the questioning. Also, the interviewee has never seen parents not allowed to the court hearing.

Several interviewees pointed out that **the more the parents are interested in what is going to happen to the child, the more they are informed and involved in the proceedings**. Meaning that the officials will not go out of their way to involve parents who show no interest towards the child and their future. One of the interviewees (other professional) explained that the parents are fully involved in the proceedings, but for families about whom it is known that the parent has not taken sufficient care of the child, family therapy is prescribed, during which the parent is taught parental care. If community service is imposed on a child, then the parent is not involved much, in this case the parent is involved only when the probation officer makes a home visit or contacts the parent.

c. Audiovisual recording of questioning and due verification of written records

i. Legal overview

The transposition bill of the Directive added the sentence “If necessary, the questioning of a suspect who is a minor shall be recorded” to the Code of Criminal Procedure.²⁶ It is not explained in the law, or the explanatory memorandum of the bill, what is meant by “necessary”. In the declaration of rights of children, it is stated that: “Your interrogation will only be recorded if the circumstances of the criminal case so require. This is decided by the person conducting the proceedings.”²⁷

The "Child Interrogation Handbook", issued in 2016 in co-operation between the Ministry of Justice and the Ministry of the Interior, explains the necessity and importance of video recording an interview with a child, but referring only to child victims and witnesses in criminal proceedings.²⁸ The regulation in force in Estonia before the transposition of the Directive did not include anything regarding the audiovisual recording of questioning of children who are suspects or accused, and this was not done in practice.²⁹

ii. Implementation in practice

All the **police officers** claimed that the child suspects are not audiovisually recorded during questioning. One pointed out that the law stipulates that the testimony of a child victim or witness is recorded. One more interviewee confirmed that the audiovisual recording is used when the child is a victim. If the child is in the role of suspect or accused, the questioning is recorded in writing.

All the **lawyers** said that there is no audiovisual recording of the questioning. Instead, the minutes are recorded in writing and signed. The lawyer’s goal is to make sure that the minutes are accurate and written according to the child’s statements.

According to the prosecutors and judges, the questioning and the court hearings of children are not audiovisually recorded.

None of the **other professionals** knew about the audiovisual recording of the proceedings.

d. Discussion of findings

The different groups of professionals gave very different answers regarding how the informing of children of their rights is done in Estonia. The right which was mentioned the most is the right to have a lawyer. The professionals also reported differently who is the primary person to inform the children. The police officers were perhaps most confident that they are the primary source of the information on rights for the child suspect. The written declaration of rights was mentioned many times and it seems to be a well-established practice to show or read the declaration to a child. The accounts on whether children understand the information vary. The legal professionals were more certain that this depends on a child, the other professionals were slightly more critical of how accessible the information is to children.

There do not seem to be unified guidelines outside of the law which the professionals would follow when in contact with a child in criminal proceedings. The professionals seem to have a considerable freedom to decide how to conduct the proceedings as long as they follow the law in force.

²⁶ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 75 (4), 12 February 2003.

²⁷ Estonia, Minister of Justice (*Justiitsminister*), [Alaalise õiguste deklaratsioon](#), Annex 3 of the Regulation “Õiguste deklaratsiooni näidisvormi kehtestamine” of 17 July 2014 (amendment entered into force 30 December 2019).

²⁸ Liivamägi-Hitrov, A., Kask, K. (2016), [Lapse küsitlemise käsiraamat](#), Ministry of Justice, Tallinn.

²⁹ Jalast, G. (2019), [Kriminaalmenetluses kahtlustatavate või süüdistatavate laste menetluslikke tagatisi käsitleva direktiivi ülevõtmise analüüs](#), Master’s Thesis, Tartu University, Law Department in Tallinn.

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

a. Legal overview

The right of suspected or accused children to be assisted by a lawyer existed in the Code of Criminal Procedure before the transposition of the Directive. Any suspect or accused person has the right to the assistance of a lawyer, but the participation of a lawyer is mandatory for the entire course of criminal proceedings if the person was a minor at the time of commission of the criminal offence.³⁰

According to the State Legal Aid Act (*Riigi õigusabi seadus*), in criminal proceedings, a suspect or an accused person, who has not chosen a defence lawyer by agreement and in whose criminal case the participation of a defence lawyer is required by law, receives state-funded legal aid regardless of their financial situation.³¹

The right to a defence lawyer is also stressed in the guidelines of the Chancellor of Justice “The rights of children at first contact with the police”³² and in the 2018 prosecutors’ agreement “Special treatment of juvenile offenders in criminal proceedings”³³.

If criminal proceedings are conducted without the participation of a lawyer even though the participation of the lawyer is mandatory, it is considered to be a material violation of criminal procedural law, which is a ground for annulment of a court judgment.³⁴ This has been confirmed by the Supreme Court – in case 1-17-8281, the Supreme Court found that because an underage defendant was not appointed a lawyer for county court proceedings and was only represented by his mother, the county court judgment had to be annulled due to material violation of criminal procedural law.³⁵

b. Assistance by a lawyer and legal aid

According to most interviewees, the assistance of a lawyer is obligatory for accused or suspected children, and it is free of charge for them (paid by the state). This is in line with the law and as reported by the interviewees, there are no challenges regarding access to free legal aid for accused or suspected children.

The process of appointing a lawyer to a child is usually done by the police. The police use a procedural information system where they can place an order for a state provided lawyer for a child. Three of the other professionals reported that the quality of state legal aid can vary – while some do a great job, there have been complaints from the children and their parents that the lawyer did not do their job effectively enough. This also came out from some of the interviews with accused or suspected children in a separate study conducted by Praxis and the Estonian Human Rights Centre for FRA. The children were not happy with their lawyer’s work. However, the children (and their family) do have the option to hire a lawyer themselves for which they have to pay for.

According to the interviewees, children and their families are informed about their right to legal aid relatively quickly after they are detained by the police. Most interviewees reported that the lawyer starts participating in the criminal proceedings related to children before the first questioning of the

³⁰ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 34 (1) 3), § 45, 12 February 2003.

³¹ Estonia, Riigi Teataja, [State Legal Aid Act \(Riigi õigusabi seadus\)](#), § 6 (2), 28 June 2004.

³² Estonia, Chancellor of Justice (*Õiguskantsler*), [Laste õigustest esmasel kokkupuutel politseiga](#), 22 August 2017.

³³ Estonia, Alaealistele spetsialiseerunud prokuröride kokkulepe, [Kuriteo toime pannud alaealiste erikohtlemine kriminaalmenetluses](#), Narva-Jõesuu, 21 February 2018.

³⁴ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 339 (1) 3), § 362, 12 February 2003.

³⁵ Estonia, Supreme Court (*Riigikohus*), [Case No 1-17-8281](#), p. 10, 7 February 2018.

child, or that the lawyer will be present at the first questioning. Usually, the child and their lawyer meet before the police questioning and they talk in private.

According to the law, a child cannot be questioned without the presence of a lawyer. However, three out of four lawyers reported that there have been cases where the police investigators have pressured the child to give a sincere confession without the lawyer present. This, however, cannot be used in court as evidence. According to some interviewed lawyers, the police do it under the pretext that they want to understand what happened and whether the child should become a suspect or not. This also came out from some of the interviews with children in the children's study, that they were pressured to write a confession without the lawyer present.

All interviewees said that the court hearings always take place with a lawyer representing the child defendant and there have been no challenges regarding that.

“Q: Compared to criminal proceedings for adults, do national authorities apply particular measures to ensure that children suspected or accused of crime are always actively assisted by a lawyer throughout pre-trial and trial proceedings?”

A: (EE) Need juhtumid, millega on see üles tõusnud, nad on saanud kaitsjalt abi, olen neid kaitsjaid ka näinud. Vanemate hoiak on olnud pigem selline, et kaitsja noh, ütleme istus ja haigutas selle aja maha või olen kohtus olnud, kus kaitsja tõi päris kummalise kõrvalise asja ainsa argumendina välja. Ütleme, et noorel oli pikk ja keeruline register, aga kaitsja tõi argumendina, et viimati ta tabati ju ainult seal mingit alkoholi natuke pruukimast, et see ei ole proportsionaalne nüüd karistus, kui ta saadetakse kinnisesse kooli, aga varasemad ei puutu asjasse. Noh ma ei ole jurist ja ma ei oska öelda kui asjalik see on, aga tegu oli ikkagi väga kõrgete riskidega noorega. Aga kohus lahendas sellega kuidagi ära ja ütles, et see ongi noore kaitseks, omas ilusas juriidilises keeles. Nii et olen kokku puutunud, et kaitsjad tegelevad. Olen kokku puutunud vanemate kriitikaga, et see on ainult formaalne.

A: (EN) The cases in which it has arisen, they have received help from a lawyer, I have seen these lawyers as well. The attitude of the parents has been more that the lawyer, well, let's say, sat down and yawned the whole time, or I have been in court, where the lawyer raised a rather strange extraneous matter as the only argument. Let's say, the young person had a long and complicated criminal history, but the defence lawyer argued that the last time they were caught it was just for drinking some alcohol, that it is not a proportionate punishment now if they are sent to a closed school, the previous [offences] are irrelevant. Well, I'm not a lawyer and I can't say how relevant it is, but it was still a young person with very high risks. But the court somehow solved this and said that it was for the protection of the young person, in its own beautiful legal language. So I have been exposed to lawyers dealing with cases. I have heard criticism from parents that it is only a formality.

MDFT therapist-supervisor, Estonia

“Q: From your experience, at which particular point in time do lawyers usually get involved in criminal proceedings involving children (i.e. upon first contact with the police/authorities with the child, before the child's initial questioning or only in later stages of the proceedings)?”

A: (EE) Advokaat kutsutakse esimesele menetlustoimingule. Sellega muidugi on sellised huvitavad mõtted, et mul on mõnel korral olnud niimoodi, et laps on juba politseiasutuses olnud ja teda on erinevad isikud juba nii-öelda ära kuulnud ja ta on juba jõudnud kirjutada seal mingisugused puhtsüdamlikud kahetsused ja ülestunnistused. No seaduse alusel tegelikult sellist asja ei tohiks olla. Peaks olema advokaat koheselt kohal kui on lapsel esimene kokkupuude politseiasutusega. Uurijad ei tohiks temaga ennem rääkida, kui advokaat on seal, aga nende jälle vastuväide on olnud see, et aga me ei teadnud, sest võib-olla laps ei olegi või ei muutugi kunagi kahtlustatavaks ja me tahtsime

lihtsalt teada, et mis juhtus. Et noh, seal on selline nagu vahe - kas nüüd oli teada, et ta tõepoolest on või satub kahtlustatavaks või mitte. Et selles mõttes võib-olla see periood on nagu noh... Kas talle on siis selgitatud, et mis tema need õigused on. Ta on sellise puhtsüdamliku ülestunnistuse teinud paberile, et kas see nüüd on midagi. Noh, nad tahavad muidugi seda puhtsüdamlikku ülestunnistust ka lisada toimiku materjalidesse, mis iseenesest ei tohiks, üks ole. Et jah, muidugi on erinevaid uurijad ka, üks ole. Osad uurijad on, et mina üldse ei räägi mitte midagi, istu siin nii kaua, kui advokaat tuleb, siis räägime. Aga teised on väga sellised avatud, et ikka uurime ise asjad ära ja siis vaatame mis hetkel siis meie heaks näeme, et advokaat tuleb kutsuda, üks ole.

A: (EN) The lawyer is invited to the first procedural act. With this, of course, there are such interesting things, I have sometimes had cases where the child has already been in the police station and has already been questioned, so to speak, by various people, and has already managed to write some sincere regrets and confessions there. Well, by law, in fact, such a thing should not happen. A lawyer should be present as soon as the child has their first contact with the police. Investigators shouldn't talk to them until the lawyer is there, but their objection has been that we didn't know, because maybe the child isn't or will never become a suspect, and we just wanted to know what happened. That, well, there's such a difference – whether it was known that they really are or become a suspect or not. In that sense, maybe this period is like, well ... Have they then been told what their rights are. They have made such a sincere confession on paper, whether this is something now. Well, of course, they also want to include this sincere confession in the materials of the file, which in itself should not happen. I mean, yes, of course there are different investigators, too. Some investigators say I'm not talking about anything at all, sit here as long as the lawyer comes, then we'll talk. But others are so open, in a way, that we investigate things ourselves and then we'll see at what point a lawyer needs to be called, right."

