

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

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

Malta passed **ACT No. XVIII** of the Criminal Code in 2020, which amends the Criminal Code and adds a new title, "of the rights of children who are suspected or accused persons," after Title VI, Part I, Book Second of the Code (Book Second provides the laws of criminal procedure). Title VII contains measures for implementing Directive (EU) 2016/800 on procedural safeguards for juveniles who are suspected or accused of crimes.¹

The directives relevant age groups and scope of application are as follows. A child is defined as a person under the age of eighteen under **Article 534AGB** of the Criminal Code.² In terms of juvenile justice, the age of criminal responsibility in Malta has been raised from 12 to 14 years, through **ACT No. III of 2014**, on February 14, 2014.³ Moreover, the **Juvenile Court Act** establishes the juvenile court as a Court of Magistrates with the same jurisdiction as a Court of Magistrates in regard to the hearing of charges and other proceedings involving children.⁴

The juvenile criminal system is described in length in a paper outlining a project called "**OutinOut**," which includes both qualitative and quantitative data analysis.⁵ The findings demonstrate that juveniles between the ages of fourteen and sixteen are not always exclusively charged before the juvenile court. This occurs as a result of the so-called co-accusation policy being implemented.

Article 534AGQ of the Criminal Code states that staff of law enforcement authorities and of detention facilities who handle cases involving children shall receive specific training. However, respondents unanimously stated that they had not received any special training concerning the rights of children suspected or accused of a crime. In addition, respondents were not aware that any training was available in this area.

The Commissioner for Children is the body established by the **Commissioner for Children Act**, to review the work of public and private entities dealing with children to ensure that they are acting in the best interests of the child.⁶ **Article 17(1)** of the Commissioner for Children's Act specifies that the commissioner does not have enforcement authority and may only make suggestions in the form of a compliance notice.⁷

Age assessment and the presumption to be a child in case of remaining uncertainty: The Maltese Criminal Code does not contain any provisions on age assessment. However, the new provision of **Article 534 AGB** states that when it is uncertain whether a person has reached the age of eighteen, that person shall be presumed to be a child.⁸ This provision is in keeping with what interviewees refer to as the benefit of the doubt principle, in which the court considers the best interests of the child and prosecutes the offender as a juvenile.

¹ Malta, [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

² Malta, Article 534AGB of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

³ Malta, [Criminal Code](#) (Act No. III of 2014), Chapter 9 of the Laws of Malta, 10 June 1854

⁴ Malta, [Juvenile Court Act](#), Chapter 287 of the Law of Malta, 25th July 1980.

⁵ Malta Report, Project OutinOut, "[Juvenile Justice in Malta](#)", Workstream 1.1: Comparative Investigation, Joseph Giordmaina Coordinator.

⁶ For more information, see [Commissioner for Children Act](#).

⁷ Office of the Commissioner for Children, [30th Anniversary UN Convention on the Right of the Child](#), Annual Report 2019, p. 28.

⁸ Malta, Article 534AGB of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

The research revealed that most respondents do not have any experience with age assessment as Maltese citizens are officially registered at birth, making it easy to determine their age. Instead, age assessment is often reserved for undocumented unaccompanied children, and the Agency for the Welfare of Asylum Seekers (AWAS) has a procedure for assessing the age of migrants and asylum seekers. In general, respondents had little understanding of contemporary age assessment methods, and frequently cited outdated age assessment practices such as bone density and dental exams.

The rights to information, having the holder of parental responsibility informed and audio-visual recording of the questioning: Title VI of the “Rights of Suspects and Accused” applies to all persons accused of crimes and is also relevant for proceedings where the suspected or accused person is a child.⁹ **Article 534AGD** of the Criminal Code stipulates specific provisions on the right to information for children in criminal proceedings.¹⁰ The respondents confirm that children are informed of their procedural rights by the police, at the beginning of the investigation. While also acknowledging the role played by lawyers and social workers in informing children about their rights.

The right to have the holder of parental responsibility informed is transposed in **Article 534AGE** of the Criminal Code.¹¹ The holder of parental responsibility is generally informed and notified promptly. There are, however, situations when the holder of parental responsibility should not be informed, and the information should instead be provided to another appropriate adult nominated by the child and recognised as such by the responsible authorities.

The grounds for audio-visual recording of children's questioning are outlined in **Article 534AGI**.¹² While the **Minor Protection Act** establishes the procedures for recording evidence when dealing with minors.¹³ There was a plethora of responses from interviewees when it comes to audio-recording of criminal proceedings. As a result, the findings reveal that there is no uniform protocol in place, and that recording is left up to the officers in command's discretion.

The rights to be assisted by a lawyer and legal aid: **Article 534AGF** of the Maltese Criminal Code states the children should always be assisted by a lawyer.¹⁴ The respondents confirm that the right to be assisted by a lawyer is ensured in practice. However, interviewees indicated that assistance by a lawyer can be waived on various occasions. The findings also revealed that, despite **Article 534AGF** clearly stating that authorities should postpone questioning of the child and other investigative acts if the lawyer is not present, court hearings can technically go ahead without the presence of a lawyer, such as when the child does not want to be represented.¹⁵ In that event, the child would sign a declaration stating that s/he does not want to be represented by a lawyer.

The research further revealed that lawyers get involved at the early stages of the proceedings and can be present during all stages of the proceedings. Three themes emerged in the research when it came to the definition of “**effective participation of a lawyer**”. First, a lawyer can be involved and present throughout the whole process. Second, a lawyer has access to information. Third, a lawyer can interact and communicate with the client and other professionals.

In terms of legal aid, Maltese law does not allow for special procedures for juvenile offenders. The **Code of Organisation and Civil Procedure** instead establishes broad guidelines for obtaining legal

⁹ Malta, Article 534AGD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹⁰ Malta, Article 534AGD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹¹ Malta, Article 534GE (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹² Malta, Article 534AGI of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹³ Malta, the [Minor Protection Act](#), 16 July 2019.

¹⁴ Malta, Article 534AGF (2) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹⁵ Malta, Article 534AGF (3) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

assistance.¹⁶ Yet, despite this, the findings of the research adhere that free legal aid is ensured in practice when the parents cannot afford a lawyer. Respondents, on the other hand, expressed a number of concerns regarding the accessibility and quality of free legal assistance.

The right to an individual assessment: Article 534AGG (2) of the Maltese Criminal Code states that children in criminal proceedings shall be individually assessed, and that the individual assessment shall be carried out at the earliest appropriate stage of the proceedings.¹⁷ The magistrate usually grants an individual assessment, although there is no legal obligation under Maltese law to conduct the assessment. The respondents state that the magistrate approves the individual assessment upon request of the lawyer or the child defendant, implying that the assessments are not conducted ex officio. However, these findings are surprising as most of the lawyers have limited to no knowledge about individual assessments.

Moreover, the court is said to use a multidisciplinary approach consulting with professionals from various disciplines to perform the assessment. The outcomes and findings of the individual assessment are then used to make decisions in the final judgement, including to determine protective, beneficial, and pre-trial measures.

The findings suggest that there are challenges with regards to individual assessments, which are at the expense of children facing criminal charges. National authorities, in particular, do not provide sufficient assistance to children with special needs or children with mental health issues. While migrants and foreign children have a unique set of challenges, which are further exacerbated by language and cultural obstacles.

Deprivation of liberty as a last resort and safeguards for children who are deprived of their liberty: Article 534AGJ provides that deprivation of liberty shall be imposed only in a last resort and limited to the shortest appropriate period of time.¹⁸ The research reveals that deprivation of liberty is indeed used as a measure of last resort. The court favours alternative measures to detention as it will give the young offender the possibility to rehabilitate. The psychosocial and medical situation of the children will also be considered to determine the appropriate punishment. However, repeat offenders or juveniles involved in grave crimes do not qualify for alternative measures.

Article 534AGH specifies that children deprived of liberty have a right to a medical examination without undue delay with a view, to assessing their general mental and physical condition.¹⁹ The respondents confirm that children deprived of their liberty have the right to a medical examination immediately after their request. Although the answers differ as to what the medical examination entails, the findings suggest that the children's mental health is given a special consideration. Moreover, authorities ensure the child's privacy is respected at all times during the examination. The results of the medical examination are used by professionals for a number of reasons.

Article 534AGJ of the Criminal Code states that children need specific treatment in the case of deprivation of liberty.²⁰ The respondents reveal that there are health care services and education programmes in place to promote reintegration into society after their prison sentence. According to **Article 534AGL** children must also be held separately from adults.²¹ However, the findings reveal that

¹⁶ Malta, Article 911(1)(2), Chapter 12 of [Code of Organization and Civil Procedure](#).

¹⁷ Malta, Article 534AGG (2) sub-article (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹⁸ Malta, Article 534AGJ of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854

¹⁹ Malta, Article 534AGH of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854

²⁰ Malta, Article 534AGJ of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

²¹ Malta, Article 534AGL of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

boys are detained in a separate facility from adults, while girls and adult women are held together in the same prison.

The rights to effectively participate in and be accompanied during the trial: Children or minors accused of being involved in crimes have the right to be present and to participate effectively in their trial. Effective participation, according to **Article 543AGO (1)**, means giving the child the opportunity to be heard in court and to express his/her opinion.²² The respondents revealed that the magistrate speaks to children considering their age and gives them the opportunity to speak and express their feelings during the hearing. Children also have the right to remain silent and cannot be forced to testify. The juvenile court settings in Malta are said to be more informal and child friendly. The settings, on the other hand, have been criticised for not being authoritative enough.

Moreover, **Article 534 AGN** of the Maltese Criminal Code specifies that children shall have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved.²³ The research findings confirm that minors are allowed to be accompanied by the holder of parental responsibility as well as support persons. It is also suggested that minors are allowed to confer with their lawyers and support persons during the court hearings even though, in practice, they might not have time to do so.

Furthermore, the right to privacy of children suspected or accused of a crime is mentioned in **Article 534AGD (2)**.²⁴ The respondents reveal that juvenile court hearings are held privately, without a public presence. However, some respondents highlighted that in allegedly “emergency situations”, children over the age of 16 can be arraigned in the standard criminal court, where hearings are open to the public and are less child friendly.

PART B. INTRODUCTION

In total, 20 eligible interviews were carried out in the timeframe of March 2021 to September 2021. Four police officers were interviewed at the Police General Headquarters in Floriana, Malta. Due to the Covid-19 pandemic, five defence lawyers and 11 specialists were interviewed remotely via electronic means of communication.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

The researchers and interviewers working on this project have experience in interviewing. As a result, no training was necessary. The selection of participants was approved by the FRA before invitations to participate were sent. Participants were identified and selected according to their professional experience, with a focus on ensuring gender balance. Researchers recruited interviewees in several ways. All the lawyers and several non-legal specialists were contacted using personal connections or social media platforms.

In the case of police officers, it was necessary to request an official authorisation to the Police Communication Office. The communication officer selected the interviewees and provided the researchers with the contact details. A researcher interviewed all the police at the Police Headquarters in Valletta in July, August, and September. Interviews were possible only when the government lifted the restrictions imposed due to the COVID-19 pandemic.

Researchers were not able to secure any interviews with Maltese judges. There were two reasons for this: first, the Maltese juvenile court is composed of only one magistrate, meaning that there would

²² Malta, Article 534AGO (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854

²³ Malta, Article 534AGN of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10th June 1854.

²⁴ Malta, Article 534AGD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

be no anonymity. Second, "According to the Code of Conduct Applicable to the Judges and Magistrates, no individual interviews can be entertained by sitting members of the judiciary."²⁵

It is important to note that in Malta, the police act as both investigators and prosecutors. Therefore, there is no distinct 'prosecutors' group participating in this research.

Since it was not possible to interview judges, 11 non-legal specialists were recruited. Non-legal professionals, social workers, psychologists, probation officers, and university lecturers were interviewed.