Lawyer, Estonia

c. Effective participation of a lawyer

According to most interviewed **other professionals**, effective participation in the context of criminal proceedings against children means that the lawyer does everything in their power to protect the child's rights without discrimination. Most of the other professionals also brought out that it is important that the lawyer hears all the circumstances of the case and takes into account the child's background, developmental characteristics, social characteristics, age, etc., and genuinely delves into the proceedings in order to find the best solution. According to one other professional, the lawyer should be involved in the process at the earliest possible stage to represent the rights of their client and to assess the specifics of the offence. According to the **police officers**, it is important that the lawyer understands the specifics and the rights of the children and ensures that the child's rights and obligations are respected. Most police officers also mentioned that the lawyer should explain the child's rights and obligations in a child-friendly language and create a feeling of security in the child and reassure that they are not alone. Furthermore, according to most police officers, the lawyer should be friendly, proactive and motivated to help the child.

„As a police officer, what do you understand by the term “effective participation of a lawyer” in the context of criminal proceedings against children?

A: (EE) Kaitsja peab lapsele seletama lapse keeles lahti tema õigused ja kohustused, ta peab teda toetama. Tõhus on see, kui menetlus on lapsesõbralik. Me [kaitsja ja menetleja] ei unusta hetkekski, et tegemist on alaealisega.

A: (EN) The lawyer must explain the child's rights and obligations to the child in the child's own language, the lawyer must support them. It is effective if the procedure is child-friendly. We [lawyer and prosecutor] do not forget for a moment that we are dealing with a minor.“

Police officer, Estonia

According to the **judges and prosecutors**, the effective participation of a lawyer in the context of criminal proceedings involving children means that the lawyer thinks about what the best solution for the child is. Some of the judges and prosecutors mentioned that it is important for the lawyer to actively listen to the child and to take on the role of an educator and guide the child. This requires the lawyer to have empathy. One prosecutor reported that often officials cannot establish good contact with the child.

„Q: As a judge, what do you understand by the term “effective participation of a lawyer” in the context of criminal proceedings against children?

A: (EE) Kaitsja tõhus osalemine laste asjades on ressursimahukas. Kaitsja jaoks on see sisuliselt kasvataja rolli asumine. Kõigepealt on oluline saada lapsega kontakt, et ta kuulaks kaistjat, et advokaat saaks selgitada [...], kuidas kohtus käituda, mis on last ees ootamas. See nõuab kaitsjalt empaatiavõimet.

A: (EN) The effective participation of a lawyer in children's cases is resource-intensive. For the lawyer, it essentially means taking on the role of an educator. First of all, it is important to achieve contact with the child so that they listen to the lawyer, so that the lawyer can explain [...] how to behave in court, what the child can expect. This requires the lawyer to have the ability to empathise.”

Judge (3), Estonia

According to the interviewed **lawyers**, their role is to ensure that the proceedings involving children are conducted honestly and fairly. One of the interviewed lawyers mentioned that it is important for the lawyer to observe how the child describes the event so that it can be recorded accurately and ask clarifying questions. Furthermore, another lawyer emphasised that it is important for the lawyer to ponder which measures are the most suitable for the benefit of the child.

In conclusion, based on all interviews with professionals, three main aspects stand out regarding effective participation of a lawyer: 1) the lawyer must duly consider the child's background, 2) the communication with the child must be clear and child-friendly, and 3) the lawyer must be proactive and motivated to help the child.

According to most interviewed professionals, the most important part of following the best interests of the child is to take into account the child's background. This could mean getting to know the child's life situation, school life, mental ability, coping, and health characteristics. One of the interviewed **other professionals** emphasised that the lawyer should consider the child's needs. For example, the meetings should be organised at a convenient time for the child. Two of the interviewed other professionals mentioned that following the best interests of the child means that the proceedings should not be traumatic for the child, but safe. One of the experts in the group of other professionals said that it is important that the sentencing should be forward-looking and developmental, not punitive so that the child could get back to law abiding life as fast as possible.

„Q: What does it require in your opinion to address the best interests of the child?

A: (EE) Kindlasti seda, et kogu see protsess ja kõik need protseduurilised osad, et ükskõik siis kas süüdistatava või kahtlustatava lapse puhul, et see ei tooks kaasa lisakahjustusi või täiendavaid mingeid traumeerivaid seikasid tema jaoks. Et see oleks turvaline ja et ta mõistaks ka, et tõesti see turvalisus oleks enam kui sõnades öeldut.

A: (EN) Certainly that the whole process and all those procedural parts, for the accused or suspected child, do not cause additional harm or any additional traumatic circumstances for them. That it would be safe, and that [the child] would also understand that the safety is really more than just said in words.“

Clinical psychologist, Estonia

Overall, the interviewed police officers did not provide much detail when answering what does following the best interests of the child mean.

According to three of the interviewed **judges and prosecutors**, addressing the best interests of the child means that the lawyer delves into the child's case and background and does not simply examine the file. One judge and one prosecutor also emphasised the importance of communication with the child – to follow the child's best interests, officials must explain everything to the child as well as possible and ensure that the child could understand and is willing to open up and cooperate. One interviewed prosecutor mentioned that addressing the best interests of the child requires cooperation between different institutions. In addition, it is important that the procedural evidence is there, made available by the investigator.

According to one of the interviewed **lawyers**, following the best interests of the child in criminal proceedings means that the lawyer encourages the child to speak the truth and to accept the punishment to help them stay away from crime in the future. Another lawyer emphasised the need to look at the big picture, meaning the child's background, family and attending school. One interviewed lawyer argued in the context of the best interests of the child that the procedure for the remuneration for the lawyer's work should be changed. Also, that the lawyer should be present at the termination of the criminal case, so that the lawyer as an expert could also be asked what is the best sanction for the child.

„Q: What does it require in your opinion to address the best interests of the child?

A: Noh, siin on see kõik üks ole, mis sellega kõik seondub. Et noh, kui nad on alaealised, üks ole, siis on võimalus nende suhtes kriminaalkaristust mitte kohaldada ja kasutada nende suhtes siis mingisuguseid kasvatustlikku laadi meetmeid. Et noh, tuleb ikkagi vaadata kogu seda pilti, et noh, kust see laps on üldse tulnud, milline on tema perekond, kas tal on juba probleeme koolis käimisega. Ja siis noh, kuni sinnani välja, et kui mingil hetkel võib tulla see taotlus saata laps kinnisesse lasteasutusse, et siis kas see on tema parimate huvide kohane või siis võiks ta ikkagi jääda koju ja käia tavakoolis. Ja noh, sellised asjaolud kõik, et tuleb vaadata kogu tema elu.

A: Well, here is all that is connected with it. That, well, if they are minors, there is the possibility to not subject them to criminal punishment, but to subject them to some form of educational measures. That, well, you still have to look at the whole picture, where this child has come from, what their family is like, whether they already have problems attending school. And then, well, until it comes to that point that there might be an application to send the child to a closed childcare institution, then whether it is in their best interests or could they still stay home and go to a regular school. And well, all these circumstances must be looked at throughout their life.“

Lawyer, Estonia

According to almost all the interviewees (except some other professionals, and one prosecutor, who did not have experience/knowledge regarding this question), lawyers can always effectively participate in all stages of the proceedings and there are not any challenges regarding that.

d. Confidential and private consultations and meetings

According to all interviewees, children are always allowed to consult their lawyer in private and confidentially, also in cases where children are deprived of their liberty. Some interviewees added that there are no time limits for a meeting between the child and their lawyer in the detention centre. However, it can be more complicated if the place (e.g. prison) where the child is held is far away from where the lawyer is located. In a case like this, the child must be ordered to go to meet the lawyer. If

necessary, the lawyer can also visit the child in prison. However, some interviewed children in the children's study reported that they had a hard time contacting their lawyer (the lawyer did not give them their phone number, or the lawyer was busy when the child needed them).

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

According to the interviewed lawyers, they usually are in contact with the child's parents when the parents are interested. In general, parents are notified when a lawyer has been appointed to the child and they are given the lawyers contacts (name, email, phone number). If necessary, the lawyer will consult with the parent and talk about the circumstances, the further proceedings and whether the case goes to court or is resolved in another way. The interviewees did not point out any problems regarding cooperation with the child's holder of parental responsibility.

f. Discussion of findings

In conclusion, a state paid lawyer is always appointed to accused or suspected children by law. Children and their families can hire their own lawyer for which they have to pay for themselves. The lawyer usually meets with the child before the first questioning by the police and they can always have private and confidential meetings. The questioning and court hearings cannot happen without a lawyer present. There have been cases where police have pressured the child to write a sincere confession without the lawyer present. This confession, however, cannot be used in court as evidence. According to the interviewees, the lawyers can always effectively participate in all stages of the proceedings and there are no challenges regarding that. Effective participation in the eyes of the interviewees means that the lawyer has the child's best interests in mind and that they make sure the child understands everything.

C.5 The right to an individual assessment

a. Legal overview

The right to individual assessment was included in the Code of Criminal Procedure with the transposition bill of the Directive. The rights of suspects and accused persons are outlined in § 34 of the Code of Criminal Procedure, this article was supplemented with a subsection regarding specific rights of children, including the right to an individual assessment. The provision states that a child defendant has the right to have a pre-trial report prepared for their individual assessment at the latest before bringing the charges, except in the case this is not in their interests. It is not specified who assesses whether it is in the defendant's interests or how. It also provides that the conclusions of the individual assessment must be taken into account upon making procedural decisions.³⁶

This right to a pre-trial report existed before the transposition of the Directive and was outlined in the Probation Supervision Act. It serves as an individual assessment report, containing a summary of the personal characteristics, social circumstances, biographical facts and a psychological-social prognosis of the suspect or the accused.³⁷ However, the specifics regarding children were further clarified with the transposition bill in 2019. It was added that upon preparation of a pre-trial report on a child suspect, their vulnerability, and the results of any individual assessments made earlier shall be taken into account. In case the facts constituting the basis for the report change substantially during the proceedings, an additional report shall be prepared at the request of the body conducting proceedings.³⁸ It was also added that when collecting information for the pre-trial report, the officer

³⁶ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 34 (1¹) 3), 12 February 2003.

³⁷ Estonia, Riigi Teataja, [Probation Supervision Act \(Kriminaalhooldusseadus\)](#) § 24 (1)-(2), 17 December 1997.

³⁸ Estonia, Riigi Teataja, [Probation Supervision Act \(Kriminaalhooldusseadus\)](#) § 24 (6), 17 December 1997.

is required to meet the person who has been designated by the child defendant in case their legal representative is not available.³⁹

The importance of an early pre-trial report is also stressed in the 2018 prosecutors' agreement "Special treatment of juvenile offenders in criminal proceedings", which states that pre-trial report should be ordered at the earliest possible stage of the proceedings. Before ordering a pre-trial report, the investigative body collects the necessary information about the child from the school, parents and the local government. If necessary, data are also collected from health care institutions.⁴⁰

b. Individual assessment and exceptions in practice

The four groups of professionals gave very different accounts on the individual assessment. It is clear from the answers that they meant different documents and referred to them with different names. It is possible that during criminal proceedings, several assessments by different professionals are carried out, depending on the type of the proceedings and the needs of the investigation and the procedure.

According to three **police officers** (one did not know), an individual assessment takes place and is conducted by the police. The aim is to get as much information about the child as possible. Data on the child is collected from the parent, the school (from either a teacher or a psychologist), the child protection or social assistance department of the local government, the family doctor, hospitals, if the child has been in a hospital. The parent is questioned as a witness, they give a description of the child, usually also about the child's education, behaviour, hobbies, computer use. If the child has a low socio-economic background, this does not affect the assessment. If the child is a migrant, additional sources of information may be included.

One of the police officers explained that the pre-trial report of probation officers is more related to the prosecutor and their decisions in the proceedings. The prosecutor usually orders the assessment from the probation officer.

It is not entirely clear from the answers of the police officers whether the child can request the assessment. One of the interviewees said that the child and their lawyer can make all kinds of applications, but they may not be aware of the individual assessment in order to request it. However, they have encountered cases where it is asked from the police to collect background information about the child, for example from neighbours or other acquaintances. Another police officer said that the assessment may be requested by the lawyer and the child, but is usually done as a preliminary step by the officer conducting the proceedings.

One of the interviewed police officers said that if the case is terminated due to lack of elements of the crime and this is known before the hearing, no effort will be made with the individual assessment. The same interviewee was the only one to point out that the assessment is updated as children and their circumstances may change rapidly.

"Q: Is the assessment updated throughout the proceedings whenever elements that formed its basis significantly change?"

A: (EE) Kindlasti uuendatakse. Kuna laps areneb kiiresti. Isegi paari kuuga võib noore käitumine muutuda. Iga pisiasi võib noort mõjutada. Individuaalset hinnangut uuendatakse, kui lapse pere kolib või lapse peres midagi muutub, nt mõni sugulane sureb. Ma isegi märkan lapse juures muutusi, ta hakkab nt uusi sõnu kasutama.

A: (EN) Definitely updated. As the child develops rapidly. Even in a few months, a young person's behaviour can change. Every little thing can affect a young person. The individual assessment is

³⁹ Estonia, Riigi Teataja, [Probation Supervision Act \(Kriminaalhooldusseadus\)](#) § 24 (3), 17 December 1997.

⁴⁰ Estonia, Alaealistele spetsialiseerunud prokuröride kokkulepe, [Kuriteo toime pannud alaealiste erikohtlemine kriminaalmenetluses](#), Narva-Jõesuu, 21 February 2018.

updated if the child's family moves or something changes in the child's family, e.g. a relative dies. I also may notice a change in the child, e.g. the child starts using new words."

Police officer, Estonia

Two of the four interviewed **lawyers** claimed that there is no assessment of the child's needs. One of them pointed out that even if an assessment is performed in the proceedings, the lawyer does not see the document. The lawyer sees the case file at the end of the pre-trial investigation (sees the documents added into the file by the prosecutor). The other of the two lawyers said that the lawyer may request the assessment.

Two lawyers claiming that there is an individual assessment gave following information about the assessment:

- In case of serious crimes, such as murder, a forensic psychiatric examination is carried out, which also assesses personality traits.
- In case of, for example, a fight or theft, etc., a characterisation is asked from the school or workplace.
- The assessment takes place when the file is forwarded to the prosecutor. The prosecutor calls out the child and talks to them.
- The parent is asked about the family relationship, the relationship between the parent and the child, whether the parent has authority, whether the child listens to the parent.
- The police may ask for background information from the regional child protection.
- If the child has already been suspected of a crime, data from the youth police will also be collected.
- Pre-trial report is mandatory for children. The probation officer must gather all the preliminary information, visit the child's home, talk to the child etc. The lawyer's task is also to say if they see that there is no assessment. The interviewee thinks that the report is prepared only in cases that go to court.
- After the pre-trial report has been prepared, it is not likely that new information would be added in there. If the lawyer finds something, an additional document is created, which the prosecutor evaluates in the light of new information.

According to the **prosecutors and judges**, the probation officers prepare written pre-trial reports outlining the child's life course, date of birth, place of birth, family members, educational background, previous offences, school and grades. In the case of children with disabilities, there is more information in the report, because they have been under the attention of the social system for a longer time.

"Q: 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?"

A: (EE) See individuaalne hindamine, mida meie nimetame kohtueelseks ettekandeks, toimub olukorras, kus kriminaalasi on tulnud prokuratuuri ja mina siis prokurörina vaatan sinna sisse ja otsustan, kas see läheb tõenäoliselt kohtusse edasi või mitte või kas ma näiteks lõpetan selle menetluse hoopis ära. Ja kui ikka on näha, et asi läheb kohtusse, siis ma alati tellin selle kohtueelse ettekande kriminaalhooldusosakonnalt. Seda teeb kriminaalhooldusametnik, kes võtab aluseks seal erinevad iseloomustavad materjalid, mis on nii koolilt ja linnavalitsuselt välja küsitud selle lapse ja pere kohta. Samuti siis peetakse seal lapsega omavahel vestlus ja kogu see lugu võetakse niimoodi kokku. Analüüsitakse lapse varasemat elukäiku ka, et kust mingi tegu võib olla alguse saanud. Ja siis sellest tulenevalt tehaksegi järeldused, et mis meede oleks lapse puhul sobilik ja mis mitte.

A: (EN) This individual assessment, which we call a pre-trial report, takes place in a situation where a criminal case has come to the prosecutor's office and I then look into it and decide, as a prosecutor, whether it is likely to go to court or not, or whether, for example, I can terminate the proceedings instead. And if I see that the case goes to court, I always order that pre-trial report from the probation department. This is done by a probation officer, who takes as the basis the various characterising materials that have been asked from school and the city government about this child and the family. Also, there is a conversation with the child and the whole story is summed up in this way. The child's previous life course is also analysed, where any act may have started. And then, as a result, conclusions are drawn as to which measure would be appropriate for the child and which would not."

Prosecutor, Estonia

The information in the report is collected through the questioning of the legal representative (parent or guardian). In addition, a query is sent to the school, public registries, and the criminal record is checked. The family doctor and the psychiatrist of the child may be contacted. If necessary, the child is also assigned a complex forensic examination, which shows whether the child is capable of guilt, whether they are able to face court trial and serve the sentence.

The report is prepared at the final stage of the pre-trial proceedings – it is ordered by the prosecutor. One interviewee said that in case of children, individual assessment is a legal obligation, it is not necessary to apply for it. Another interviewee said that in case of smaller offences where the prosecutor terminates the proceedings, the report is generally not ordered.

„Q: In your experience, are there any criminal cases against children in which such an individual assessment is not typically conducted? If so, which and for what particular reasons?

A: (EE) Jah, üks asi on tulnud ette [kus hindamist ei olnud]. Põhja-Prokuratuuris on alaealiste osakond, st spetsialiseerunud prokurörid, kes teevad head tööd, teavad kõiki alaealiste erisusi, neil alati hindamised tehtud. See üks asi oli selline, kus menetleja oli narkoasjadele spetsialiseerunud prokurör, kes ei teadnud alaealiste erisust. Kohus saatis selle asja prokuratuuri tagasi, sest hindamine oli tegemata. See näide on absoluutne erand – 10 a jooksul on mul see vaid üks kord ette tulnud. Kohus ettekande olemasolu kontrollib, see on kohtu jaoks oluline. See on kohtule ainuke allikas, kust lapse kohta infot saada.

A: (EN) Yes, one case has come up [where the assessment was not prepared]. The Northern District Prosecutor's Office has a juvenile department, i.e. specialised prosecutors who do a good job, know all the specificities of juvenile cases, and they always do the assessments. In this one case, a prosecutor specialised in drug related crimes did not know the specificities of cases involving minors. The court referred the case back to the prosecutor's office because no assessment had been made. This example is the absolute exception – it has happened, in my experience, once in 10 years. The court checks the existence of the report, it is important for the court. This is the only source for the court to obtain information about the child."

Judge, Estonia

Several prosecutors and judges said that no new report is submitted during the proceedings in case new information emerges. The report is in writing and is always part of the court file.

One of the interviewed prosecutors suggested that the prosecutors take on the assessment of children's individual needs, involving other experts such as child protection workers and probation officers. If necessary, roundtables will also be organised, which include psychologists, prosecution consultants, and other important parties. Such an individual assessment by the prosecutor usually

takes place at the stage when the investigator has finished their work and the prosecutor starts their work.

The **other professionals** discussed various assessments when asked about the individual assessment in the context of criminal proceedings. **Only one of the seven interviewees knew that the police officers conduct an individual assessment.** They said that an assessment is part of the police investigator's work instructions, there is no need for the lawyer to request it. The police question the child's parent, ask the local government for information about the family, contact the school or the last educational institution for information, including about the child's educational success and behavioural patterns. The police also check the information on referrals to doctors and psychiatrists. If the file contains information that is more than few months old, the prosecutor may submit new information requests.

Two interviewees discussed the **forensic examination**. One of them claimed that the needs and vulnerabilities, personality and maturity, social and family background of suspected or accused children are not normally assessed. It is only done when necessary. According to the second interviewee, the forensic psychology reports assess the child's emotional state at the time of the crime and at the time of the interview. The child's social background and other characteristics are assessed by forensic psychiatrists and psychologists, for example, on the basis of the documents in the file, and/or they ask for additional testimonials, for example from school, child protection, etc. They do not directly assess the child's needs, but make a recommendation in the context of needs for treatment if it can be seen that the child would benefit from living in a controlled environment (e.g. a closed childcare institution).

One interviewee discussed a **risk assessment** of a child who is on probation. This assessment is carried out by a probation officer only at the decision of an official. This is usually done for cases that go to court (so not for all children involved in criminal proceedings as suspects/accused) and if the prosecutor orders it (the assessment is added to the court files). This risk assessment includes an analysis of the crime, previous crimes, biography, circle of acquaintances, education, language skills, drug and alcohol use, health status, etc. If necessary, the police, social worker, support person, local government child protection specialist, etc. are also involved in the risk assessment carried out by probation officers.

One interviewee discussed an individual assessment of children and young people carried out by a probation officer at the request of the prosecutor's office. An individual assessment usually includes home visits, interviews with the child and the parents. Sometimes this includes conversations with the school psychologist, social worker, etc.

The seventh interviewee discussed the **individual assessment performed by the child protection workers**, i.e. the complying with the case plan of a child. This is done for all children who are exposed to child protection for various reasons, including children suspected or accused of a crime. The case plan evaluates the child's social network, family background, education and health situation.

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

Only two **police officers** could tell the purpose of the individual assessment. The possible purposes are following:

- Facilitate the decision on whether the child remains at liberty or should they be detained.
- Facilitate the decision on which sanctions should be applied to the child.
- Facilitate the decision on how the child's behaviour should be influenced.
- Facilitate the decision on whether the child should be placed in a closed childcare institution.

- The findings are used throughout the proceedings – the assessment is used to make decisions about the outcome of the proceedings.

Three lawyers gave their insights to the purposes of the assessment:

- This is the basis for making a sentencing decision, either for the court or for the prosecutor in a settlement procedure.
- If a child has a disability, efforts are made to avoid arrest and imprisonment. Placement in a special care home is preferred if the disability so requires.
- The assessment provides guidance on whether a penalty is necessary or other means of influence (sanctions) are required.
- The assessment does not affect the decision to detain. If the child has been detained, they have already been detained. If they are at liberty in the middle of the proceedings, then there is no reason to be detained in the middle of the proceedings.

The prosecutors and the judges saw the purpose of the assessment in the following:

- This is the basis for making a sentencing decision.
- The court uses the report to understand why the child committed the act and, secondly, what to do about it – what is best for their social status and family background.

“Q: How and for what purposes do national authorities use the outcomes and findings of this individual assessment? What measures are put in place to address the specific needs of the child?”

A: (EE) Kohtunik saab istungile eelnevalt ülevaate alaealisest – millisest perest ta on, kuidas tal koolis läheb - et lahendada menetlus alaealisele parimal moel ja määrata alaealise huve arvesse võttes sobivaim karistus.

A: (EN) The judge receives an overview of the minor in advance of the hearing – what kind of family they are from, how they are doing at school – in order to resolve the proceedings in the best way for the minor and to determine the most appropriate sentence taking into account the minor's interests.”

Judge, Estonia

The other professionals reported following purposes of the assessment:

- The risk assessment is added to the court files, to help in sentencing and determine measures of influence. Based on the risk assessment, a maintenance plan is completed. A summary is made by the Ministry of Justice, which provides relevant instructions, e.g. for child protection, for planning certain activities.
- To assess which measures the child could be referred to. It also assesses whether a child is eligible to participate in a therapy programme (e.g. multidimension family therapy MDFT).
- The assessment is used during pre-trial proceedings and is written into the indictment. Prosecutors consider the assessment of probation officers when imposing sentences and measures.
- The assessment is used to refer to family therapy or to provide background information to the therapist.

d. Challenges

According to the interviewees there are no hurdles for certain distinct groups of children.

e. Discussion of findings

The individual assessment is understood very differently by different groups of professionals depending on the area of their work and which stage of the criminal proceedings they are familiar

with. Based on the findings, some form of assessment or collecting of information on the child is carried out by the police. For cases that are taken to the court, a pre-trial report is prepared, if the prosecutor requests one. If the officials so decide, the child may be subjected to a forensic psychological assessment. For children who are on probation, risk assessment is carried out.