On a special note, recruiting experts from Agenzija Appogg (the national agency for children) was particularly difficult as non-student researchers must initiate a request procedure to receive information from the Foundation for Social Welfare Services (including interviews). The request procedure was long and challenging, as it was rejected twice. Since Agenzija Appogg is Malta's child protection agency, it was important to obtain permission to interview the agency's specialists. After several emails and a letter signed by the Head of FRA's Research and Data Unit, consent was approved. In general, due to the strict lockdown in the months of March-June, it was difficult to commit interviewees to an interview date and time. In a few circumstances, the interview dates were postponed or cancelled.

○ **SAMPLE AND DESCRIPTION OF FIELDWORK**

Interviews lasted 75 minutes on average. The atmosphere was generally friendly. The level of trust was also high. Interviewees appeared passionate about their field of work and were willing to share their experiences and contribute to the research. The sample, as outlined in Table 1, consisted of four police officers, five defence lawyers, and 11 non-legal specialists.

Police officers: Requested: 4, completed: 4

Defence lawyers: Requested: 5, completed: 5

(Non-legal) specialists: Requested: 6, completed: 11

Table 1: Sample professionals

Group	Expertise in juvenile criminal justice	Gender
Police officer	The interviewee is a police officer and a prosecutor. She investigated cases involving minors and has experience prosecuting juvenile criminal cases. She was a district police officer for nine years, dealing with various crimes committed by minors.	Female
Police officer	The interviewee works as a police inspector at the 'Vice Squad', a police division whose focus is stopping public-order crimes.	Male
Police officer	The interviewee has worked as a police officer with both child victims and perpetrators. He has prosecuted juveniles under 16 years of age before the juvenile court in Santa Venera, as well as minors between 16 and 18 years old, at the Criminal Court in Valletta.	Male
Police officer	The interviewee is an experienced police officer but not a prosecutor. She is currently working with children involved in the criminal justice system.	Female

²⁵ Information provided by email from the Deputy Registrar on 24th August 2021.

Defence lawyer	The interviewee has represented children suspected or accused of a crime and witnesses before the juvenile court, but also minors co-accused with adults at the court of magistrates.	Female
Defence lawyer	The interviewee is now a lawyer working as a child advocate before the juvenile court.	Female
Defence lawyer	The interviewee is a lawyer and worked for ten years as a legal counsel with the Foundation for Social Welfare Services. He has assisted children before the juvenile criminal court.	Male
Defence lawyer	The interviewee is a lawyer working for the National Agency of Social Welfare Services.	Female
Defence lawyer	The interviewee is a criminal lawyer with 20 years of experience. He has assisted children in criminal proceedings before both the juvenile court and the magistrate's court.	Male
(Non-legal) Specialist	The interviewee is an educator working for the Commissioner for Children. She visits the juvenile court during the hearings to assess the procedure and give suggestions for improvements.	Female
(Non-legal) Specialist	The interviewee is a warranted social worker and counsellor. He has experience working with inmates under the age of 18 within the correctional services.	Male
(Non-legal) Specialist	The interviewee is a lawyer and lecturer on criminal youth justice at Malta University.	Female
(Non-legal) Specialist	The interviewee is a psychologist since 2004. He worked at the Corradino Correctional Facility (adult prison) and with the Probation and Parole Services. The interviewee's role as a psychologist starts if the court appoints a probation officer who might call the interviewee to perform a risk/needs assessment.	Male
(Non-legal) Specialist	The interviewee works as a forensic psychologist. Her job entails working with young offenders and tutoring vulnerable children.	Female
(Non-legal) Specialist	The interviewee is a senior social worker who specialises in criminology and criminal justice, in particular youth restorative justice. During his practice, he has encountered young offenders within the juvenile criminal justice system including detained children.	Male
(Non-legal) Specialist	The interviewee is a social worker with 16 years of experience in the field of juvenile criminal justice.	Female
(Non-legal) Specialist	The interviewee is a social worker assisting minors between 13 and 18 with behavioural issues and drug addiction. When those children are involved in criminal proceedings, she accompanies them to police interviews or court appearances.	Female
(Non-legal) Specialist	The interviewee is a probation and parole officer. She performs the individual assessments of children in the pre-sentencing report and supervises accused children who were issued a provisional supervision order.	Female

(Non-legal) Specialist	The interviewee works with the juvenile criminal justice system while assisting children witnesses or victims of violence.	Male
(Non-legal) Specialist	The interviewee is a social worker dealing with minors presenting challenging behaviours. When these minors are accused or suspected of a crime and are arraigned in court, he accompanies them throughout the proceedings.	Male

○ **DATA ANALYSIS**

Researchers applied thematic analysis to examine qualitative data, once all the interviews were completed. They carefully examined the responses to identify common themes and patterns that repeatedly came up in each research question, following the structure of the final research report. In preparation for the data analysis, a codebook was created. Interviewees were coded based on their professional group according to the guidelines. Next, researchers employed a deductive approach. They selected the preconceived themes based on the findings of the desk research. After that, they highlighted the relevant responses from all the interviewees.

In the second stage, researchers revisited the codes and discarded those deemed too vague or not relevant. At the same time, researchers used an inductive approach to analyse the data that did not fall into the preconceived theme. Any key responses identified by more than one interviewee were considered salient and potentially interesting. As such, new themes were generated.

The codebook allowed the researchers to identify common and recurring themes. In the same way, researchers could pinpoint differences or contradictory replies among interviewees. Each theme was described along with example codes from the data as evidence. This method, therefore, allowed the researchers to systematically draw conclusions.

○ **BRIEF OVERVIEW**

This report gives an overview of the current national developments to implement the Directive on Procedural Safeguards for Children who Are Suspects or Accused Persons in Criminal Proceedings (2016/800/EU).

The first step was collecting information concerning procedural safeguards for children involved in criminal proceedings through desk research. This part outlines the current legal provisions enacted to transpose the Directive and existing programmes with children in criminal proceedings. In the second part of the research process, researchers used 20 semi-structured interviews to assess whether the new legislation is implemented in practice. By using illustrative quotes from lawyers, police officers, and other professionals from the juvenile justice system, the research compares the applicable current legislation with the practice.

The report is composed of different sections that analyse the following themes: children's right to information, right to have the holder of parental responsibility informed, audio-visual recording of the questioning, the right to be assisted by a lawyer and legal aid, the right to an individual assessment, deprivation of liberty, and children's right to effectively participate in and be accompanied during the trial. Every thematic chapter consists of the desk research (including a short legal overview and contextual background information), and the results of the interviews. At the end of each section, a paragraph titled "discussion of findings" provides a general assessment, which includes challenges, improvements, promising practices, and suggestions.

The last conclusive chapter summarises the main challenges surrounding the effective implementation of the new provisions to safeguard procedural rights for children involved in juvenile justice.

PART C. RESEARCH FINDINGS

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

a. Overview

On April 7 2020, the Maltese parliament adopted [ACT No. XVIII of 2020](#) - Criminal Code (Amendment No. 2), amending the [Criminal Code](#), **Chapter 9** of the Laws of Malta. The Act adds a new title to the Code named “*of the rights of children who are suspects or accused persons*”, immediately after Title VI, Part I, Book Second of the Code (Book Second provides the laws of criminal procedure). The provisions in Title VII provided for the transposition of Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. The articles relevant for this analysis are: **534AGA to 534AGQ, 572A, and 572B**. In addition to this new Act, the [Juvenile Court Act](#), **Chapter 287** is also analysed in this report, as it focuses on juvenile justice issues and is therefore directly relevant to the matter of children in criminal proceedings.

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

In Malta, proceedings against children who are suspected or accused of a crime are considered criminal. This is clear both through the relevant section of the criminal code transposing the requirements of the directive, and through the consideration of the juvenile court as having the same jurisdiction as a court of magistrates.²⁶

Article 534AGB of the Criminal Code, defines a child as a “*person below the age of eighteen*”.²⁷ According to **Article 534AGC**, “*this Title applies to children who are suspects or accused persons in criminal proceedings, until the final determination of the question on whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal.*”²⁸ It is worth noting that, **Article 534 AGB** uses the words “*criminal proceedings*” and “*criminal offence*”, confirming once again the criminal nature of the hearings.²⁹

Regarding juvenile justice, through [ACT No. III of 2014](#), enacted on 14 February 2014, the age of criminal responsibility in Malta has been raised from 12 to 14 years. According to the new **Article 35(1)** the offender aged below 14 is presumed incapable of committing a crime (*doli incapax*) and shall be exempt from criminal responsibility.³⁰ **Article 37** of the Criminal Code sets a threshold and states that children between 16 and 18 years of age are subject to criminal law and criminal courts for adults.

The juvenile court established under [the Juvenile Court Act](#) is deemed by law to be a Court of Magistrates and has the same jurisdiction “*with regard to the hearing of charges and other proceedings relating to children or young persons which the Court of Magistrates, as a court of criminal judicature and as a court of inquiry, would*”.³¹ It hears criminal cases brought against minors who are under the age of 16³². In terms of punishments meted out by this court, **Article 3(3)** clarifies that “*all the provisions of the Criminal Code and of any other law applicable to the Court of Magistrates shall, subject to the provisions of this Act, apply to the Juvenile Court.*”³³ Once again, the law explains the criminal feature of the proceedings before the juvenile court. Hence, in the Maltese judicial system proceedings against children under the age of 16 are considered to be criminal.

²⁶ For more information, see [Criminal Code](#), Chapter 9 of the Laws of Malta.

²⁷ Malta, Article 534AGB of the [Criminal Code](#) (Act No. XVIII of 2020) Chapter 9 of the Laws of Malta, 10 June 1854.

²⁸ Malta, Article 534AGC of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

²⁹ Malta, Article 534AGB of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

³⁰ Malta, Article 35(a), [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

³¹ Malta, Article 3(2) of the [Juvenile Court Act](#), Chapter 287 of the Law of Malta, 25th July 1980.

³² For more information, see [Court of Magistrates](#).

³³ Malta, Article 3(3) of the [Juvenile Court Act](#), Chapter 287 of the Law of Malta, 25th July 1980.

Worth to mention the report documenting a project called “[OutinOut](#)”, which describes the juvenile criminal system in detail. Both qualitative and quantitative data were analysed. The analysis shows that in the trial phase, minors between the ages of fourteen and sixteen are not always exclusively charged before the juvenile court. This happens because of the application of the so-called **co-accusation policy**. According to **Article 6 (3)** of the Juvenile Court Act, the juvenile court “*shall not hear charges against, or other proceedings relating to, a child or young person who is charged jointly with any other person not being a child or young person*”.³⁴ Following this practice, minors aged under 16 years old, who commit an offence with persons older than sixteen, will be co-accused together with the older persons. Therefore, all the offenders, including the minors, will be tried before the Magistrates' Court, without all the special treatments guaranteed by the juvenile court and as provided for in **Article 534 AGG** of the Criminal Code.³⁵

- c. Special training
 - i. Legal overview

Article 20 of the Directive is transposed in **Article 534AGQ** of the Criminal Code, which states that:

“Staff of law enforcement authorities and of detention facilities who handle cases involving children”, shall “receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child”.

Moreover, the minister responsible for justice shall take appropriate measures to ensure that judges, prosecutors, and lawyers who deal with criminal proceedings involving children receive specific training.³⁶ For example, lawyers and prosecutors who participate in European conferences, while the European Judicial Training Network provided training to judges on various issues.³⁷

In addition to the new amendments to the Criminal Code, **Article 17** of the Minor Protection (Alternative Care) Act specifies that, during the hearing of the minor, the Court (2) “*shall ensure that the person consulting the minor has received appropriate training to make such consultations, and in the case of unaccompanied minors the Court shall also ensure that the person consulting such minors has the appropriate linguistic and cultural sensitivity*”.³⁸

Several reports and policy documents stressed the fact that, as regards juvenile justice, there is a lack of specific training for people that work with young offenders.