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

i. Legal overview

The Code of Criminal Procedure provides that in case of a child defendant, the court may order that detention is replaced by placement in a closed childcare institution.⁴¹ This option was added with the amendments that entered into force in 2018, before the transposition of the Directive.

The service of closed childcare institutions is regulated by the Social Welfare Act.⁴² A closed childcare institution service is a round-the-clock service provided to a child whose liberty has been restricted by a court order. The purpose of the service is to support the child's psychological, emotional, educational and cognitive development in order to achieve lasting changes that will enable the child to successfully cope in a normal environment without behaviour that would harm their life, health and development and the life and health of other persons.⁴³

In addition to using the service as an alternative to detention during criminal proceedings, children aged 14-18 can be placed in the closed childcare institution by the court as a sanction for committing a criminal offence under § 87 of the Penal Code. In addition, local government authorities can submit an application to the court to place a child in the closed childcare institution if the child's behaviour endangers their own life, health or development or the life or health of other persons and this risk cannot be eliminated by any less restrictive measures.⁴⁴

The Code of Criminal Procedure also includes other preventive measures which can be used as alternatives to detention, such as prohibition on leaving the place of residence or electronic surveillance.⁴⁵ According to the 2018 prosecutors' agreement "Special treatment of juvenile offenders in criminal proceedings", replacing detention with electronic surveillance is used if the child's presumed conduct does not pose an immediate risk of continuing serious crime, if the child's home environment is sufficiently stable, and when it enables continuing social activities, such as going to school. When electronic surveillance is applied, appropriate additional behavioural control is also specified. In addition to the preventive measures, non-procedural options can be used to guide the behaviour of children, such as referral to family therapy or another programme, or support for relocation to attend a different school.⁴⁶

In a 2019 master's thesis, for which 15 experts (police officers, prosecutors, judges, etc) in the field of juvenile criminal justice were interviewed, it was noted that neither prohibition on leaving the place of residence or electronic surveillance have found regular use when it comes to children, as they are either not proven effective or there are other obstacles (e.g. the child does not have a home or the

⁴¹ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 131 (3²), 12 February 2003.

⁴² Estonia, Riigi Teataja, [Social Welfare Act \(Sotsiaalhoolekande seadus\)](#), Division 7¹, 9 December 2015.

⁴³ Estonia, Riigi Teataja, [Social Welfare Act \(Sotsiaalhoolekande seadus\)](#), § 130¹ (2), 9 December 2015.

⁴⁴ Estonia, Social Insurance Board (Sotsiaalkindlustusamet), [Kinnise lasteasutuse teenus](#).

⁴⁵ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 128, § 137¹, 12 February 2003.

⁴⁶ Estonia, Alaealistele spetsialiseerunud prokuröride kokkulepe, [Kuriteo toime pannud alaealiste erikohtlemine kriminaalmenetluses](#), Narva-Jõesuu, 21 February 2018.

parents are not able to control the behaviour of the child at home). Interviews with specialists showed that the replacement of detention with placing the child in a closed childcare institution has been widely used and that this measure is mostly positively assessed, as children receive at least basic education in the institution.⁴⁷ The interviewed experts agreed that detention is used as a last resort for children, only if all possible options for influencing the child have been tried in the past and have not proven effective. Interviewed judges provided positive feedback about the quality of applications for arrest warrants, explaining that the applications regarding children are thoroughly motivated by the prosecutors, and the relevant court hearings can last for several hours, because all parties ask questions and the whole life of the child is thoroughly examined, making detention a very carefully considered decision.⁴⁸

Arrest warrants and other court orders on preventive measures can be appealed in accordance with the appeal procedure set out in Chapter 15 of the Code of Criminal Procedure.⁴⁹

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

According to all interviewees, deprivation of liberty of a child is used as a last resort measure and used very rarely. For example, an interviewed judge brought out that in Tallinn area, prosecutors request the court to arrest a child only once or twice a year. In case of a serious crime (like murder or when very serious damage to health has been caused) though, the child is arrested even if it is the child's first crime. In case of second level crimes, the prosecutor does not lightly request the arrest of the child. Deprivation of liberty is considered only when all other measures have failed. However, the issue that some interviewees (mainly judges, prosecutors, police, and lawyers) highlighted is that many of these alternatives only emerged a few years ago, so the use of alternative measures is still in its infancy. The interviewed experts mentioned the following alternative measures in use:

- prohibition to leave the place of residence (house arrest);
- electronic surveillance or ankle monitor (this is typical of cases where a child has already committed criminal offences repeatedly, has a suspended sentence and commits a new offence during probation);
- placing the child in a closed childcare institution;
- community service;
- shock imprisonment (usually a short-term detention applied with the intent to make the person realise the consequences of their criminal acts);
- counselling;
- social programmes like for example "ringist välja" (out of the circle) ("ringist välja" is a network-based model introduced in 2020 by the Ministry of Justice and the aim of the programme is to identify risks and opportunities related to young people in particularly

⁴⁷ Vlassova, V. (2019), [Alaalistele kohtueelses menetluses kohaldatavate tõkendite süsteemi arenguvajadus](#), Master's Thesis, Tartu University, Law Department in Tallinn, p. 56-59.

⁴⁸ Vlassova, V. (2019), [Alaalistele kohtueelses menetluses kohaldatavate tõkendite süsteemi arenguvajadus](#), Master's Thesis, Tartu University, Law Department in Tallinn, p. 53-55.

⁴⁹ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 383-392, 12 February 2003.

complex cases and to ensure young people's legal compliance through cooperation between specialists from several institutions and their families;

- addiction treatment;
- MDFT or multidimensional family therapy;
- paying the victim financial compensation for damage caused by the crime.

Based on the interviewees' answers, placing the child in a closed childcare institution seems to be the most popular/used option as an alternative measure. However, one interviewed lawyer mentioned that there are too few closed childcare institutions with too few spaces for children. There seems to also be fluctuations in the quality of closed childcare institutions based on the interviews with children.

The interviewed experts mostly do not think that there are distinctions made between different groups of children.

“Q: What are, in your opinion, typical circumstances when a child is either deprived of his/her liberty or alternative measures are used?”

A: (EN) Tüüpiliselt asjad, kus võetakse [lapselt] vabadus on need, kus lapsel on juba enne 14. eluaastat pandud toime kehalised väärkohtlemised, siis, kui ta on varasemalt kohtu all olnud, kui varasemad katseajad on määratud kohtuga, aga ta ei lõpeta oma kuritegelikku tegemist. Teda on igatepidi juba erinevate institutsioonide poolt mõjutatud, aga ta ei lõpeta kuritegelikku tegevust. Sellist stampi ei ole, et nt 3. kord [jäab vahele] ja pannakse vanglasse.

A: (EE) Typically, the cases in which deprivation of liberty is imposed [on children], are those where the child has already committed physical abuse before the age of 14, when they have previously been tried in court, when previous probation periods have been ordered by a court, but they did not stop their criminal activity. In short, they have already been influenced by various institutions in every way, but do not stop criminal activity. There is no such rule, for example, [that getting caught for] the 3rd time means placing in prison.”

Police officer, Estonia

“Q: From your experience, could you briefly specify the alternative measures that are applied?”

A: (EE) No alternatiivseid meetmeid, kui me räägime näiteks menetluse lõpetamisest prokuratuuri poolt, võib-olla siis lihtsalt see, et kas üldkasulik töö, mingisugune sotsiaalprogramm või nõustamine. Näiteks siis mitmedimensiooniline pereteraapia või siis „Ringist välja“ mudeli kasutamine, mis on ka praegu väga populaarne. Samuti siis näiteks mingi sõltuvusravi või mingite ainete tarbimise keeld, eks ole. Ka mingisuguse kahju heastamine, et laps siis kas ise või siis vanema kaudu tuleb heastada kuriteoga tekitatud kahju. Ja noh muidugi saab määrata ka muid asjakohaseid kohustusi, mida seadus otseselt välja ei too, aga mida me saame määrata. Kas mingi väikese essee kirjutamine ja igasugu niisuguseid erinevaid asju võib siis ka kohaldada lapsele, mis antud juhtumi osas sobiks.

A: (EN) Well, alternative measures, if we are talking, for example, about the termination of the proceedings by the prosecutor's office, perhaps simply community service, some kind of social programme or counselling. For example, multidimensional family therapy or the use of the "Out of the Circle" model, which is still very popular today. Also, for example, some addiction treatment or a ban on the use of certain substances, right. Also compensating some kind of damage, so that the child, either by themselves or through a parent, has to compensate the damage caused by the crime. And, of course, there are other relevant obligations that are not directly set out in the law, but which we

can impose. Whether writing a short essay, or all sorts of different things can then also be imposed on the child, whatever is appropriate for the case.”

Prosecutor, Estonia

b. Medical examination

i. Legal overview

The right to a medical examination of children deprived of liberty was added to the Code of Criminal Procedure with the transposition bill of the Directive. The added provision states that the child “shall undergo a medical examination without undue delay upon deprivation of liberty in the cases prescribed by law or if necessary, and at their request, the request of their counsel or the person [designated by them] or on the initiative of the body conducting proceedings, and the conclusions thereof shall be taken into account upon making procedural decisions”.⁵⁰

The explanatory memorandum clarifies that if a child has been deprived of liberty but is not placed in a detention centre but released within the prescribed period of time (within 48 hours), and no request for medical examination is made or the examination cannot be carried out, the person conducting the proceedings must still ensure that the child is provided with medical treatment if necessary.⁵¹

If a child is placed in the detention centre, the medical examination outlined in the Imprisonment Act is applied, which was clarified with the following subsection during the transposition of the Directive: “The objective of the medical examination of detained suspect who is a child is to assess, in particular, their overall mental and physical condition. The findings of the examination shall be communicated to the body conducting the proceedings. If there are any new circumstances, an additional examination shall be conducted”.⁵²

There are no specific legal remedies in case the right to a medical examination is violated.

ii. The medical examination in practice

According to most of the interviewees (except interviewees who did not know or lacked the experience), everyone, including the child, their parents or the lawyer, have the right to request a medical examination throughout the procedure. However, according to one lawyer, children or their parents may not be aware of that right.

According to two other professionals, medical examination is always guaranteed if a child arrives at the detention house or prison. One interviewed police officer reported that if medical examination is needed in the detention house, an ambulance will be called. Furthermore, one police officer considered the lack of medical staff in the detention house an issue. So when a medical examination has to be done, or when, for example, the child is emotionally upset, an ambulance has to be called, and if needed, the child is taken to a hospital for a medical examination.

According to a police officer, when a child goes to prison, the child is not asked for consent for a medical examination, but is automatically examined by a prison doctor. Usually the prison doctor records any injuries, asks the child about medications, use of alcohol and drugs, information about a

⁵⁰ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 34 (1¹) 4), 12 February 2003.

⁵¹ Estonia, Ministry of Justice (Justiitsministeerium), [Explanatory memorandum to the bill “Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmise\)”](#), p. 4, 11 July 2019.

⁵² Estonia, Riigi Teataja, [Imprisonment Act \(Vangistusseadus\)](#), § 14 (1¹), 14 June 2000.

family doctor etc. If a child is placed in a detention house for up to 48 hours, they will fill in a questionnaire (however, this was mentioned only by one police investigator, so it is not clear whether it is always done in practice), including on whether they have any illness(es) for which they need to take medication.

According to judges, all detainees are guaranteed medical care. One judge explained that when the serving of the sentence starts, everyone will undergo a medical examination. However, they do not know if it is the same for suspects who have been arrested. According to two prosecutors, the medical examination certainly includes a physical examination, but if it turns out that the child may have a mental health problem, it will also be addressed.

„Q: When children are deprived of their liberty, do they (or their lawyer, or the holder of parental responsibility) have the right to request and trigger a medical examination?

A: (EE) Kõigile kinnipeetavatele on tagatud arstiabi. See tuleb üldisest paragrahvist. Kui vahistamisel täisealised toovad tihti välja, et ei ole põhjendatud tõkendi kohaldamine, kuna tal on see või teine tervisehäda, siis ma nende vahistamismääruses selgitan, et kõigile kinnipeetutele on tagatud vajalik arstiabi – see tuleb vangistusseadusest.

A: (EN) All detainees are guaranteed medical care. It comes from a general legal provision. When arrested, adults often point out that detention is not justified because they have this or that health problem, then I explain in their arrest warrant that all detainees are provided with the necessary medical care – it comes from the Imprisonment Act.“

Judge, Estonia

„Q: When children are deprived of their liberty, do they (or their lawyer, or the holder of parental responsibility) have the right to request and trigger a medical examination?

A: (EE) See on selline huvitav asi, et kuidas see praktikas toimib ma ei tea. See tuli jah, et on õigus nagu tervisekontrollile, aga näiteks meil arestimajas eraldi mingeid meditsiinitöötajad ei ole. Kui on muidugi vahistamine ja ta saadetakse vanglasse, siis seal kindlasti see meditsiinipersonal on. Tegelikult see õigus nagu justkui on, aga kuidas see praktikas tegelikult rakendub. Kas me peaksime kutsuma mingisuguse kiirabi endale siis siia, kes nagu ütleb, et jaa, et laps on nagu korras või siis perearsti välja kutsuma, et ta näiteks on käinud ja kõik on korras olnud. See on selline keeruline küsimus tegelikult, et kuidas see praktikas rakendub.

A: (EN) It's such an interesting thing that I don't know how it works in practice. It came, yes, that there is a right to a medical examination, but, for example, we do not have any medical staff in the detention house. If, of course, there is an arrest and the child is sent to prison, then there is definitely medical staff. The right is there, but how is it actually put into practice. Should we call some kind of ambulance ourselves here, who says that yes, the child is fine, or call a family doctor, for example, that they have been here and everything is fine. It's such a difficult question, in fact, how it works in practice.“

Police officer, Estonia

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

According to two interviewed other professionals, one police officer, two judges and two lawyers, medical examinations done in prisons are used to provide the child with appropriate medical care (including mental health care) or take into account other special needs (e.g. if a person has lactose intolerance or prefers vegetarian food), if necessary. Another interviewed other professional emphasised that medical examination can also be used in court proceedings, for example, to take into

account how much a child is able to understand. According to one prosecutor and a lawyer, the medical examination, especially mental health examination, plays an important role when sentencing or making a decision (determining an appropriate or punitive measure for the child). One interviewed police officer also mentioned that if it is known that the child has mental health issues, a psychiatric examination will be ordered, after which the doctor can declare the child incapable of guilt if applicable.

c. Special treatment in detention

i. Legal overview

The right to specific treatment of children in case of deprivation of liberty was added to the Code of Criminal Procedure with the bill transposing the Directive.⁵³ Neither the bill nor the explanatory memorandum offer any further clarifications about the content of that specific treatment.

In the declaration of the rights that is provided to child defendants to inform them about their rights, it is explained that special treatment in custody means that if the child is detained, they have the right to be kept separately from adults, but not if it is against their interests. If the child is deprived of their liberty, they still have the right to participate in family life, education, training and programmes designed to help them.⁵⁴

In connection with that right, the Imprisonment Act was also amended. The segregation of children and adults was already provided for in the Act, but the amendment added that exception to the requirement of segregation may be made if segregation of a child from adults is contrary to the interests of the child.⁵⁵ It is not specified who assesses the interests of the child or how.

There are no specific legal remedies in case the right of a child to specific treatment is violated. All prisoners, detained persons and persons held in custody have the right to file complaints to the prison service or the Ministry of Justice. If the prison service or the Ministry of Justice has rejected the complaint, it is possible to file a complaint with the Administrative Court.⁵⁶

ii. The special treatment in practice

According to most of the interviewees, children suspected or accused of a crime are held separately from adults, including when in police custody, pre-trial detention, and post-trial detention. This is in line with the law and the findings of the children's study. However, one interview with a child serving their time in prison revealed that they were kept separately from adults in the cell, but they were together with adults in prison sectors when they were in pre-trial detention for six months.

The interviewed experts' opinions and experiences regarding access to health care while detained vary a little bit – while most interviewed experts think that children have an adequate to a good level of access to health care when deprived of their liberty, some do not agree. For example, one police investigator mentioned that access to medical care in a detention house could become an issue – detainees cannot be given medication, for example, painkillers, when there is no doctor present. One interviewed lawyer mentioned that medical care in Tallinn prison is below any standard (for example, in case of back pain, painkillers are given but no actual treatment is provided). One interviewed other professional also reported that there are problems with access to medical care in closed childcare

⁵³ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 34 (1¹) 5), 12 February 2003.

⁵⁴ Estonia, Minister of Justice (*Justiitsminister*), [Alaeline õiguste deklaratsioon](#), Annex 3 of the Regulation "Õiguste deklaratsiooni näidisvormi kehtestamine" of 17 July 2014 (amendment entered into force 30 December 2019).

⁵⁵ Estonia, Riigi Teataja, [Imprisonment Act \(Vangistusseadus\)](#), § 12 (5), 14 June 2000.

⁵⁶ Estonia, Riigi Teataja, [Imprisonment Act \(Vangistusseadus\)](#), § 1¹ (5), 14 June 2000.

institutions – they have a lack of medical specialists on site. If possible, children are sent to support services or to see a family doctor outside a closed childcare institution, but this is always not possible due to logistics. This correlates to the findings of interviews with children, who reported a lack of mental health care in the closed childcare institution and a lack of doctors on site. According to one child, they have only a nurse on site who gives the children their medication. However, according to one interviewed lawyer's experience, they do have doctors and nurses on-site and organised medical monitoring in closed childcare institutions, which can highlight the differences in the quality of closed childcare institutions.

According to all the interviewees who had knowledge and experience regarding this question (for example, some other professionals did not know), access to education and training is provided in both prison and a closed childcare institution. However, according to one interviewed judge, there is no schooling during detention (before sentencing). This correlates to an interview with a child who was detained for 6 months and did not continue school at that time. However, later when they were sentenced and transferred to another prison to serve their sentence, they did start school again.

Furthermore, according to some interviewed other professionals, lawyers, prosecutors and judges, children in prison are also guaranteed access to various programmes that promote their development (MDFT therapy, art, light and music therapy, psychological help, etc.), but their participation largely depends on the child's own will and consent to participate and behave well. However, one lawyer argued that there are no special physical or mental development measures in prisons other than having access to the gym and books to read.

Most interviewees agreed that there are problems in providing follow-up services to young people who have left prison or closed childcare institutions. There are some programmes that promote children's reintegration into society, but their effectiveness is questionable. Many interviewed experts, mostly other professionals, emphasised that children need more support in getting back on track.

„Q: In your experience, when children are deprived of liberty, do they - to an appropriate level - have access to physical and mental development measures?

A: (EE) See füüsilise ja vaimse arengu meetmed kui me nüüd räägime vangistusest, siis meil on väga pikad vangistused nende väga raskete kuritegudega. Ja siinkohal jääb tegelikult sellisest arengust lastel ikkagi väga puudu. Kui ta tuleb meil 14. aastasena vanglasse ja lahkub meil sealt 22. aastasena, siis ta tegelikult ei ole vaimselt jõudnud sinna 22. aastase tasemele. Seda on näha nii erinevatel elu etappidel. Seda on näha näiteks nende otsustusvõimes – nad ei suuda teha iseseisvaid otsuseid väga palju. See on tihtipeale näha neil näiteks seksuaalelus. Nad ei olegi näinud seda osa kus sa noh ma ei tea, tüdrukutega fliridid ja seal ongi sellist noh, kurameerimist. See osa on täiesti puudu neil seal elust. Tegelikult selline täiesti normaalne areng on puudu. See on see, miks ma seal vastasin ei (küsimuse kohta, mis puudutas vangistatud laste ligipääsetavust füüsilise ja vaimse arengu meetmetele). Erikoolis on natukene lihtsam.

A: (EN) These measures of physical and mental development, if we now talk about imprisonment, then we have very long imprisonments for these very serious crimes. And here, in fact, children still miss such a development. When he comes to prison at the age of 14 and leaves at the age of 22, he has not really reached the level of a 22-year-old mentally. This can be seen at so many different stages of life. This can be seen, for example, in their decision-making capacity – they are not able to make very many independent decisions. This is often seen in their sexual life, for example. They haven't seen the part where you, I don't know, flirt with girls and such a thing as courtship. This part is completely missing from their lives there. In fact, a normal development is lacking. That is why I answered previously no

(question on access to physical and mental development measures for children deprived of liberty). It's a little easier in a special school."

MDFT supervisor-therapist, Estonia

d. Contact with family members during deprivation of liberty

According to most interviewees who have experience with children deprived of their liberty, children mostly always (if not banned by the prosecutor's office or when the child has violated prison rules) have the opportunity to contact and meet with their family members when deprived of liberty (in prison and in a closed childcare institution). According to most interviewees, it is possible for children to call family members immediately after arrest, however, some argued that if a child is arrested, all meetings are generally excluded until a certain stage of investigation is reached.

The communication takes place either by face-to-face meetings or phone calls. In closed childcare institutions, they generally have visiting days and certain times when children can make phone calls. According to some interviewees – one police officer, one other professional, one prosecutor – face-to-face meetings were banned during the COVID-19 pandemic.

e. Discussion of findings

According to all interviewees, deprivation of liberty of a child is used as a last resort measure and used very rarely. Deprivation of liberty is considered when all other measures have failed. The most popular alternative measures to deprivation of liberty include placing a child to a closed childcare institution, house arrest, electronic surveillance, community service, different types of therapy and social programmes, etc. According to the interviewees, everyone (including the child, their parents or the lawyer) has the right to request a medical examination throughout the procedure, however, children or their parents may not be aware of that right. Medical examination is always done when a child first arrives in prison, however, there are issues like lack of medical staff in detention houses and closed childcare institutions. According to the interviewees, medical examinations are used to take into account the child's special needs and to help determine an appropriate or punitive measure for the child. The interviewed expert's experiences and opinions vary regarding children having access to health care services, physical and mental development measures, education, and training, as well as programmes that foster their personal development and reintegration into society. While most agree that there is appropriate access to education and training, as well as urgent health care services and physical development measures, there is room for improvement in the provision of mental health care and mental development measures. Furthermore, most importantly there is a need for better programmes that help with reintegration into society, that are currently lacking and rely on the child's own and their family's motivation to participate.

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

a. Legal overview

According to the explanatory memorandum to the bill transposing the Directive, Article 16 of the Directive did not require any amendments to be made in the Estonian legislation. The Code of Criminal Procedure provides that the accused person has the right to examine the criminal file through their lawyer and participate in the judicial hearing.⁵⁷ There are no specific provisions for children or any guidelines about measures to enable children to participate in the trial "effectively".

⁵⁷ Estonia, Riigi Teataja, [Code of Criminal Procedure](#) (*Kriminaalmenetluse seadustik*), § 35 (2), 12 February 2003.

At the request of the Ministry of Justice, a website on child-friendly proceedings was created, which contains information and contacts for children and parents who come into contact with the legal system. The website also includes information about how a court hearing is conducted and how to behave during the hearing, in child-friendly language.⁵⁸

The transposition bill of the Directive added a section to the Code of Criminal Procedure concerning the right for the child's parent, other legal representative or relevant person to participate in the proceedings at the request of the child defendant, more specifically, to accompany the child during a court hearing, or during the performance of procedural acts, if this is in the interests of the child in the opinion of the body conducting the proceedings, and does not impede the criminal proceedings by means of causing delays or in any other manner.⁵⁹

The explanatory memorandum to the bill explains that the right to have the child's legal representative or other person to be present does not outweigh the need to carry out certain procedural steps without delay and to conduct the criminal proceedings without undue delay. It is also clarified that the person conducting the proceedings must be prepared to explain the reasons for denying the request to the child in a way the child understands. Any affected person may file a complaint pursuant to § 228 of the Code of Criminal Procedure (the general appeal procedure against procedural violations).⁶⁰

b. Right to effective participation in practice

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

The **police officers** were not asked about the right to participate in the trial.

According to the **lawyers**, the children are generally heard in the ordinary courtroom. The answers about the procedure varied. One lawyer claimed that the procedure is the same for adults and for children.

Hearing is public or closed depending on the circumstances. One interviewee said that the court hearings are generally public, unless there are grounds to declare them closed. It also depends on the age of the child.