For instance, during the drafting of the [National Children’s Policy](#) it has been noted that both the police and the professionals in the justice system should strengthen their safeguarding over young offenders by receiving a specialised training in order to be equipped with the skills and competencies needed to deal with particular situations. The same observation was made in the document on the [Crime Prevention Strategy for the Maltese Islands for the period 2017-2021](#), where it has been reported that implementing a thorough review of Maltese youth justice by identifying a pool of specialised professionals should be a primary focus.³⁹

³⁴ Malta, Article 6 of the Juvenile Court Act, Chapter 287 of the Laws of Malta, 25th July 1980.

³⁵ Malta Report, Project OutinOut, “[Juvenile Justice in Malta](#)”, Workstream 1.1: Comparative Investigation, Joseph Giordmaina Coordinator page 14.

³⁶ Malta, Article 534AGQ of the [Criminal Code](#), (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10th June 1854.

³⁷ OHCHR (16 May 2019), [Committee on the Rights of the Child examines report of Malta](#) third to sixth periodic report.

³⁸ Malta, Article 17(2) of the [Minor Protection Act](#) (Alternative Care) Act, Cap. 569.

³⁹ Ministry for Home Affairs and National Security, [Crime Prevention Strategy for the Maltese Islands for the period 2017-2021](#), May 2017

In recent time, all staff and volunteers who work with minors need to own a Protection of Minors Act certificate, renewed once a year.⁴⁰ The Protection of Minors Act (POMA) requires all employees or volunteers who come in contact with minors to file a court application in order to verify whether there is any relevant information on the Offenders' Register, as regulated by **Article 3**.⁴¹ This register aims to provide for the registration of sexual offenders and other offenders who commit offences of serious violence. Any of these registered persons "shall be ineligible for membership of, or any employment or other position with, any institution, establishment or organisation providing or organising any service or activity which involves the education, care, custody, welfare or upbringing of minors".⁴²

ii. Special training received by interviewees

All the interviewees unanimously answered they did not attend special training concerning the rights of children suspected or accused of a crime. The respondents were also not aware of any training offered in this regard. A psychologist and a probation and parole officer stress the importance of receiving training in the area of juvenile criminal justice, as well as training on working with suspected or accused children.

(Probation and parole officer, Malta): *"(In Malta) We would need a specific short course on how to deal with certain situations with minors and their mindset."*

The only exception is the case of social workers from the Foundation for Social Welfare Services (Agenzija Appogg), who attended training on children's rights funded by the government. As part of their collective contract, they are also committed to attending compulsory continuing professional development sessions (two social workers).

(Non-legal specialist, Malta): *"Social workers of Foundation for Social Welfare Services have two possibilities. Either the foundation sends you for training and pays for it, or we have what we call continuous professional development which is part of the collective agreement. We have a set amount of money every year that is allocated to every worker for training."*

Furthermore, the interviewed police officers confirm they also do not receive any specialised training in this regard, and they have attended only general legal training regarding criminal offenders.

(Police officer, Malta): *"After being promoted to an inspector, I have had other legal training related to our work with offenders. Part of this training was dealing with juveniles as well."*

d. Effectiveness of measures / Monitoring

In Malta, the Commissioner for Children is the body appointed by the [Commissioner for Children Act](#), to review the work of public and private entities dealing with children and ensure that those are promoting the best interests of the child.⁴³

According to the Commissioner for Children Act, the Commissioner has investigative powers and shall make sure that *"departments, local authorities, other public bodies (...) and public organisations consider the interests of the child, when decisions on policies affecting children are taken."*⁴⁴ Thus, the key role of the Commissioner is auditing the work of public and private entities that are responsible for the well-being of children against not only the rights of children, as enshrined in

⁴⁰ Information provided by email from the Ministry for home affairs, National Security, and Law Enforcement, 03 March 2021.

⁴¹ Malta, Article 3 (1) of the [Protection of Minors \(Registration\) Act](#), Chapter 518 of the Law of Malta, 20 January 2012.

⁴² Malta, Article 3 (3) of the [Protection of Minors \(Registration\) Act](#), Chapter 518 of the Law of Malta, 20 January 2012.

⁴³ For more information, see [Commissioner for Children Act](#).

⁴⁴ Malta, [Commissioner for Children Act](#), Chapter 462 of the Law of Malta, ACT VII of 2003, as amended by Legal Notice 427 of 2007.

the Convention, but also the commitments made by these entities in the various policies, strategies and standards.⁴⁵ However, the power of the Commissioner for Children is very limited.

Article 17(1) of the Commissioner for Children’s Act specifies that the commissioner does not have power of enforcement but can only exercise the soft power of making recommendations in the form of a compliance notice. This does not mean that the Commissioner’s opinions are without impact. Soft powers can be very efficient, especially for those matters that require a profound and extensive change to legal and institutional systems.⁴⁶

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

a. Legal overview

Article 3 S.2 of the Directive is directly transposed in **Article 534AGB** of the Maltese Criminal Code. The new provision of **Article 534 AGB** states that when it is uncertain whether a person has reached the age of eighteen, that person shall be presumed to be a child.⁴⁷

The Maltese Criminal Code does not contain any provisions on age assessment. However, the Maltese asylum and reception system sets out specific procedures to assess the age of migrants and asylum seekers and those are also used to assess the age of children suspected or accused of a crime. Age assessments are composed of three stages and are carried out by a multidisciplinary board as part of the Agency for the Welfare of Asylum Seekers. Because of the lack of resources, the procedure takes a long time and children are kept in prison or detention together with adults. The famous El Hiblu 1 case is an example of where concerns about these provisions and related issues have arisen. In 2019, three teenagers were arrested after their arrival in Malta and charged with terrorism, as they were accused of having hijacked El Hiblu 1, the merchant vessel which had rescued them in the central Mediterranean. Amnesty International reported that, despite the fact that two of them were 15 and 16, they were held in the high-security unit of Corradino prison, an adult detention facility. They were only transferred to the Centre of Residential Restorative Services (CoRRS) for children after an official assessment of their age, which confirmed what they had already declared. In addition, the Maltese Court had ordered a supplementary age assessment of the two defendants, and as Amnesty International reported, “no clear answer as to why this second assessment has been requested has been provided”.⁴⁸ A medical professional was appointed by the court to confirm the age of the accused after doubts were raised by the Court and the Office of the Attorney General (as prosecutor) about the accuracy of the AWAS Age Assessment.

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

Most interviewees do not have any knowledge of age assessments.

Five respondents (three police officers, one lawyer, and one non-legal specialist) mention bone density analysis, which is an outdated practice.⁴⁹ In general, **respondents have no experience in doing age assessments**, as Malta is a small island, and everyone is officially registered. Eight interviewed non-legal specialists are not informed about the current practice. Instead, **the age assessment often refers to undocumented unaccompanied minors involved in the criminal system**, because they sometimes lack official documentation (lawyer).

⁴⁵ Office of the Commissioner for Children, [30th Anniversary UN Convention on the Right of the Child](#), Annual Report 2019.

⁴⁶ Office of the Commissioner for Children, [30th Anniversary UN Convention on the Right of the Child](#), Annual Report 2019, p. 28.

⁴⁷ Malta, Article 534AGB of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁴⁸ Amnesty International Public Statement, [Malta: The El Hiblu 1 Case- Three Teenagers In The Dock](#), 23 October 2019

⁴⁹ Aditus, [Unaccompanied minor asylum-seekers in Malta: a technical report on age assessment & guardianship procedures, October 2014, p. 40](#)

It is, however, important to establish the age of the defendant to determine whether s/he should be brought before the juvenile or the adult court (lawyer). In principle, when determining the age of the defendant, **the burden of proof is on the prosecution.**

(Lawyer, Malta): *“If a non-Maltese child cannot be identified by official documents, the police and specialised experts will determine the child’s age. Local authorities will search for and contact foreign authorities, such as orphanages or centres for unaccompanied migrant children. If no record of the child is available abroad, the police will also consider statements made by tutors and other people who might know the child in Malta.”*

In the situation where the age cannot be determined, **the court must apply the benefit of the doubt in favour of the defendant who claims to be a minor** (three non-legal specialists). Therefore, there should be a presumption that the child is under 16 and can be heard before the Juvenile Court (lawyer).

The age assessment is conducted by an interviewing team from the Agency for the Welfare of Asylum Seekers (AWAS), a government organisation that works with irregular migrants. They perform age evaluations through interviews with a psychologist, a social worker, and a representative from the agency. They ask questions about the place they have travelled from, their age and information to understand their mental health status. This procedure is **less invasive than the dental and bone assessment conducted in the past.** If the migrant is believed to be a minor, they will be transferred to a residence in another location (two non-legal specialists).

(Non-legal specialist, Malta): *“The psycho-social interview is more friendly and less invasive than a medical examination. However, this process takes a long time, which is a criticism. Having said that, this process is far superior to what used to happen with x-rays and dental examinations in the past. The psycho-social interviews are therefore definitely a step in the right direction.”*

Another social worker refers to an alternative to the psycho-social interviews, which take some cultural traditions into account.

(Social worker, Malta): *“Another method relates to cultural traditions. For example, in some cultures (e.g. tribes) the citizens will receive a mark on their skin when they become of age. The people in charge of verifying the age of the alleged minor have a schedule of tribal marks for them to check the meaning behind the mark. Thereby, a particular age could be ascertained”*

c. Discussion of findings

There are no specific provisions on age assessment in the Maltese Criminal Code. However, when it is uncertain whether a person has reached the age of eighteen, that person shall be presumed to be a child following the new provision of **Article 534AGB**.⁵⁰ The Maltese asylum and reception system sets out the specific procedures for the age assessment as it is usually intended for individuals who are undocumented migrants. A team of professionals from the Agency for the Welfare of Asylum Seekers (AWAS) conducts the age assessment through a psycho-social interview, choosing questions to identify the child’s background and mental state. The new psycho-social method is a positive development because this practice is more child-friendly. Yet, it is noteworthy to recognise that most respondents were not informed about the current procedure of the age assessment.

Furthermore, interviewees state that when uncertainty remains as to whether a suspected or accused individual is a child or not, there is a presumption that this person is a child. This approach is in line

⁵⁰ Malta, Article 534AGB of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

with the principle of the benefit of the doubt, enshrined in **Article 534AGB** of the Maltese Criminal Code.⁵¹ As a consequence, the minor follows the procedure of the juvenile court system.

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

Children must be informed of their rights when suspected or accused of a crime, so that they can exercise them. Specific provisions on the right to information for children can be found in **Article 534AGD** of the Criminal Code, which fully transposes **Article 4** of the Directive.⁵²

Furthermore, **Article 534AGD** refers to Title VI “Of the Rights of Suspects and Accused” which applies to all persons accused of crimes and that is also relevant for proceedings where the suspected or accused person is a child.⁵³ The Code specifies that information about the arrest must be explicit and given in a language that the person arrested understands.

Notably, **Article 355AC** states that: “*When a person is arrested, the arrest is not lawful unless the person arrested is informed that he is under arrest, even though, the arrest may be obvious*”.⁵⁴ This information must be clear and understandable. **Article 34(2)** of the Constitution also specifies that “if an interpreter is necessary and is not readily available (...) at the time of the person’s arrest or detention, such provisions shall be complied with as soon as practicable.”⁵⁵

In general, the information shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspected or accused persons (**Article 534AB (2)**).⁵⁶ From **Article 534AB** to **Article 534AD**, the Criminal Code describes in detail the right to information, and underlines that the Police has the duty to provide a person arrested or detained with a Letter of Rights. In situations where the Letter of Rights is not available in the appropriate language, this should be translated in a language that he/she understands.⁵⁷

More specifically, **Article 534AGD** states that “when children are made aware that they are suspects or accused persons in criminal proceedings, they shall be informed promptly of their rights in accordance (...) with this Title, and about the general aspects of the conduct of the proceedings”.⁵⁸ The information shall also be provided to the holder of parental responsibility, or another appropriate adult who is nominated by the child and accepted as such by the Police or by any other law enforcement or judicial authority, as soon as possible.

No special procedures exist regarding children in criminal proceedings and the right to information.

It is possible to challenge failures or refusals to provide information in the same way as one would challenge any other procedural deficit in the course of criminal proceedings as a result of authorities’ action or inaction. This possibility of claiming redress in the event of a breach of rights of the accused is outlined in **Article 355AUI** of the Criminal Code. In the event the breach is ascertained, possible consequences could be the dismissal of the case or the possibility to start appeal proceedings. In terms

⁵¹ Malta, Article 534AGB of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁵² Malta, Article 534AGD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁵³ Malta, Article 534AGD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁵⁴ Malta, Article 534AC of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁵⁵ Malta, Article 34(2), Chapter IV of the [Maltese Constitution](#).

⁵⁶ Malta, 534AB (2) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁵⁷ Malta, Article 534AB to Article 534AD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁵⁸ Malta, Article 534AGD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

of who has the responsibility, this is not explicitly set out in law, instead there are established practices in place to clarify who is in charge. Such responsibility would rest with the prosecutor to make sure that all material information is given to the accused through the service of an interpreter or translator who could effectively communicate with the child.

ii. Information about procedural rights and safeguards in practice

All the interviewees claim that children are **informed of their procedural rights** by the **police**, at the **beginning of the investigation**. Six professionals clarify that children also receive information from the **lawyer** (two social workers, one specialist, one probation and parole officer) and the **magistrate** (one lawyer and one specialist). Another lawyer refers to children in alternative care and states that usually, the social worker assisting the child explains the whole proceedings, including the right to information.

Two of the police officers explain that **children are usually informed about their rights in the presence of their parents, a legal guardian, or a social worker** (if assisting the child). However, one of those officers' states that the police are allowed to speak to the child without an adult. Nonetheless, the procedural rights are always communicated to both the minor and the parents or the legal guardian (one lawyer and one police officer).

Two social workers and a non-legal specialist interviewee also acknowledge the importance of the lawyer and the social worker to be present when informing the child about their procedural rights. As a senior social worker confirms, the police play a role in this process.

(Senior social worker, Malta): *"I have been present for the police questioning at the initial stages many times. In all situations, the police inspector would inform the young person of his/her rights and s/he will explain the process. They will also give the young person and his/her guardian the choice of the lawyer as well. If the young person wants to have a lawyer, then the interrogation will stop until the lawyer is present for the interrogation."*

Regarding **which** procedural rights children are informed of, three lawyers, two police officers, and two social workers mentioned the **right to be assisted by a lawyer**. According to two of the lawyers, children are also informed about their right to **have the holder of parental responsibility informed and to accompany the child in criminal proceedings**.

Worthy to note, as one of the lawyers claims, children are sometimes not explained the implications of not choosing a lawyer.

The interviewees' responses across all professions are conflicting when it comes to the right to privacy and holding proceedings involving children behind closed doors. Four of them (two lawyers, one police officer, and one social worker) remark that children are informed about their right to privacy and that hearings involving children are held in the absence of the public (behind closed doors). However, a lawyer and a psychologist state that they were unsure if children are informed about this right. While one of the social workers notes that in her practice, she intentionally does not inform children about their right to privacy since the hearings with juveniles over 16 years old may be reported by the media (**please refer to section C7**).

(Lawyer, Malta): *"When I was present (at the police station), children were always read out their basic rights, the right to have legal assistance, the right not to answer, the consequences of their answers, the procedures that they would be facing, and the consequences of the charges they are facing. These rights have been explained to children in a language they understand. [...] They are informed about the right to privacy, but automatically, when they are arraigned, the Juvenile Court does not permit public presence."*

Additionally, other procedural rights that the interviewed police officers mention include the **Right to Remain Silent** and the **Right to Testify in Court**.

Regarding the **way children are informed**, two of the police officers explain that they hand children a letter outlining their procedural rights and they also communicate these rights orally, in a child-friendly manner, and with respect to their age and maturity.

(Police officer, Malta): *“The information is given both, orally and in writing. We give them a form and it is explained to them. The matter in which the information is provided is assessed to the particular person. Sometimes you have somebody who is a young adult, but his/her mental age might be different, so we treat him/her as a minor. I try to explain the rights in a friendly manner.”*

Furthermore, one of the social workers describes that the professionals inform children according to their age and cognitive ability, using various tools and means such as drawings. Another social worker mentions that she tries to paraphrase the information provided by the police to children using simplified language.

(Social worker, Malta): *“The matter of explanation depends on the age and cognitive ability of the child. We speak to children in a way that is relevant to them, and we make sure that all the information given is consulted with professionals in advance. We explain everything. Sometimes drawings and other different tools and means are used when interacting with children.”*

When it comes to **explaining procedural rights to children**, a large number of interviewees across all professions agree that the lawyer and the social worker accompanying the child should explain the procedural rights to the child and check whether the child understands them as provided by the police. A social worker who acts as a legal guardian for children in care in Malta describes that she tries to paraphrase the information provided by the police to children using simplified language. Moreover, another non-legal expert mentions that the magistrate would question children and check whether they have grasped their procedural rights.

(Social worker, Malta): *“Since we are the most present with children in care, we would know the level of their capacity of understanding. We sometimes intervene and restate certain words. We would try to speak their language to ensure that they really understand. Sometimes we ask them to tell us what they understood. So, we use different social work skills to make sure children understand what is being said.”*

Interviewed non-legal specialists identified several issues when it comes to **checking if children understand their procedural rights**. A psychologist from the Probation and Parole Directorate states that he does not believe there is a way to check whether the information was provided to children, aside from liaising with the prosecuting police officer. A social worker notes that there is no formal procedure to check if children understand the provided information and that the lawyers, especially the legal aid ones, do not have sufficient time to check with the child.

(Probation and parole officer, Malta): *“I don't think there is actually a way to check. I think that it should be the role of the lawyer, but the lawyers usually have too many things to do and sometimes they are called in as legal aid because the child cannot afford to pay for a lawyer. [...] I don't think the child has a chance to digest what is going on.”*

While the senior social worker from the Safeguarding Commission comments, the matter of explanations is highly dependent on the personal qualities of the police inspector and the lawyer. He also remarks that children and their parents can be confused and sometimes do not understand all the information provided to them.

(Senior social worker, Malta): *“I would double-check with the young person if s/he is understanding what the police inspector is telling him/her. I would sit down with the child and the family to recapitulate because there is a lot of information going on. The young*

person and his/her parents might be confused, and scared. [...] In Malta, the matter of explanation also depends on who you have as a lawyer. It depends on who you have as a police inspector. It also depends on the magistrate as well. I have been working with magistrates who went out of their way to explain and put the young person at ease. I have also worked with police inspectors who were very nice and very understanding, especially with kids. They basically double-checked if the child understands."

iii. Information about the general conduct of the proceedings

All the lawyers acknowledge that informing and explaining the process to the child is their responsibility.

(Lawyer, Malta): *"Regarding information about the proceedings before the court hearing, it would be entirely up to the lawyer. For example, I've had the majority of juveniles asking me what the possible outcomes and charges are."*

Four non-legal experts confirm that children are informed about the general conduct of the proceedings by a lawyer, who should also explain the conduct and check if the child understands (probation and parole officer) together with the social worker if one is appointed (three non-legal specialists). A senior social worker notes that it depends on the individual lawyer if they have the time to go into detail about the procedure with the child.

One of the social workers from Social Welfare Services gives a **different opinion**, claiming that lawyers often do not play a role in informing children and, therefore, it is the job of the social worker.

Three other interviewed professionals also mention the role of the **police**. During the first questioning, the police inform children on this matter, and again, the magistrate will list the rights at the beginning of the court proceedings (two police officers).

(Police officer, Malta): *"In the first sitting, the magistrate would introduce her and her two assistants, and s/he would again explain the proceedings."*

In addition, two specialists stress the role of the magistrate in explaining the procedure and ensuring that the child understands all of the aspects. One of them, in particular, remarks on the good practice of the current magistrate in addressing children in a child-friendly manner when sentencing or giving directions. However, as a probation and parole officer comments, it might be a bit too late to explain the conduct of the proceedings to children in court.

(Probation and parole officer, Malta): *"At the police stage, the matter (of informing about the general conduct of criminal proceedings) depends on the prosecuting police officer. When it comes to the court, it is explained by the presiding magistrate. S/he would try to explain what is going on. Of course, at that stage, I believe it is a bit too late because children are in front of many people [...] and I don't think they're registering what is going on."*

Regarding **the way** those rights are explained, the lawyer should use appropriate language and diction adapted to children to ensure that the information provided is understood (two lawyers). According to two police officers, the information is given verbally, in a child-friendly way and with respect to their level of maturity. The police explain to children the role of different parties in court and the setting of the juvenile court. Two of the police officers stated, they try to discourage children from re-offending by using examples of consequences for their wrongdoings.

Whether children understand depends on the individual child, as some of them committed crimes in the past or come from families with experience in the justice system (two police officers). Alternatively, it depends on the social upbringing, intelligence, and family setup of the minor (police officer).

(Police officer, Malta): *“We had children who knew the justice system because their parents/families have been through the justice system themselves. Therefore, the children have been brought up in the system and they would be able to understand the procedure without the need of anyone explaining to them. However, we still do explain it to them, and they do understand. [...] Then other children do not have the assistance of a lawyer, and we do our most to explain. If they understand depends on the person, his/her upbringing, intelligence, family setting, and social background.”*

When it comes to informing accused or suspected children about their procedural rights, a social worker, a psychologist, and an educator explain that they approach children in a child-friendly way and with respect to children's cognitive abilities, age, and maturity.

(Psychologist, Malta): *“I would adjust my approach reflecting the knowledge that the person has and the level of maturity. If children do not understand, I would make sure to use simplified language and make it clearer.”*

A striking comment was made by one of the psychologists. He does not believe that children are informed in practice, and notes that explaining the general conduct of the proceedings to children requires a lot of patience and a clear description of different aspects of the procedure. In his view, children are not aware of the details of the proceedings such as the length and the role of parties.

(Psychologist, Malta): *“I think that children are not informed about the general aspects of the conduct of criminal proceedings in real life. When we look at the court and how it operates, I am pretty sure that children don't know what happens, how the procedure starts, how long it takes, or the roles of the parties.”*

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

The right to have the holder of parental responsibility informed is transposed in **Article 534AGE** of the Criminal Code, while **Article 534AGB** gives a definition of parental responsibility. According to **Article 534AGB**, parental responsibility *“is given to a natural or legal person by judgment, by operation of law or by an agreement having legal effects”*. The holder of parental responsibility has *“all rights and duties relating to the person or the property of a child”*, including the right to be informed that the child is a suspect or accused person in criminal proceedings.⁵⁹

Article 534AGE (1) states that the *“Executive Police or any other law enforcement or judicial authority”*⁶⁰, should inform the holder of parental responsibility about applicable procedural rights. The information should be provided as soon as possible in accordance with **Article 534AGD**, the content of which is explained above.

In some cases, information should be provided to another appropriate adult nominated by the child and accepted as such by the competent authority. The police or another law enforcement authority verifies that the person nominated by the child is suitable. The criteria used to assess the suitability of this person are based on the child's best interests and left to the discretion of the competent authorities.