One interviewee said that if the child is a defendant on trial, the child must be present. This contradicts with the claim made by another interviewee who said that sometimes the judges allow using video if the child is detained in another city – this was reported as a good practice.

„Q: 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? Please elaborate.

A: (EE) Viimastel aastatel on tavapärane, et kui laps soovib kaasa tugiisikut, siis teda istungile lubatakse.

Istungil võimaldatakse ka üle videosilla ütlusi anda, kui laps on kannatanu või tunnistaja. Kui laps on kohtu all süüdistatavana, siis peab laps ise [istungil] kohal olema.

⁵⁸ Estonia, Ministry of Justice (*Justiitsministeerium*), Lapsesõbralik menetlus, [Juhtumi lahendamise kohtus](#).

⁵⁹ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 35² (3), 12 February 2003.

⁶⁰ Estonia, Ministry of Justice (*Justiitsministeerium*), [Explanatory memorandum to the bill “Karistusseadustiku ja teiste seaduste muutmise seadus \(Euroopa Liidu finantshuvide kaitse direktiivi ja alaealiste menetlusõiguste direktiivi ülevõtmine\)”](#), 11 July 2019.

A: (EN) In recent years, it has been customary that if a child wants to be accompanied by a support person, they will be allowed to attend the hearing.

It is also possible to testify over a video bridge, if the child is a victim or witness. If the child is a defendant on trial, the child must be present [at the hearing]."

Lawyer, Estonia

The **prosecutors and the judges** confirmed that courtrooms are the same for everyone, there are no separate rooms for children. The children's rooms at the courts are only for questioning child victims. One interviewee gave a reason why the child is tried in the same courtroom as the adults: the authority of the court is used to influence the offender, including the child. Children who are brought to justice for their offence have usually committed offences several times and are being persuaded by the seriousness of the proceedings to get back on track. That is why the hearings are held in the usual rooms and using the usual routine.

The main difference for the children is that the court does more explanatory work in children's hearings than in adult hearings. It is important that the child understands, and that the right solution is found. There is a more relaxed atmosphere in the court and the communication is not so official. If the rules stipulate that it is necessary to stand up to speak in court, then such a rule is not followed in case of children, and the procedure is less formal, the child may remain seated. If the child is not arrested before the hearing, they will not sit behind the barrier, but in the first bench.

The prosecutors and the judges gave different answers to the question about the hearing. One said that the hearings are declared closed if necessary. Two said that the hearings are usually closed in case of children, but parents can be in the room, the child's lawyers are always present. One pointed out that in the best interests of the child, not only are the court hearings closed, but in the court calendar, information about the hearings does not include the child's full name but only initials to protect their identity (from media interest). This is based on the Code of Criminal Procedure, which provides that "the time of a court hearing is published on the website of a court indicating the number of the criminal matter, the name of the accused who is an adult, and the initials of the accused who is a minor".⁶¹ This provision existed before the transposition of the Directive.

"Q: 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?"

A: (EE) *Tavaliselt on lapse huvides kohtuistungid kinnised, kohtukalendris istungite kohta infos ei ole lapse terve nimi vaid initsiaalid, et kaitsta tema isikut (meedia huvi eest), kindlasti on istungil kaitsja. Vajadusel ka tsiviilkostja. Istungil on lapse seaduslik esindaja, ta võib osaleda ka siis, kui istung kinnine.*

A: (EN) *Usually, in the best interests of the child, court hearings are closed, in the court calendar, information about the hearings does not include the child's full name but only initials to protect their identity (from media interest), there is definitely a lawyer present at the hearing. if necessary, also a civil defendant. The child's legal representative can attend even if the hearing is closed."*

Prosecutor, Estonia

According to the **other professionals**, there are no special courtrooms for children. Hearings are declared closed when necessary, meaning not always. The children suspected or accused of a crime can consult with their lawyer or support person before and during the hearing, but the child may not always dare to do so according to the interviewees.

⁶¹ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 169¹, 12 February 2003.

According to one interviewee, the organisation and the conduct of court proceedings may be more flexible in case of children, meaning that the hearings can be organised immediately, even when not planned beforehand, so that the child's procedure will not experience any delays.

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

The **lawyers** concentrated in their answers on how the child is talked to. None of the lawyers seemed concerned about the child being able to state their views. One interviewee pointed out that the cross-examination is not applied to children pursuant to the law.

„Q: 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?

A: (EE) Noh, seadusest tulenevalt alaealiste puhul risküsitlust ei kohaldata. Et osapooled ikkagi püüavad küsida väga selgeid küsimusi, kus on võimalus vastata nagu väga selgelt. Et selliseid keerulisi küsimusi ei ole mõtet esitada ja ei ole mõtet ka esitada mitmeid küsimusi järjestikku ühes osas. Siis lapsel tegelikult jääb meelde ainult esimene küsimus ja vastab sellele ära ja kõik. Et seda ikkagi kohaldatakse ja on ka neid koolitusi ju, et kuidas küsitleda alaealist. See on spetsiifiliselt just nendele isikutele, kes lastega tegelevad.

A: (EN) Well, by law, cross-examination is not used in case of minors. The parties try to ask very clear questions, where there is an option to answer very clearly. There is no point in asking complex questions, nor is there any point in asking several questions in a row in one part. Then the child actually remembers only the first question and answers it and that's all. This is still applied and there are also these trainings after all, how to interview a minor. This is specifically for those persons who work with children.“

Lawyer, Estonia

Several lawyers pointed out that the parties try to ask very clear questions and the judges explain in relatively simple language what will happen in the proceedings, what rights and obligations the participants have.

The **prosecutors and judges** all except one emphasised that the questioning of a child depends on the type of proceedings, such as whether it is a simplified procedure or a settlement procedure. For example, in a settlement procedure, the accused will not be heard at court at all. This view was contradicted by another interviewee who claimed that in a settlement procedure, more questions are usually asked from the children. One interviewee rounded it up by saying that there are many different types of criminal proceedings and child will not always have the chance to speak at the court. For example, if the circumstances are known, then conciliation procedure is used and the substantive discussion of the matter does not take place in court – it is examined whether the punishment agreement between the accused and the prosecutor is in accordance with the law – the child is not heard in this procedure.

“Q: 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? Please elaborate.

A: (EE) Kriminaalmenetluses on palju erinevaid liike menetlusi. Kui asjaolud on teada, siis on kokkuleppemenetlus ja kohtus asja sisulist arutelu ei toimu – vaadatakse, kas karistuskokkulepe süüdistatu ja prokuröri vahel on seadusega kooskõlas – selles menetluses last üle ei kuulata. Lühimeneluses toimub asja otsustamine kirjalike materjalide põhjal ja ka selles menetluses lapse ülekuulamist kohtus ei toimu. Klassikaline menetlus – Eesti seadustes nimega “üldmenetlus”, mida on kõigist kohtusse tulevatest kriminaasjadest ehk 10%, alaealiste asjadest moodustavad

üldmenetlused alla 5%, sest tavaliselt on lapsed lihtsustatud menetlustes. Neis üldmenetluse asjades toimub lapse ülekuulamine kohtus – st seda toimub haruharva. Pigem küsitakse kohtus lapselt tema suhtumist oma teosse ja vaadatakse tulevikku – küsitakse, mida ta tahab tulevikus õppida, mida edasi plaanib teha.

A: (EN) *There are many different types of criminal proceedings. If the circumstances are known, then conciliation procedure is used and the substantive discussion of the matter does not take place in court – it is examined whether the punishment agreement between the accused and the prosecutor is in accordance with the law – the child is not heard in this procedure. In alternative procedure, the case is decided on the basis of written materials, and in this procedure the child is not questioned in court either. Classical proceedings – in Estonian law, called “general procedure”, which is 10% of all criminal cases brought to court, or less than 5% of juvenile cases, because children are usually in simplified procedures. In these general proceedings, the child is questioned in court – i.e. very rarely. The court asks the child about their attitude towards their offence and views of the future – asking what they want to learn in the future, what they plan to do in the future.”*

Judge, Estonia

Unlike the lawyers, one of the interviewees in this group of professionals claimed that at the beginning of the cross-examination, the judge draws attention to the fact that the defendant is a child, and all questions should be unambiguously understood by the child. Meaning that the child can be cross-examined.

“Q: *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? Please elaborate.*

A: (EE) *Enne risküsitlust juhin prokuröri ja kaitsja tähelepanu sellele, et tegemist on alaealisega ja küsimused peaksid olema sõnastatud alaealisele ühemõtteliselt arusaadavalt.*

A: (EN) *Before the cross-examination, I draw the attention of the prosecutor and the lawyer to the fact that the defendant is a minor and that the questions should be phrased in a way that is unambiguously understandable for the minor.”*

Judge, Estonia

According to the estimations of one interviewee in this group of professionals, in Estonia, the classical proceedings called “general procedure”, make up about 10% of all criminal cases brought to court, and less than 5% of juvenile cases, because children’s cases are usually processed in simplified procedures. In these general proceedings, the child is questioned in court. The court asks the child about their attitude towards their offence and their views of the future – asking what they want to learn in the future, what they plan to do with their life. The circumstances of the offence are no longer discussed much, it has already been investigated by that time. Also, the child's view or story emerges from their written statements. This will be taken into account in court.

Three **other professionals** discussed hearing the child’s perspective in court. According to one interviewee, the children are allowed to speak at the hearing and are heard, and there is no so-called grilling or aggressive questioning, which is more common in adult hearings. From the experience of another interviewee, the adolescents are very tongue-tied in court, as their anxiety is high. As a rule, they limit themselves to “don't know” answers or shrugging. One of the other professionals knew that the child's participation in the hearing depends on the type of proceedings. In case of alternative procedure, as a general rule, the parties are not involved in the hearing, but if the child wants to say something and come to the hearing, for example, the lawyer requests it. In settlement proceedings, agreements are made in advance and approved by the court. In this case, there is no longer any expression of opinions in the courtroom.

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

Both the lawyers and the prosecutors and the judges agreed that the parents are present at the hearing. In recent years, it has been customary that if a child wants to be accompanied by a support person, they will be allowed to attend the hearing. There seem to be no obstacles for the child to discuss with their lawyer during the hearing, also breaks are allowed.

None of the other professionals discussed this matter.

d. Discussion of findings

The child is offered a chance to speak their mind in the courtroom if their procedure is of a type that there is a court hearing with the defence and prosecution invited to express their views. The courtrooms are the same for all – adults and children alike. The judges make an extra effort to make sure that the child understands what is going on and what is talked about during the hearing. The child is accompanied in court by a lawyer and a parent.

There are conflicting opinions among the professionals whether the hearing is declared closed. Most claim that it is done if there is a need for it, or there is a legal ground that demands it (the child defendant not being the ground itself).

PART D. GENERAL ASSESSMENT

D.1 Challenges

The interviewees were asked about the challenges regarding the procedural guarantees of children. Great many different issues and problems were mentioned with only few overlaps, meaning that very few of the challenges were mentioned by several interviewees. The challenges are grouped together according to the topic discussed.

Challenges related to lawyers, their work or right to have a lawyer

The quality of the free legal aid assigned by the state may vary – while some lawyers do an excellent job, there have been complaints from the children and their families that the lawyers are not motivated to help the child and do not keep the child's best interests in mind, nor were they proactive in their work as the defence lawyer. It was also mentioned that in Estonia there is a lack of specialised lawyers who work with children. This was also confirmed by the interviews with children.

Challenges related to institutions where children deprived of liberty are held

The institutions where the children who are deprived of their liberty are held lack social programmes and other measures to support the development of a detained child. This finding was confirmed also by the interviews with children.

Access to medical care in detention houses, prisons and in closed childcare institutions is a challenge. There is a lack of medical staff in the detention houses, in case a child needs medical aid, ambulance must be called. Generally, the closed childcare institutions do not have doctors on site, but rather nurses who give the children their medications. When a child needs to see a family doctor or a therapist or psychologist, they need to be taken outside the premises. While most interviewees agreed that there is appropriate access to urgent medical care in prisons, some argued that proper medical care is lacking (for example, giving only a painkiller for back pain, but not actually providing treatment). Many children held in closed childcare institutions have psychiatric conditions and they need special care and support which is often lacking in these institutions.