Article 534AGE (2) identifies the following three cases:

“where the information to the holder of parental responsibility (a) would be contrary to the child's best interests; (b) is not possible because, after reasonable efforts have been made, no holder of parental

⁵⁹ Malta, Article 534GB of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁶⁰ Malta, Article 534GE (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

*responsibility can be reached or his or her identity is unknown; or (c) could, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings”.*⁶¹

Where the child has not nominated another appropriate adult, the information must be communicated to another person. This person can be a legal representative appointed by an authority or institution responsible for the protection or welfare of children.

Where those circumstances listed above cease to exist, any information that the child receives and that is still relevant in the course of the proceedings, should be provided to the holder of parental responsibility (**534AGE (3)**).⁶²

ii. Informing the holders of parental responsibility

When it comes to **informing the holders of parental responsibility**, four lawyers state that the police call the holders of parental responsibility **immediately** or within a **few hours** after the investigation starts. Additionally, the lawyer also informs holders of parental responsibility about the criminal procedure as well as the children’s procedural rights (lawyer). One of the lawyers points out that the police can investigate in order to examine if there are reasons not to inform the holder of parental responsibility. Such reasons may occur in the instance when the parents have been involved in the crime in question (three lawyers) or the police cannot trace them (one lawyer).

(Lawyer, Malta): *“If the parent is accused and there are proceedings against the parent, the child would be co-accused in those proceedings. Then there is the law on the procedure of co-accused and it would be applied because you cannot give information that may help one and hinder the other. But in other circumstances, they have all the rights to be informed, to be consulted, and to be part of the proceedings themselves.”*

The police confirm they reach the parents over the phone at the beginning of the investigation unless there are reasons not to do so. Such reasons might include tampering with the evidence in the instance of domestic crimes before the police come to search the house (police officer).

(Police officer, Malta): *“In very few situations, where the parent might be investigated as well, we don't inform the adult. We have to get a social worker who cannot speak to the minor alone. If the parents are involved, they could tamper with evidence. For example, if the child did something at home, the mother could try to hide the evidence from the police.”*

According to three other non-legal experts, the police evaluate the reasons not to inform the holder of parental responsibility and if another person can be notified instead. For instance, if the parents are not involved in the child's life, the parents might not be informed about their right to accompany and assist the child in the criminal proceedings (psychologist). Other reasons include if parents cannot be contacted (one social worker), if they are complicit (two social workers and one non-legal specialist), if they present safety issues to the child (one non-legal specialist), or in the instance of domestic and sexual abuse (one psychologist and one non-legal specialist). The interviewed probation officer describes that sometimes parents do not understand all the information provided to them. On the contrary, one specialist points out that because the police inform the parents or legal guardians, they may clarify the procedural rights to the child if they are not clear.

(Non-legal specialist, Malta): *“Parents or guardians are equally informed. Very often, if the child is in a delicate state and they can't really process the information for whatever reason, the police, for instance, would explain the rights to the adult, the parent or guardian, who would then break it down later to the child at a more appropriate time.”*

⁶¹ Malta, Article 534AGE (2) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁶² Malta, Article 534AGE (3) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

iii. Having a nominated/designated person informed

The respondents' answers on the procedures regarding the nominated/designated persons and the information provided to them varied slightly. Although the interviewees described how these persons are identified and notified, they did not elaborate on what information is provided to these support persons, in which manner they are informed or if they understand.

Three lawyers explain that when there are reasons not to inform the holders of parental responsibility, children can nominate another person to be notified by the police. If children do not nominate such a person, a social worker would be appointed to accompany the child and s/he would be notified instead. Similarly, if children do not want parents because they feel uncomfortable with them, they can indicate someone else. When they do not choose another adult, the proceedings will be attended by a social worker (lawyer).

(Lawyer, Malta): *"If the child does not feel comfortable being with the parent, s/he may choose to have a trusting adult. The trusting adult would be identified by the child himself/herself, so it could be the social worker, a teacher, who has a close relationship, it could be an aunt, and as long as that does not hinder in any way the testimony or whatever, the proceedings."*

In case the police find reasons **not** to inform the holders of parental responsibility, according to three police officers, the child can nominate another family member to be notified instead. If such a person is not identified, the police would notify the appointed social worker from the Foundation for Social Welfare Services – APPOGG (two police officers).

(Police officer, Malta): *"Minors are accompanied by an adult. If they do not have a next of kin, we are duty-bound legally to inform APPOGG services, where a social worker who is on call will accompany the child."*

Two social workers and one non-legal specialist point out that if there are reasons not to inform the holder of the parental responsibility, children can nominate another trusting adult as a guardian. Social workers can also help children to identify the appropriate person (social worker). However, three non-legal specialists dispute that children nominate such a person themselves; instead, the Foundation for Social Welfare Services is responsible for appointing someone. According to one of the social workers, the police confer with the probation and parole services and with the social services to assign a probation officer or a social worker who will accompany the child.

(Social worker, Malta): *"When there is a probation officer involved, I believe that the police communicate with the probation and parole services. However, many times, they also ask social workers to accompany the minors. A social worker would accompany them, especially when there are care orders and the parental responsibility from the parents is not effective."*

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

The lawyers interviewed unanimously answer that the parents or holders of parental responsibility are involved in all stages of the criminal proceedings with children. As one of the lawyers describes, they are present for the investigation and remainder of the criminal proceedings.

One of the police officers' comments that the extent of parents' involvement in the proceeding depends on the willingness to cooperate with the authorities. He states that sometimes lawyers may advise parents not to answer the questions asked by the police.

(Police officer, Malta): *"If there is a lawyer present as well, s/he can advise parents that they have the right not to answer any questions. So, the parent would follow the lawyer's advice or if s/he is present, s/he would say to the parent: "Stay quiet because you are making the situation worse."*

When asked to what degree the support persons of children are involved in the overall proceedings, a social worker notes that **there is sometimes ineffective communication between the police and the social worker**, resulting in them not being present.

(Social worker, Malta): *“Generally, there is always the presence of an adult with the minors during the statement, however, communication with us is not always effective. There were times in which we were not even considered at police stations, for example. We would be accompanying them just by their side, but it would be a very cold atmosphere. They would not even acknowledge us. Sometimes they just talk to the minor and that is it.”*

Other specialists confirm that the parents or other support persons are involved in all stages of the proceedings. Two non-legal professionals describe that the magistrate welcomes parents in the courtroom because s/he might consult with them and learn more about the child’s background. During the court hearings, children are always with an adult, unless the magistrate orders the support persons to leave the courtroom (one social worker and one non-legal specialist).

(Non-legal specialist, Malta): *“Usually, the parents or the guardians appear in the court, and the magistrate very often also asks the parents. She talks to the parents while the proceedings are being carried out, she will see what the parents think, the sort of punishment or the outcome of the jury.”*

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

Article 9 of the Directive is directly transposed in the Maltese Criminal Code.⁶³

Questioning of children shall be audio-visually recorded where this is proportionate in the circumstances of the case, considering whether a lawyer is present or not and whether the child is deprived of liberty or not, as specified in **Article 534AGI**, which also mentions the child’s best interests as a primary consideration.

When audio-visual recording is not possible, questioning shall be recorded in another appropriate manner and the minutes shall be duly verified: a copy of the recording shall be handed over to the suspect or the accused person following the conclusion of the questioning and then be admissible in evidence, unless the suspect or the accused person alleges and proves that the recording is not the original recording and that it has been tampered with. Recording material shall be kept confidential and not publicly disseminated. In any case, audio-visual recordings are not required when a question is asked for the sole purpose of identification of the child.⁶⁴

The [Minor Protection Act](#) set up the way recording of evidence shall be carried out when dealing with children. **Article 17(8)** states that evidence from the minor shall be recorded by experts that are appointed by the Court and for which **(10)** the Minister may, by regulations, prescribe the procedure for the selection. In addition, sub article 9 specifies that during the cross-examinations of the minor by the lawyers of the parties, questions to the young offender shall be made by these experts in front of the Court. Any recording activity should be done, if possible, in one sitting.⁶⁵

When the questioning of children suspected or accused of a crime is not recorded as required by **Article 534AGI** of the Criminal Code, the Juvenile Court should be immediately notified by the police

⁶³ Malta, Article 9 of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

⁶⁴ Malta, Article 534AGI of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁶⁵ Malta, Article 17(8) of the [Minor Protection Act](#) (Alternative Care Act), Cap. 569.

of that. After the notification the police must carry out the instructions given by the Juvenile Court and act in accordance with them. **(Article 8 (3) Juvenile Court Act)**.⁶⁶

ii. Implementation in practice

Almost half of the interviewees, especially the non-legal professionals, did not know whether the questioning of children is audio-visually recorded. Most of the lawyers and all four police inspectors stated that audio-visual recording is put into place. However, the varying answers from the police inspectors show that there is no established practice in this area and that it is left to the discretion of the specific police station in charge.

Two of the police inspectors clarify that the questioning of children is audio-visually recorded in the case of more serious crimes. They disclose that the audio-visual recording is made when “*a child's liberty is at stake,*” “*a sentence of more than two years is imposed,*” or “*a lawyer is present.*”

(Police officer, Malta): “*It is at our discretion if we record the questioning by typing or audio-visually. Usually, when it is a minor crime, we don't record it audio-visually, we type it, but when the lawyer is present, we always record it audio-visually. [...] When there is no lawyer, it depends on the type of the crime, because for the court it is easier if we type it. After all, if we record it audio-visually, the court will have to appoint someone to do the transcript.*”

When police do not audio-record, the questioning is documented in writing, and the children are asked to sign their statements and are given a copy. When audio-recording, the police provide the accused child and his/her lawyer with a recording on a CD (lawyer).

Contrary to the above mentioned, two non-legal specialists note that they do not believe that the police audio-visually record the questioning of children. Furthermore, according to an interviewed psychologist, the police do not have the technology to audio-record children's questioning.

(Psychologist, Malta): “*There are around 13000 reported offences every year in Malta and the police have only one audio-visual equipment.*”

d. Discussion of findings

To conclude, children accused or suspected of a crime are informed about their procedural rights in practice by the police at the beginning of the investigation in line with **Article 534AGD (2)** of the Criminal Code. The respondents confirmed that no special procedures exist regarding children in criminal proceedings and the right to information as found in the desk research. How these rights are explained, however, depends on the nature of the professionals involved. Lawyers and social workers should assist the child and further explain the meaning of the rights. The police and the social workers approach children with respect to their age and maturity, giving the information in simple and accessible language as prescribed by **Article 534AGD (3)** of the Criminal Code. Despite that, the comments made by several social workers show that some of the children do not understand their rights and might be confused. Most importantly, it is up to the lawyer and the social workers to check whether children understand the information about their procedural rights.

Lawyers and police officers play a key role in informing children about the general conduct of the proceedings, in line with **Article 534AGD (1)**.⁶⁷ Some of them explained that they use appropriate language and diction adapted to children to ensure they understand the provided information. Several police officers mentioned that some children come from families who have experience with the judicial system, so they are familiar with how the proceedings are conducted. Furthermore, lawyers together with social workers check if children understand the information about the general conduct

⁶⁶ Malta, Article 8(3) of the [Juvenile Court Act](#), Chapter 287 of the Law of Malta, 25th July 1980.

⁶⁷ Malta, Article 534AGD (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

of the proceedings. During court hearings, the magistrate would also ask the child if they understand the procedure at the beginning of the hearing.

In terms of informing those with parental responsibility, the respondents state that the police call the parents or legal guardians within a few hours of the start of the investigation in accordance with **Article 534 AGE (1)** and **Article 534AGD** of the Criminal Code.⁶⁸ The police inform them about children's procedural rights and the criminal procedure. The police also assess whether there are reasons not to inform the holders of parental responsibility. The reasons may include parents being involved in the crime, they are unavailable, or dangerous to children which corresponds with the reasons listed under **Article 534AGE (2)** of the Criminal Code.⁶⁹

The respondents were not clear about how another support person could be nominated. Some respondents stated that the child can identify a close trusting adult to be notified instead, whereas others said that children do not nominate such a person by themselves. As such, it is the responsibility of the social welfare services together with other experts to identify and appoint a social worker. The contradictory answers show that the procedure of identifying and appointing another support person to the child is not established well in practice.

According to the interviewees, parents or designated persons are involved in all stages of the criminal proceedings. They might be consulted by the police and the magistrate during the court hearings; however, their role is mainly to provide children with moral support.

The interviewees' replies differ considerably when it comes to audio-visual recording of interrogation and proper verification of written records since it is left to the discretion of the police officer. Some explained that the audio-visual recording is made when *"a child's liberty is at stake," "a sentence of more than two years is imposed,"* or *"a lawyer is present "* in the sense of the **Article 534AGI** of the Criminal Code.⁷⁰ However, several interviewed specialists do not believe that the questioning of suspected or accused children is audio-video recorded. Moreover, none of the interviews mentions that the police would inform the juvenile court in the instance the questioning of children is not recorded as required by **Article 534AGI** of the Criminal Code.⁷¹

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

a. Legal overview

Article 6 and **18** of the Directive are transposed in **Article 534AGF** of the Criminal Code.⁷²

The new **Article 534AGF** specifies that children who are suspects or accused in criminal proceedings shall have the right of access to a lawyer, in accordance with **Articles 355AS-355AUK** of the Criminal Code. Those articles are in title sub-title IX of Title I of Part I of Book Second of the "Right to Legal Assistance and Other Rights During Detention " and will be also relevant to protect children's rights in criminal proceedings.⁷³

Article 534AGF states that in situations where the assistance by a lawyer is not proportionate in the light of the circumstances of the case this may be derogated, only insofar as this complies with the right to a fair trial and with the child's best interests. In any event, children should always be assisted by a lawyer when they are brought before a competent court or judge to decide on detention at any

⁶⁸ Malta, Article 534GE (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854. Malta, Article 534AGD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁶⁹ Malta, Article 534GE (2) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁷⁰ Malta, Article 534AGI of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁷¹ Malta, Article 534AGI of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854

⁷² Malta, Article 534AGF of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁷³ Sub-title IX of Title I of Part I of Book Second of the Right to Legal Assistance and Other Rights During Detention.

stage of the proceedings as well as during detention.⁷⁴ If the lawyer is not present authorities shall postpone the questioning of the child and other investigative acts, “for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child”.⁷⁵ According to **Article 355AUA (8) (c) (d)** the lawyer can effectively participate in the questioning on two conditions: (a) he/she cannot hinder the questioning, suggest replies or other reactions. **(b)** Any questions or other remarks shall, except in exceptional circumstances, be made after the Executive Police or other investigating or judicial authority shall have declared that it has no further questions.⁷⁶

The right of access to a lawyer in criminal proceedings as provided for in **Article 355AUA** can be derogated only in exceptional circumstances: “**(a)** where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person; **(b)** where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.”⁷⁷

Regarding legal aid, Malta legislation does not provide special procedures for young offenders. The Code of the Organisation and Civil Procedure lays down general provisions to apply for legal aid. Parties to a case can submit an application for legal aid to the Civil Court, First Hall, or can make an oral demand to the Advocate for Legal Aid (a public officer appointed by the Minister of Justice).⁷⁸ In either case, the Advocate for Legal Aid examines the demand and determines whether the applicant “has reasonable grounds for taking or defending proceedings”.

In general, to obtain legal aid: (a) the applicant must have reasonable grounds for taking, defending, continuing or being part to the proceeding at issue, and (b) the applicant may not have “property of any sort,” or may not earn an annual income that is more than the minimum wage established for persons of eighteen years and over. The calculation of the net property value excludes the applicant’s principal residence and any household items reasonably necessary for the use by applicant and his family.⁷⁹ When a party is granted legal aid, an advocate is assigned on a rotation system.⁸⁰

Continuing the analysis of El Hiblu 1. case, Amnesty International reported that the two minors were not allowed to see their lawyers while they were in prison nor to speak with their lawyer through an interpreter of their choice. In its report, Amnesty International recommended Malta’s judicial and police authorities to guarantee the adequate access of the defendants’ rights.⁸¹

In case the right to legal assistance and to legal aid is violated, the suspect or accused person in criminal proceedings is entitled to seek redress, as provided for in **Article 355AUI** of the Criminal Code.⁸² The claim for redress shall be filed promptly and the court seized with the claim shall have authority to grant such redress as it deems appropriate, without any delay. The suspect or accused person has the right to appeal from the decision to grant or to deny such redress to the Court of Criminal Appeal within eight working days from the decision.⁸³

b. Assistance by a lawyer and legal aid

⁷⁴ Malta, Article 534AGF (2) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁷⁵ Malta, Article 534AGF (3) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁷⁶ Malta, Article 355AUA (8) (c) (d) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁷⁷ Malta, Article 534AGF (4) of the Criminal Code (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁷⁸ Malta, Article 911(1)(2), Chapter 12 of [Code of Organization and Civil Procedure](#).

⁷⁹ White and Case LLP (March 2014), “[Access to Justice for Children: Malta](#)” subsequently edited by Child Rights International Network (CRIN).

⁸⁰ Malta, Article 918 of the Code of Organization and Civil Procedure, Chapter 12 of the Laws of Malta, 1 August 1855.

⁸¹ Amnesty International Public Statement, [Malta: The El Hiblu 1 Case- Three Teenagers In The Dock](#), 23 October 2019.

⁸² Malta, Article 355AUI of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁸³ Malta, Article 355AUI of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

All interviewees unanimously confirm that assistance by a lawyer is mandatory during the court hearings and that children are always allowed to have legal assistance throughout the whole criminal proceedings.

During the first questioning, one social worker notes that if the lawyer is not able to physically go to the police station, s/he speaks to the minor over the phone and the procedure will be suspended until the next day or until one is available to be present with the child.

On the other hand, two non-legal specialists insist that assistance by a lawyer is not mandatory as long as the accused child is with an adult, such as a legal guardian. S/he has the choice to either have a lawyer present or not.

(Probation and parole officer, Malta): *“They have the rights so they will ask the child or the carer. What's mandatory is that the child is accompanied by others, either the social worker or a legal guardian, but they will ask if they need a lawyer. And if they need it, they will have one.”*

Yet, despite claims that assistance by a lawyer is mandatory, interviewees agree that, during the first questioning, this right can be waived on various occasions (three non-legal specialists and one lawyer).

(Lawyer, Malta): *“Even if the child is always informed of the right to be assisted by a lawyer before being interrogated, they can choose to be represented or not.”*

For instance, parents sometimes advise the child not to consult with a lawyer (two non-legal specialists and one police officer), or if the child has spoken with the lawyer over the phone and feels confident continuing without a lawyer present (one police officer).

One lawyer points out in such a case, the child would need to sign a paper stating that s/he has been offered to at least consult with or phone a lawyer but has refused.

(Lawyer, Malta): *“[...] Sometimes I have been in situations where either because they are in panic or because they don't find it necessary, the parents will say ‘Listen, we don't need a lawyer for the questioning.’”*

In this regard, two non-legal specialists express their concern about the right to waive a lawyer. In their opinion, children can be easily influenced by the police during the first questioning. It thus should not be the case that the police officer ‘sells’ the option of waiving the lawyer. A social worker continues this line by noting that police should never trivialise the importance of a lawyer during interrogations.

(Non-legal specialist, Malta): *“(Children) are easily influenced so the mind of the prosecutor or the mind of the police officer can be developed in such a way that they can sell the option of waiving the lawyer. That's the issue. [...] And during an interview, it would probably be much better for the child to be alone because you can exercise more stress, most probably you can [get] more information [...] So, the police, I would suppose they would prefer it if the lawyer is not present because the lawyer is usually an obstacle for the police.”*

Having said that, two police officers claim that it is rare that children choose not to be assisted by a lawyer. In fact, minors are always encouraged to have a lawyer present. However, a third police officer reassures that, in the very few cases where children do not have legal representation, they will receive all the necessary care in full respect of the principle of the best interest of the child.

With regard to **legal aid**, all the interviewees claim children are informed of their right to legal aid through their parents, police inspectors and the magistrate at the beginning of the proceedings.

(Police officer, Malta): *“Children are immediately informed that if they do not have the means to pay for a lawyer, then a lawyer will be called for this operation. There is always*

free legal aid. There is a roster, there is always a lawyer on duty every day and we get a monthly roster from the law court, and we use the services of the lawyer according to the roster.”

Furthermore, 18 interviewees (11 non-legal specialists, five police officers, and two lawyers) confirm that **free legal assistance is ensured in practice**, especially when the parents claim that they do not have the economic means to pay a lawyer. According to a social worker, the Foundation for Social Welfare Services offers their lawyer to children under their care and will consult the holders of parental responsibility if they want to hire a private lawyer before appointing the lawyer of the foundation. However, one lawyer criticises that the national authority does not apply particular measures to ensure legal assistance for children.

There were, indeed, some **challenges** raised by interviewees regarding free legal assistance. One lawyer claimed that, in practice, accessing free legal assistance can be difficult. Another lawyer highlights three challenges in this regard: **(1)** lack of specialisation, **(2)** language barriers, and **(3)** the location of the juvenile court. She elaborates that legal aid lawyers are not specialised, and, in her opinion, minors represented by legal aid lawyers are at a disadvantage compared to those with more specialised lawyers.

Three challenges surrounding legal aid are also mentioned by a police officer.

(Police officer, Malta): *“First, the lawyer may be wanted in one location while being needed in another location for a different case. Second, the lawyers are always tied up in court in the mornings, which means the police officer will have to wait until 2 p.m. to speak with a lawyer in order to speak with the accused. Third, if there are two people charged, the lawyer cannot represent both of them. As a result, the police will have to contact another legal aid lawyer the following day, delaying the process. If you go to court, the lawyer won't be able to represent both accused, so he'll have to defend one while the next lawyer in line defends the other.”*

Three specialists expressed their **concern about the quality of free legal assistance services**. They note that there is a prevailing belief that legal aid lawyers do not offer sufficient legal representation in comparison with private lawyers, which can affect the possible outcome for the child.

(Psychologist, Malta): *“What I know is that the legal aid team they have here is small and that they have at the same time a very high number of cases. There is almost this idea that if you have free legal aid then you won't be adequately legally represented. I remember years ago when a client of mine, he was a minor and he decided that he wanted and demanded that specific lawyer, there on the spot. After we consulted with the mother, I remember he approached a particular lawyer and his mother realized that the lawyer was not someone that they could possibly afford. But in general, yes, you would have access to legal aid.”*

A probation and parole officer criticises that sometimes legal aid lawyers do not appear in court because of lack of time or logistic issues. This leads to postponements or adjournments of the hearing, which negatively affect the accused children. Moreover, a psychologist raises another challenge where the position of legal aid lawyer in court conflicts. When a child is under a care order and is, therefore, the responsibility of the state. In this case, the lawyer must carry out his responsibility to both the state as well as the client which can be conflicting and problematic.

(Psychologist, Malta): *“Also we've had situations whether for example, the child is under a care order, the responsibility of the state, and the lawyer would either have to carry out his responsibility towards the state, or towards a person. This is problematic.”*

When it comes to **court hearings**, a significant number of interviewees (three lawyers and two police officers) affirm that court hearings **can** go ahead without a lawyer being present, such as when the child decides not to be legally represented.

(Lawyer, Malta): *“In theory, yes, (the court hearings can go ahead without a lawyer present); if the child insists, but the magistrate would explain clearly and forcefully the various implications of this.”*

For example, when a lawyer cannot attend a court hearing, and the child with the parents agree to proceed without a lawyer.