There do not seem to be enough vacancies at the closed childcare institutions (KLAT – in Estonian kinnise lasteasutuse teenus). If the prosecutor's office wants to refer the child to the closed childcare institution as a sanction, sometimes there is a queue, or there are no places. No similar service at the upper secondary school level exists.

Challenges related to the conduct of criminal proceedings

The children do not always understand the information that officials pass on to them. There is a lack of plain language information for children. As there are many Russian-speaking children, the interpreters should be trained to communicate with children in the criminal proceedings. Simultaneous interpretation is offered, but this is not child-friendly. The child has the right to be questioned by the police in their mother tongue, but the written statement is currently in Estonian. Presently, the interpreter translates the statement, and the child has to trust the interpreter.

On some occasions, the police pressures children to admit their guilt before the lawyer has arrived. This finding was confirmed by the results of the children's study.

Electronic surveillance as a restrictive measure on person's liberty before the court trial should be counted in the imprisonment time. At the moment, it is not.

Challenges related to social programmes and support offered to children by non-legal professionals

It was claimed that often the child is only dealt with and supported after a court decision (e.g. referred to a programme or probation where a risk assessment is performed, etc.). The support and social programmes should start earlier. Although there are preventive programmes, participation in them is generally not monitored.

Many officials who work with children (especially child protection specialists) are often more willing to send children to a special school (closed childcare institution) than to change the circumstances of the child's life. Insufficient training of the officials may be the cause of this.

D.3 Promising practices

All children are assigned a lawyer by the state free of charge. This practice seems to work without problems and there seem to be no cases of children where the lawyer is not present in the proceedings.

The expert interviews revealed that the police officers and the prosecutors who come in contact with children in criminal proceedings have received special training and have specialised in working with children.

The procedure is from the police perspective as child-friendly as possible and standardised across Estonia. Proceedings are conducted not just for the sake of conducting proceedings, but the officers aim to get the child on crime-free track by involving their support network. Estonian police structures use alternative methods such as conflict mediation, restorative group discussions (rehabilitation rounds) which are held to help the parties speak their minds without initiating formal proceedings. Using a new Multidimensional Family Therapy programme, designed for the whole family, not just the child, has given good results. These measures are either piloted or used for the purpose of a child-friendly procedure.

Rapid intervention is a good practice. In smaller cases, the investigation is terminated and sent to the prosecutor's office within two weeks. The criminal proceedings of children are shorter than the proceedings involving adults. During the last 10 years, prosecutors have gained more rights, which means that fewer and fewer cases go to court. It is attempted to solve most cases out of court for the benefit of the children (shorter procedure).

If the juvenile justice system encounters a child who is considered dangerous, a round table will be organised to discuss the case, with the police, the prosecutor's office, the Social Insurance Board, the local government, and, if possible, child psychiatrists will be involved. The round table discusses why the young person committed the offence, what is the best solution, whether an alternative measure can be applied or, if punishment is unavoidable, what punishment it should be so the child would not become a criminal, what support should be provided to the child when they are released from the prison.

In general, it was said that there is a good co-operation between the prosecutor, the lawyer and the judge. The court will meet halfway, if necessary, for example, allowing a video hearing if the child is in custody in a different city. The court does not have to allow this by law.

In Estonia, there are few children who are offenders, therefore, an individual approach can be used when child comes in contact with the criminal justice system. Even before the court, children are dealt with in the prosecution with the goal that they do not become criminals, to help them on the law-abiding path. The expert interviews emphasised that children are extremely rarely detained in prisons.

PART E. CONCLUSIONS

The Directive (EU) 2016/800 was transposed into Estonian legal system in 2019 by amendments to four laws. The findings of the study show that there are practices that are solid, and which help the child to navigate in the criminal justice system. For example, a state paid lawyer is always appointed to accused or suspected children by law. The questioning and court hearings cannot, as a rule, happen without a lawyer present. According to the interviewees, the lawyers can always effectively participate in all stages of the proceedings and there are no challenges regarding the involvement of a lawyer.

The age assessment of children using other means than documents or public registers does not seem to be a concern in Estonia. There were very few professionals who had heard of any cases where the child's age could not have been determined based on data from public registers.

Procedural Safeguards Directive lists eleven rights of which suspected or accused children should be promptly made aware of. The groups of Estonian professionals gave very different answers regarding how the informing of children of their rights is done in Estonia. The written declaration of rights was mentioned many times and it seems to be a well-established practice to show or read the declaration to a child. The accounts on whether children understand the information vary. The professionals also reported differently who is the primary person to inform the children. The police officers were perhaps most confident that they are the primary source of the information on rights for the child suspect.

The individual assessment is understood very differently by different groups of professionals depending on the area of their work and which stage of the criminal proceedings they are familiar with. Based on the findings, some form of assessment or collecting of information on the child is carried out by the police. If the case is taken to court, a pre-trial report is prepared, if the prosecutor requests one. If the officials so decide, the child may be subjected to a forensic psychological assessment. If the child is on probation, a risk assessment is carried out.

All interviewees agreed that the deprivation of liberty of a child is used as an absolute last resort and in general imposed on children in Estonia very rarely. The interviewed experts' experiences and opinions vary regarding children having access to health care services, physical and mental development measures, education, and training, as well as programmes that foster children's personal development and reintegration into society while in detention. While most agree that there is appropriate access to education and training, as well as urgent health care services and physical development measures, there is room for improvement in the provision of mental health care and support for child's development. Furthermore, there is a need for programmes that help with reintegration into society.

The children are kept away from prisons as well as courtrooms. The accused children only rarely end up having a court trial. Estonian police and the prosecution took pride in emphasising that effort is made to settle the case before the court or to apply the so-called softer measures. When a child does enter a courtroom, they are offered a chance to speak their mind. The courtrooms are the same for all – adults and children alike. The judges make an extra effort to make sure that the child understands what is going on during the hearing.

Abovementioned differing views and answers on topics discussed at the interviews could be explained by various things. There do not seem to be unified guidelines outside of the law which the professionals would follow in most cases when in contact with a child in criminal proceedings. The professionals have a considerable freedom to decide how to conduct the proceedings as long as they follow the law in force. Also, several experts had never participated in certain stages of the criminal proceedings and were unaware of the actual conduct of the proceedings in these phases. Some of

their answers reflected that they were unsure about the practice. This may alter the findings since the answers of more experienced juvenile justice experts are contradicted by the less experienced ones.

The findings of the study show that despite number of good practices there are still some shortcomings in guaranteeing children their procedural rights as provided in the Procedural Safeguards Directive. The experts themselves brought up several challenges (see above). In some form or another, these were all about supporting the child better in all stages of the proceedings and after the proceedings.

ANNEX 1 – Overview of national organisations working with children who are suspects or accused persons in criminal proceedings

Police and Border Guard Board (*Politsei- ja Piirivalveamet*) – investigative body conducting pre-trial proceedings. The Police and Border Guard Board employs youth police officers, whose task is to reduce the risk of young people and children being put at risk, including the prevention, deterrence, detection and processing of children's offences. The work of youth police officers is primarily organised on a school basis, each school has its own youth police officer. In addition, the youth police officer serves their local government area in cooperation with the regional police officer of the same area.⁶²

<https://www.politsei.ee/en>

Prosecutor's Office (*prokuratuur*) – government agency tasked with ensuring the legality and effectiveness of pre-trial criminal proceedings and representation of the state prosecution in court, as well as other tasks prescribed by law.⁶³ The Prosecutor's Office has prosecutors specialised in juvenile and young adult criminal matters, who are provided special training.⁶⁴

<https://www.prokuratuur.ee/en/prosecutors-office/contacts>

Courts (*kohtud*) – there are no specialised courts for child defendants, their criminal cases are heard in the county courts (first instance), circuit courts (second instance, on the basis of appeal), and the Supreme Court (the highest instance, on the basis of appeal).⁶⁵

<https://www.kohus.ee/en/estonian-courts/contacts>

Bar Association (*Advokatuur*) – Estonian Bar Association is the professional association of attorneys, which among other tasks organises the provision of state legal aid. If a person participating in legal proceedings has been granted state legal aid, an attorney appointed by the Bar Association represents and provides legal counselling to the person.⁶⁶

<https://advokatuur.ee/eng/contact>

Social Insurance Board (*Sotsiaalkindlustusamet*) – the Child Protection Department of the Social Insurance Board is responsible for providing support to local authorities in performing child protection functions, improving the quality of child protection work on local level, and developing a capable national and regional child protection system. The Child Protection Department performs tasks assigned to the Social Insurance Board by the Child Protection Act.⁶⁷ The Social Insurance Board also organises the provision of the closed childcare institution service.⁶⁸

<https://sotsiaalkindlustusamet.ee/et/kontakt>

Local Governments – The local government organises child protection at the local level and creates the necessary conditions to ensure the rights and well-being of children in its city or rural municipality.⁶⁹ The local government of the child defendant's place of residence is notified of the

⁶² Police and Border Guard Board (*Politsei- ja Piirivalveamet*), [Noorsoopolitseinikud](#).

⁶³ Prosecutor's Office (*Prokuratuur*), [About the Prosecutor's Office](#).

⁶⁴ Estonia, Alaealistele spetsialiseerunud prokuröride kokkulepe, [Kuriteo toime pannud alaealiste erikohtlemine kriminaalmenetluses](#), p. 16, Narva-Jõesuu, 21 February 2018.

⁶⁵ Estonian Courts (*Eesti kohtud*), [Estonian Court System](#).

⁶⁶ Estonian Bar Association (*Eesti Advokatuur*), [State Legal Aid](#).

⁶⁷ Social Insurance Board (*Sotsiaalkindlustusamet*), [Child Protection Department](#).

⁶⁸ Estonia, Riigi Teataja, [Social Welfare Act \(Sotsiaalhoolekande seadus\)](#), § 130⁵ (1), 9 December 2015.

⁶⁹ Estonia, Riigi Teataja, [Child Protection Act \(Lastekaitse seadus\)](#), § 17, 19 November 2014.

criminal proceedings if informing the child’s legal representative is impossible or not in the interests of the child or may significantly damage the criminal proceedings.⁷⁰

Chancellor of Justice – since 2011 the Chancellor of Justice performs the functions of the Ombudsman for Children in Estonia. Among other tasks, the Ombudsman for Children ensures that all state institutions and officials who make decisions having an impact on children would respect children's rights and have the best interests of children in mind when making these decisions. The Ombudsman also resolves complaints related to children’s rights in their relations with the individuals and authorities that perform public functions.⁷¹

<https://www.oiguskantsler.ee/en/advisers>

Estonian Union for Child Welfare (Lastekaitse Liit) – non-profit umbrella organisation that contributes to ensuring children’s rights and shaping a child-friendly society.⁷²

<https://www.lastekaitseliit.ee/en/contacts/>

ANNEX 2 – Tables

Table 2 Providing information on procedural guarantees (answers by the police officers)

<i>Who informs the children?</i>	<i>About which rights?</i>	<i>When?</i>	<i>How and in which form are they informed?</i>	<i>Do they understand the information?</i>	<i>How it is checked whether the children understand?</i>
Police	The participation of a lawyer is mandatory for a child. The right to have a parent present, teacher or other support person. There are more rights for children.	Explanation of rights is part of the questioning.	Each investigator reads these rights to the child.	To a certain extent, the explanation of rights is adapted to the needs of the child.	Investigators usually receive special training.
Not clear from the answers.	<ul style="list-style-type: none"> - The content of the suspicion - the right to testify or to refuse to testify, anything they say may be used against them - the lawyer is provided, - the right to consult with the lawyer before questioning. 	Not clear from the answers.	If, the child is deaf or has a hearing impairment, the minutes and the declaration of rights will be printed. The declaration is available in many languages. An interpreter, such as a sign language interpreter, will be at the interrogation if necessary.	Sometimes children understand their rights even better than adults.	Child is asked whether they understood the explanation.
Police	<ul style="list-style-type: none"> - The right to the assistance of a lawyer. 	At the 1 st interrogation or earlier.	Step by step, they are informed of their rights.	The child is not talked to in legal language, but as a child.	There are many techniques and tricks. Use of reference

⁷⁰ Estonia, Riigi Teataja, [Code of Criminal Procedure \(Kriminaalmenetluse seadustik\)](#), § 35² (1), 12 February 2003.