(Non-legal specialist, Malta): *“A court hearing is normally done with the presence of a lawyer, unless the lawyer can't turn up for whatever reason, and the child and his guardian who is present in court decide to go ahead because that is their right to do so.”*

In that event, the child would sign a declaration stating that s/he does not want to be represented by a lawyer (two police officers, Malta). After that, the magistrate would explain clearly and forcefully the various implications of this. Although two police officers stress that, in Malta, a magistrate does not usually accept a minor to defend oneself.

(Police officer, Malta): *“The person has the right to defend himself, but no magistrates would accept a minor to defend himself. So, any person of age can choose to defend himself without being assisted by a lawyer, but I am pretty sure that a magistrate would never accept a person underage to legally defend himself, even after he or she would express his desire.”*

On the other hand, nine non-legal specialists and one lawyer insist that a court hearing **cannot** proceed without a lawyer present. Two specialists further elaborate that the magistrate does not start the hearing if the lawyer of the accused child is not present in the courtroom. As a result, according to one lawyer, many court hearings are adjourned, since the juvenile court's location is difficult to reach for those who are also attending hearings in the main court and are stuck in traffic on their way to the juvenile court.

Moreover, the majority of interviewees unanimously state that lawyers **get involved in the early stages of the criminal proceedings**, upon the first contact with the police (three police officers), when they are detained or arrested, or before the initial interrogation (five social workers, three non-legal specialists, and one psychologist). They also state that they can be present during all the stages of the proceedings. While a senior social worker clarifies that lawyers can get involved after the parents ask for legal assistance.

(Senior social worker, Malta): *“Usually, if the parent or the guardian would say ‘Listen, I want to have a lawyer present here.’ And the lawyer would be involved from the start and then the lawyer will guide them, the young person and his family, accordingly, from the initial stages, from the questioning to the actual arraignment, [the lawyer] would explain what will happen and they would be in courts with them until the case is decided then they will decide whether to appeal, the outcome of the proceeding in court. So, I would say depending on the choice during interrogation, but most of the time, from the very beginning, I would say that the lawyer is present, especially with children.”*

Interestingly, a psychologist and a probation and parole officer denote that **lawyers' involvement depends primarily on the social status of the child and the family**. Privately hired lawyers are willing to go to the police station during the investigation because they are getting paid for this service; on the other hand, this is not always likely to happen with a legal aid lawyer.

(Probation and parole officer, Malta): *“It depends on the social status of the child. If the child comes from a good background, as soon as they receive the charges, the parents will pay for a lawyer straightaway. Then they will get assistance then. If they are in care, the agency usually has their own lawyer for these situations so that they will get assistance. Again, there's a bit of a conflict of interest there as well, but that's another thing. And if they come from a*

poor social background, usually they will wait until they get to court and then they will be assigned by the legal aid lawyer."

c. Effective participation of a lawyer

What interviewees understood by the term "**effective participation of a lawyer**" varied but there was substantial agreement amongst respondents. Ten specialists and two lawyers stated that the term "effective participation of a lawyer" means that a lawyer is able to be **involved** and **present** throughout the **whole process**.

According to one police officer, being present throughout the process is important even if a lawyer's role is passive in certain stages. During the questioning stage, for example, lawyers are not permitted to ask questions or make recommendations about how the suspected or accused child should respond.

(Probation and parole officer, Malta): *"Well, like I said before, I believe that the lawyer should be involved as soon as the child is arraigned so that the child would understand what they're being accused of, they have a chance to express what's happen or doesn't happen, how they would like to proceed and be there at every stage of the court proceedings as well. And then even after to explain what has actually happened, because that is something that usually doesn't happen. For example, the probation order is issued on the child. So even the child does not understand what the probation order is. And so, yeah, I think the lawyer is supposed to be present start to finish."*

Moreover, interviewees also believed that the term "effective participation of a lawyer" means having **access to information**. It implies having access to "all the required information", according to one lawyer, and "all the facts of the case," according to another. A police officer adds that the lawyer should be able to have access to all the documents and evidence of the case enabling them to cross examine every witness produced by the prosecution, and request to the court any support s/he deems appropriate for the case in hand.

(Police officer, Malta): *"Effective participation is that the lawyer would be privy of all the documentations as it is being presented and all the evidence, would have the right to counter examine each and every witness presented by the prosecution, would be able to request the court to particular request that he or she may think fit, and then he would be in a position after the part of the prosecution is done to create his defence."*

The interviewees agree that "effective participation by a lawyer" also means **efficient communication** with the client and other professionals. The lawyer must provide a clear explanation of the charges and the general aspects of the conduct of the criminal proceedings (probation and parole officer). Being able to engage with clients in a meaningful and confidential manner is critical (lawyer). Two social workers also mention that communication with social workers and regular updates of the case to the parents is a sign of effective participation.

When asked if lawyers **can effectively participate in all stages of the proceedings**, all specialists and three lawyers agree that **lawyers can effectively participate in all stages of the proceedings**. Two specialists, however, raised concern regarding lawyers' involvement in the **pre-trial stage**. They claim that lawyers are extremely busy and that it might be challenging for them to inform their clients about all aspects of the proceedings at that stage. They are sometimes only available to discuss the case with the child over the phone rather than meeting with the child in person.

The **number of cases** that both private and legal aid lawyers have in Malta was presented as a challenge by a senior social worker. The **location** of the juvenile court, which is not in the same area as the adult court, was also identified as an issue (one social worker and one lawyer). Lawyers are typically running from one court case to the next, making it difficult for them to attend hearings in the

juvenile court. They often get stuck in traffic on their way to the juvenile court and are late for the hearing. This results in the postponement or adjournment of cases.

Furthermore, one lawyer highlighted two specific obstacles to successful participation in court proceedings. To begin with, the magistrate lacks the necessary courtroom equipment, and technology frequently fails. Second, the court's physical setting makes effective participation difficult due to the shortage of rooms where lawyers may meet with their clients in private.

(Lawyer, Malta): *“During the hearing the physical setting is a big challenge in Malta. For example, the magistrate does not have the necessary equipment, or sometimes they are not working. There are physical challenges that can easily be remedied, so it is an investment into the system. I would say a proper room where you can discuss with your client because what we do is discuss with the client in the hall with a lot going on, people going in and out so there are a lot of distractions. So, I would say that there need to be even small rooms available.”*

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

Three lawyers believe that **when communicating with a child suspected or accused of a crime**, lawyers should explain things in a child-friendly manner since children have a limited understanding of the legal aspects of the proceedings. For example, lawyers should explain legal jargon to minors in a simple way (lawyer).

(Lawyer, Malta): *I think to make the proceedings child friendly. To have the time to explain the legal jargon that will be used in the courts. Because during the sitting there will be too much going on, so yes, having the time to explain properly to the child before and after.*

One lawyer recommends adopting a qualified and permanent team of experts appointed by the Juvenile Court, such as psychologists and social workers, in the Maltese juvenile criminal system, in order to truly assist suspected or accused children throughout all stages of the procedure. A challenge, according to two lawyers, is that there are no official checks to ensure whether the child is comfortable with the lawyer who has been appointed. A lawyer continues that the child will also not be able to change the lawyer once s/he has been appointed either. It is nevertheless, important for the child to feel at ease with the lawyer in order to guarantee efficient communication.

- e. Confidential and private consultations and meetings

Children may be deprived of their liberty while in police custody or while awaiting trial. Before being questioned, a child in police custody is able to talk privately with their lawyer, according to two police officers. The child can speak with the lawyer in a private room at the police station, and if the lawyer is unavailable, the child can speak privately with his or her lawyer over the phone (police officer). Moreover, when children are held pending trial, two lawyers claim that children are always permitted to communicate with their lawyer in a confidential and private manner.

(Police officer, Malta): *“In Malta, the person who is accused can phone his lawyer and he can talk with him/her in a private place, which is a room—may be a little bit smaller than my office—and the phone line is secure so nobody can hear what is happening and what is being said by the lawyer and the accused.”*

According to one specialist, whether children deprived of their liberty can have confidential and private consultations and meetings depends on how the police inform the child about this right. Only if the child is aware of his or her right and chooses to exercise it will they be able to meet with their lawyer in a private and confidential setting.

(Non-legal specialist, Malta): *“This very much depends on how the police, which is the first port of contact, informs the child because if the police are not informing the children of their*

right to have a lawyer present then it is a breach on their right, so yes I feel that a lawyer should be present but the child needs to be aware of this right.”

Furthermore, four specialists agree that when children are deprived of their liberty, they can contact their lawyers in a private and confidential manner.

(Psychologist, Malta): *“As far as I know, they have access to legal assistance and I think this is something that the authorities would definitely ensure is in place. From the clients I have worked with they have never said I wasn’t given access, for example, if they are in prison and they would have complained about having not been given access to a lawyer.”*

However, **during the strict Covid-19 lockdown**, children deprived of liberty could not meet their lawyer in person but could only communicate over the phone.

(Social worker, Malta): *“Yes. To be very honest, due to COVID-19, I am not sure whether they can go physically. But they still have a way to communicate.*

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

The lawyers interviewed agree that lawyers should always cooperate with those having parental responsibility since they are most likely to help the child. The holders of parental responsibility are also the ones who often involve a lawyer in the matter. However, according to one lawyer, cooperation with the parents depends on the particular case. Lawyers, in his opinion, must first determine if the parents were complicit in the crime, which would give them grounds to not cooperate with the parents. The parent-child relationship and whether or not the parents are involved in the child's life are equally crucial factors to consider. Parents who aren't particularly involved, for example, are not usually asked to participate in the criminal procedures. In cases where parents lack control, the lawyer may recommend that the child be removed from the family and placed in a foster or care home in the child's best interests.

(Lawyer, Malta): *“When you are talking about the parents, it’s another thing. You have to see whether the parents have any particular interests in the child, if the parents have any particular interest in the crime that went on, whether they are in control of the situation. It’s not the first time that we find a situation where we have to propose that the child is taken away from the parent and placed in a foster home or care home. So, you need to evaluate a little bit of what is permissible to be done or not to be done.”*

g. Discussion of findings

According to **Article 534 AGF** of the Maltese Criminal Code, children should **always** be assisted by a lawyer.⁸⁴ The findings confirm that the right to be assisted by a lawyer is guaranteed. It can, however, be waived in some instances, such as when a child decides not to be represented by a lawyer, either on their own initiative or on the advice of their parents, or when the child has talked with the lawyer over the phone and feels comfortable proceeding without them there. In this scenario, the child would be required to sign a document acknowledging that he or she had been offered legal assistance. Having said that, assistance by a lawyer is recommended, and it is extremely rare for a child not to be represented by a lawyer.

In terms of **legal aid**, Maltese legislation does not provide special procedures for juvenile offenders. Nonetheless, the findings reveal that free legal aid is ensured in practice when the parents claim that they do not have the economic means to pay. This right is communicated to the child by the police, the magistrate, or the child's parents, at the beginning of the criminal procedures. Respondents, however, voiced a variety of concerns about the accessibility and quality of free legal aid.

⁸⁴ Malta, Article 534AGF of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

Moreover, differing opinions arose as to whether court hearings can go ahead without a lawyer being present. Some respondents stated that, in theory, court proceedings can go ahead without the presence of a lawyer, it was noted again that the child would be required to sign a declaration before a court proceeding could take place without the presence of a lawyer. Others, on the other hand, were adamant that the presence of a lawyer is required.

Interviewees agreed that lawyers can be present during all stages of the proceedings. They usually get involved in the early phases of criminal procedures, such as when the child is initially approached by the police when he or she is detained or arrested, or before the initial questioning. Interestingly, two interviewees stated **that lawyers' involvement depends primarily on the social status of the child and the family.**

There were three themes that emerged over what interviewees understood by the term "effective participation of a lawyer": **(1)** a lawyer is able to be involved and present throughout the whole process, **(2)** a lawyer has access to information, **(3)** a lawyer is able to interact and communicate with the client and other professionals. There was also agreement that lawyers can effectively participate in all stages of the proceedings. However, there were some issues raised that could hinder effective participation by the lawyer.