⁷¹ Chancellor of Justice (Õiguskantsler), [Protection of the rights of children and youth](#).

⁷² Estonian Union for Child Welfare (Lastekaitse Liit), [About the organisation](#).

	- the right to have a parent present at the hearing.		First, the child is told orally about their rights, what is happening, what is going to happen next. If the child does not speak Estonian, an interpreter will be present during the questioning. Children with disabilities are in the police with their legal representative.	Children do not fully understand, but according to the interviewee, they do their best to make the children understand to the maximal degree.	moments – more complex expressions or parts of words are associated with easier words that are known to the child. Reflecting information is the most effective technique – the officer receives immediate feedback on whether the child understood.
Police investigators	Always informed of their main rights, including their right to a lawyer. Information is given to the child both in writing and orally.	Usually they do it, i.e. the investigators, when the child comes to them for questioning.	The information is generally the same for all children, but No distinction is usually made between different groups of children.	Depends on the child whether they are able to understand. In addition, such legal talk may not always be understandable to a so-called person from the street, let alone children	if necessary, the information is provided in a simplified way. They use reflection techniques when communicating information to children in order to see whether the child understands.

Table 3 Providing information on procedural guarantees (answers by the lawyers)

<i>Who informs the children?</i>	<i>About which rights?</i>	<i>When?</i>	<i>How and in which form are they informed?</i>	<i>Do they understand the information?</i>	<i>How it is checked whether the children understand?</i>
The police officer	The officer communicates with the child themselves, but definitely also with the child's parent, if possible. It is explained to the parent that the child will be called out, they have the right to a lawyer and that if the parent so wishes, it is also possible to hire a lawyer.	Not clear from the answer.	Preliminary information will definitely be given orally. The police officer calls and explains. If the child is already present and the proceedings are in progress, a declaration of the rights of the suspect has been developed in the Code of Criminal Procedure, which is shown to everyone with absolute certainty.	More recently, there might be some children who do not speak Estonian or Russian. The forms of the declaration are available in Estonian and Russian. Also available in Finnish and English.	The officers conducting the proceedings absolutely explain in their own words. Ask the child several times if they understood. It is only when the child says that they understood that they are allowed to sign.
Indirectly implied that the police informs the child.	They do not have the right to waive the lawyer. Not all rights are clarified	Not clear from the answer.	The child must be given the declaration of rights. A 2-3 page document densely	How many of them read it, how many understand it (albeit it is in	The rights are also explained to children orally. verifying by asking the child if

	immediately, such as privacy, etc. It is of no use to explain everything at first contact, as the case may not even reach the court. Generally, only the basic things are talked about: you have the right to a lawyer, the right to remain silent, everything you say can be used against you.		full of text is given and they are given the opportunity to read it – a signature will be requested to confirm that the suspect/accused has received the document. A foreign language versions are also available in all police stations: in Estonian, Russian, English, Latvian, etc	simple terms) – not sure.	they understood, or asking: "Tell me in your own words what you understood".
The police investigator and the lawyer	The children are informed of their procedural rights, including the right to receive assistance from a lawyer. The rights and obligations of suspects and accused persons are the same for adults and children.	immediately if the child is to be questioned by the investigator as a suspect	The investigator will be the first to inform the child of their rights, and if a lawyer is already present, the lawyer will also do their own explanatory work. Information about the rights is usually given to the child orally, but there is also a printed rights sheet that the child can read for themselves.	Teenagers generally understand the information provided to them. At the same time, the interviewee doubts whether they understand all the details, but generally they understand the main aspects.	The police investigators have also received special training on how to communicate with children. They explain in a language that children can understand. By asking them what they understood or did not understand, and to ask them to explain in their own words.
The police officer	It is usually explained to the child that criminal proceedings now begin, you have the right to a lawyer, then the suspicion is read out in the presence of a lawyer and the child gives testimony in the presence of a lawyer. Privacy and declaring the court hearing closed are not discussed with the child.	Depends how the child comes into contact with the police	The way the rights are clarified depends on where and how the child comes into contact with the police. If the child is called to the police as a suspect (e.g. there is an incident at school that is given to the police to investigate) and to give evidence, they go with a lawyer and do not give any statements without explaining the rights. If the situation is at home or on the street, it also depends on the police patrol whether they give the child the declaration of rights on paper or act differently.	Children understand, but children get tired faster. They can hold attention for 45 min. For example, if lawyers meet with a child just before the procedural act, it becomes difficult to keep their attention. If there is 1 episode of crime, it will take about 1 hour [to read out the suspicion], but if there are several episodes, it will take much longer.	The investigator always explains the rights correctly in the proceedings. The young person is given written rights to read and asked if they understand or if there are any questions. The investigator checks whether the child actually reads it, if, for example, the child returns the paper quickly. They ask the child to actually read it.

Table 4 Providing information on procedural guarantees (answers by the prosecutors and judges)

<i>Who informs the children?</i>	<i>About which rights?</i>	<i>When?</i>	<i>How and in which form are they informed?</i>	<i>Do they understand the information?</i>	<i>How it is checked whether the children understand?</i>
The police and the judge	The right to privacy is not very much addressed , although the Directive suggests that hearings relating to children should be closed, but in practice it depends on the content of the charges (pre-trial proceedings – closed, trial – depends on the content).	Different stages of the procedure	They will probably be given a declaration of rights. It is part of the court file. It has never happened that the declaration is not in the file. So far, special needs of a child have not played a role in informing about rights.	Usually, children respond that they understood.	The court asks the accused or the party to the proceedings whether all the rights are understood. Depending on the child's level of maturity, they are asked if they have understood and it is tried to explain in even simpler terms.
If the first contact is during questioning, the police informs the child. If the child is detained immediately after an event on the street, then the patrol officer must provide the child with an initial introduction of the rights. The lawyer and the prosecutor can also explain the rights to the child.	Right to have a parent present. Children are informed of the same rights that apply to adults, based on the declaration of rights. This includes, but is not limited to, the right to a lawyer and the right to have parents present. The investigator does not explain in detail about the court hearing. That is for the prosecutor to explain if the case goes to court.	First contact with the police.	The information is provided to the child both orally and in writing. In most cases, the officer has the habit of handing over the declaration of rights to the child and also explaining orally what the different aspects mean.	Depends on their level of development, how old they are, their previous experience and their level of anxiety.	Various parties ask the child regularly whether they understand. One tactic for checking if a child understood is to ask them to explain in their own words what they have just been told.
The police officer	According to the law, there are differences compared to adult defendants, e.g. the obligation to inform parents.		In a formal sense, they are informed. The case files show the signed declaration of the rights of children, which is required by law. The substantive part of the informing remains	It depends on the child whether they understand. By the time they get to court, it's pretty clear why they're in court, it's clear. It does not usually seem in court that the child does not understand why they are there. By then,	it probably depends on the investigator whether the rights are explained in child-friendly language.

			unknown to the judge.	explanatory work has been done.	
The police, the prosecutor, and the lawyer	<ul style="list-style-type: none"> - The right to have a legal representative present. - The right to a pre-trial report, so-called individual assessment. - The right to a medical examination if they are detained. - The children are also informed that their hearings may be declared closed. 	They are informed of their rights and obligations as the first thing during the questioning.	The questioning takes place in the presence of a lawyer, who also explains to the child their rights and obligations. Prosecutors do the same. The information is provided to the child both orally and in writing, and the child's signature is taken that they have been informed.	It largely depends on the child how much they understand the information passed on to them. It is very difficult to explain things to some children, especially if they have a mental health problem.	The children's age, comprehension and ability are taken into account and the information is tried to be presented in the simplest and most comprehensible way. The child is asked to explain in their own words what they have just heard.
The police investigator, the prosecutor, the judge	Children have the same rights as adults, the only difference is that there must be a lawyer present when the child is questioned. The child does not have the right to waive the lawyer. The rights which are the same as for the adults: e.g. the right not to testify against themselves or family. The child is told that the parent will be informed, the child is invited to be questioned with the parent.	First, the investigator explains the rights to the child. The prosecutor also explains both the rights and the options in the proceedings. If the case goes to court, the judge explains.	The investigator explains the rights orally during the questioning. Explanation is possible in both languages – both Estonian and Russian. The child is given the minutes, which include the rights.	In most cases, children understand what is happening to them. Depends on the child's development, ability to understand. If the child has any health problems, they may not understand that well. Usually children do not hide their emotions.	The investigator and the prosecutor try to speak the child's language. Rights are not simply read out in legal language. The prosecutor checks the understanding by asking the child if they understood.

Table 4 Providing information on procedural guarantees (answers by the other professionals)

<i>Who informs the children?</i>	<i>About which rights?</i>	<i>When?</i>	<i>How and in which form are they informed?</i>	<i>Do they understand the information?</i>	<i>How it is checked whether the children understand?</i>
The police	The children are most often informed that they have the right to a lawyer, the obligation to contact a parent or a guardian, the right to have someone present during questioning (e.g. child protection worker or psychologist), etc. (the interviewee	The first contact with the police.	The children are informed about their procedural rights, but there is often a lack of explanation in a language that the child or the young person understands. Informing is done sooner rather than later, and this informing is done by the police when the child is caught. The information is	Some of the information is in too difficult language for children, which can lead to situations where the child agrees to things that are not in the child's best interests. Many young people say that they understand the information, just to get on with the process and	The information provided is relatively little adapted to the child's specific needs or background. It is often due to lack of skills, meaning the professionals do not always notice or think about such things. At the moment, it tends to remain at the

	relies on children's own statements, she is not 100% sure which additional rights the children are actually informed about.		usually provided orally.	get out of the situation or not to look stupid.	level of simply asking the child if they have fully understood the information.
Does not have enough experience in this area to answer.	Does not have enough experience in this area to answer. However, knows of 2 cases where the child was not informed of their rights.	Does not have enough experience in this area to answer.	Does not have enough experience in this area to answer.	The children do not understand very well what police officers, prosecutors or judges tell them about their procedural rights and the course of the proceedings. Children are anxious, in the interviewee's experience, and the information that is passed on to them does not reach them well.	Does not have enough experience in this area to answer.
The police, and the prosecutor	The rights and obligations arising from the law are largely the same for everyone. For example, children are informed that everything they say may be used against them. In addition, children are informed of their right to a lawyer and that they may withdraw their testimony. In addition, explanations are given regarding whether, when and where the child must appear	Not clear from the answers.	The children are informed about their procedural rights at the police, and the prosecutor does the same. This is done both in writing and orally, and the child's signature is taken, to show that they have understood it.	According to the interviewee, whether children understand the information provided to them depends on, in particular, how old they are, what their level of education is or whether the child has a mental disorder.	The interviewee has no experience in adapting the information provided to the child's specific needs or background.
The interviewee has no experience.	The interviewee has no experience.	The interviewee has no experience.	The interviewee has no experience.	The interviewee has no experience.	The children are asked how they understood the information. The mental age of children is not always taken into account when providing information.
The interviewee has no experience.	The interviewee has no experience.	The interviewee has no experience.	The interviewee has no experience.	The interviewee has no experience.	The interviewee has no experience.
The police, the lawyer, the child	Rights that are explained: the right to refuse to testify, to refuse	Not clear from the answers.	The police are doing a pretty good job – meaning, the lawyer is already	Not clear from the answers.	Prosecutors have been trained on how to communicate

protection specialist	to testify against relatives.		appointed, the lawyer has been at the questioning. The policemen inform the children of their rights in writing. There is a page about children's rights in the file, which is in several languages, because there are many Russian-speaking children.		with the child. When an interpreter is involved, it is difficult for young people to understand what is being said, because simultaneous interpretation is used. In this case, a Russian-speaking consultant explains what the interpreter has said in the language of young people, in short sentences. The consultant checks from the child's eyes whether or not they understand, if they are keeping track.
The interviewee thinks that children are mainly informed about their right to assistance by a lawyer and other procedural rights by the police and the prosecutor.	The interviewee has mentioned to a child on one occasion that they are entitled to the assistance by a lawyer.	Interviewee has no experience on this.	Interviewee has no experience on this.	It depends on the child and their background.	it may be difficult to understand whether the child is not interested and does not understand the seriousness of it or simply did not understand the information. The interviewee has used the help of a therapist, if she has felt that her competence is lacking.