Furthermore, while defending or supporting a child suspected or accused of a crime, interviewees stressed the importance of using *age-appropriate, simple language*, and working with those who have parental responsibility. However, before any communication, lawyers should first determine whether the holder of parental responsibility has any particular interest in the child or the crime.

C.5 The right to an individual assessment

a. Legal overview

Article 7 of the Directive is transposed in **534AGG** of the [Criminal Code](#).⁸⁵

Article 534AGG (2) states that "*children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have*". Provided that "*the extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment*".⁸⁶

Furthermore, the Maltese Criminal Code specifies that the individual assessment shall be carried out at the earliest appropriate stage of the proceedings and before the child is charged with a criminal offence.⁸⁷ In this case, the Criminal Code refers to the moment of notification of suspicion by national authorities.

Article 534GG (5) states that "*In the absence of an individual assessment, a child may nevertheless be charged with a criminal offence provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court*".⁸⁸ Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in

⁸⁵ Malta, Article 534AGG of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁸⁶ Malta, Article 534AGG (2) sub-article (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁸⁷ Malta, Article 534AGG (4) sub-article (5) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁸⁸ Malta, Article 534AGG (5) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

Articles 534AGE and 534AGN or a specialised professional.⁸⁹ In any event, the individual assessment should be available at the beginning of the trial hearings before a court to identify specific needs of the child and protect him from harm.

Around this issue, it is worth noting that this was not the case of the three teenagers accused in El Hiblu 1. In its report Amnesty International stressed that what happened must be seen from the teenagers' perspective in line with the provisions of **Article 534AGG (2)**.⁹⁰ Notably, these acts were allegedly committed with the sole purpose of protecting themselves and others from the immediate danger of being landed in Libya and subjected to arbitrary and indefinite detention.⁹¹ No individual assessment has been carried out, considering the seriousness of the alleged criminal offence and the measures that could be taken if the teenagers were found guilty. Amnesty International believes that the office should take due account of the context in which the facts took place and therefore the potential application of grounds to exclude or mitigate criminal liability for such acts, if proven in court.

⁹²

There are no specific legal remedies in case the right to an individual assessment is violated. However, **Article 355AUI** of the Criminal Code generally provides that a suspect or accused person in criminal proceedings shall be entitled to seek redress in the event of a breach of their rights. The court seized with the claim has authority to grant such redress (which is usually monetary compensation) as it deems appropriate. There is also a right of appeal from a decision to grant or deny such redress to the Court of Criminal Appeal. This Article applies also in case of violation of **Article 534AGG**.⁹³

b. Individual assessment and exceptions in practice

Three interviewed lawyers do not have any knowledge of the individual assessments. Two other lawyers explain that the lawyer or the defendant child can request the individual assessment. The magistrate is the one who approves the request and consults social workers, child protection officers, psychiatrists and psychologists (two lawyers and one non-legal specialist). Respondents among all professions agree that **experts often work together using a multidisciplinary approach to the assessment.**

According to a police officer, the minor is always individually assessed when under the assistance of the Probation and Parole Services. The probation officer is in charge of producing two kinds of reports: the pre-sentencing report and the social inquiry report. In these two reports, relevant professionals assess the history of the minor and their mental state at the time of the assessment.

(Police officer, Malta): *“Once we had a very delicate case, the child came from a poor background and the father was in jail. His sister was also in and out of jail, and his mother had other issues. We would go to all the stakeholders from different agencies; APPOGG, childhood protection, psychological agencies. We got everyone together to decide the next action in the best interest of the child.”*

The social inquiry report is assessed before the court proceedings. The lawyer or the magistrate can also request the report for reference at a later stage during the proceedings. The pre-sentencing report is assessed during court proceedings. It should reflect any changes of the accused or suspected child that occurred throughout the proceeding. The professionals performing the assessment also advise the court on the sentence that should be given to the minor. The results of the assessment can have a crucial impact on the final judgement (police officer).

⁸⁹ Malta, Article 534AGG (6) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁹⁰ For more information, see Article 534AGG (2) of the [Criminal Code](#).

⁹¹ For more information, see Article 534AGG (2) of the [Criminal Code](#).

⁹² Amnesty International Public Statement, [Malta: The El Hiblu 1 Case- Three Teenagers In The Dock](#), 23 October 2019.

⁹³ Malta, Article 355AUI of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10th June 1854.

(Police officer, Malta): *“In case the child has mental health problems, the police will usually contact a psychiatrist. The psychiatric assessment evaluates the child’s ability to make conscious decisions. If the examined child has no malicious intention, there is no crime to be convicted, and therefore no court proceedings.”*

Concerning the child’s involvement in the assessments, two police officers state that the defendant is able to participate in the procedure. Two non-legal specialists add that the holder of parental responsibility is involved in the individual assessment. This will be the case only where the child requests this person to be involved. A social worker continues that **the assessment is not a single event but rather a continuous process performed by various professionals**. Those professionals must always be aware of the child’s situation to provide the best support.

Individual assessments are not conducted ex officio. Most interviewees (six non-legal specialists, two police officers, and a lawyer) state that the lawyer requests the individual assessment and that the magistrate has discretion in approving this request (three non-legal specialists and a police officer). Yet, **the court has no legal obligation to conduct the assessment** (social worker).

(Police officer, Malta): *“The individual assessment is not conducted ex officio. The lawyer needs to ask for the assessment and I have never had the case where the magistrate objects to it. Even if I (the prosecutor) object it, the magistrate would decide if they grant the assessment or not.”*

Concerning exceptions, one police officer adds that an individual assessment is not conducted in two instances. First, in the case of less serious offences where a minor receives the lowest possible sentence, there is no need for a social inquiry report. A second example is when the offender pleads guilty at the first court hearing.

(Police officer, Malta): *“An individual assessment is not conducted in cases of less serious offences or when the offender admits guilt at the first court hearing. A typical example is sharing inappropriate photos of another minor. In this case, minors are given the lowest possible sentence, such as conditional discharge for 6 months. It is useless to obtain a social inquiry or pre-sentencing report, go to court 3 or 4 times, and then you get the same sentence, because you cannot get a lower sentence.”*

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

The outcomes and findings of the individual assessment are used for the magistrate to make a deliberate decision in the final judgement (police officer). The magistrate together with the probation officer decides if the social inquiry report should be assessed before the court proceedings (police officer).

According to one police officer, there are cases where national authorities need medical information about the child in order to facilitate appropriate assistance. National authorities must formally request access to the medical assessments, and respect data protection regulations.

Another purpose for national authorities to use the individual assessment is **to determine protective, beneficial, and pre-trial measures**.

(Social worker, Malta): *“The assessment is important to determine the care plan. This includes protective and beneficial measures such as changing the place of residence of the child to a community home.”*

A non-legal specialist mentions examples such as detention or alternatives to pre-trial detention, and sentence and punishment options. A psychologist continues that professionals involved in the

assessment work with the National Foundation for Social Welfare Services APPOGG. National authorities may then use the findings to develop protective measures if the child's safety is in danger.

(Psychologist, Malta): *“If the safety of the child is being compromised, then I would imagine certain measures would need to be put in place to ensure the safety of the child. For example, if the child discloses they are being sexually abused, then something needs to be done immediately. The assessment could also indicate that the child needs training and education to integrate into society better. We try to explore community-based resources and try to direct the child to alternative schooling.”*

A social worker states that **the magistrate uses the individual assessment to determine the need for the assistance of a social worker**. The social worker continues explaining the difference in importance of the individual assessment in the juvenile court compared to the criminal court in Valletta. Where the criminal court generally does not make use of the individual assessment, the juvenile court attributes great relevance to the assessment, including for the final sentence.

d. Challenges

As to challenges concerning individual assessments, only the non-legal professionals group commented on their experiences. According to one social worker, even though the court allows individual assessments, in practice they do not always take place. For instance, this is a problem when the court issues a treatment order (i.e., anger management classes) without the consultation of a psychiatrist or psychologist to assess the need for this treatment. In addition, another social worker reflects on the **poor communication between police and social workers on the assistance of mental health issues of minors**. An even greater difficulty arises when it concerns mental health issues of migrant children (psychologist).

(Psychologist, Malta): *“When I am working here in Malta with a Maltese child, it is different for a child who comes from sub-Saharan areas where mental health is taboo. If we are talking about certain questions that I would ask my Maltese client, it is difficult to ask clients from other cultures, and still be able to take their needs into account.”*

Moreover, **language and cultural barriers pose challenges**. A psychologist questions the use of interpreters because correct translation is complicated by dialects and local differences in language. This can result in a different outcome of the trial for minors with an immigrant background or for minors who belong to an ethnic minority (one psychologist and one non-legal specialist). Another social worker confirms the hurdles in finding an interpreter in Malta, especially when it comes to less common languages.

(Social worker, Malta): *“The Department of Probation and Parole and the Court provide an interpreter in order to break the language barrier when performing the individual assessment. However, as Malta is a small country, there are hurdles in finding an interpreter for some languages, such as some African or Eastern European languages.”*

In addition to the language and cultural barriers, a senior social worker has observed the different treatment of unaccompanied children coming from an immigrant background, compared to Maltese children. In the experience of the social worker, migrant children who have no fixed address will remain longer in pre-trial detention compared to children from Malta.

e. Discussion of findings

According to **Article 534AGG(2)**, children who are suspected or accused of crime shall have an individual assessment.⁹⁴ However, the findings suggest that lawyers have limited or no knowledge of the individual assessment. This data is contradictory, as most respondents have reported that the lawyer is in charge of requesting the individual assessment. Since the individual assessment is not conducted ex officio, it is questionable when the magistrate decides to use it. In this regard, one social worker has criticised the court because it will not always request an individual assessment, also in cases in which the magistrate will impose a treatment order.

It is also worth noting that **only one respondent has addressed the evaluation of the criminal intent in the individual assessment**. As it is crucial for the further course of the proceedings and the final judgement, it is interesting that none of the other interviewees has mentioned it.

Another concern expressed by non-legal professionals is **communication between police and social workers, especially on mental health issues**. The matter is particularly relevant in the case of migrant children, whose culture still sees mental health issues as taboo. Besides traditional taboos, interpreters cannot always guarantee correct translation because of language and cultural barriers. These are additional challenges that the magistrate should consider when assessing the background and the intention of a child migrant who committed a crime.

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

Article 10 of the Directive is directly transposed in **Article 534AGJ** of the Criminal Code.

Regarding the deprivation of liberty of a child, at any stage of the proceedings, **Article 534AGJ** provides that the measure “shall be *imposed only in a last resort and limited to the shortest appropriate period of time*”. Any post-trial detention decision shall be subject to appeal no later than six months after the deprivation of liberty and must be reviewed every six months by the court for as long as the decision remains in force.⁹⁵

As referred to in **Article 534AGK** alternative measures to detention shall be taken where possible.

Article 534AGM, on the timely and diligent treatment of cases, states that the Police and other judicial authorities shall ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence. Moreover, the authorities shall treat children in a manner which protects their dignity, and which is appropriate to their level of understanding, including any special needs that they may have (needs concerning any communication difficulties, for instance).⁹⁶

With regards to young offenders, there is only one detention centre in Malta that houses both juvenile (under 16) and young offenders. The Young Offenders Unit for Rehabilitation Services (YOURS) that caters for males under 21 years of age. On the discretion of the concerned authorities, older young people can be kept in this section on the basis of factors that ascertain various characteristics of the offender’s personal security. The YOURS provides its inmates with the services of a social worker, a psychologist and a psychiatrist.⁹⁷

⁹⁴ Malta, Article 534AGG (2) sub-article (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

⁹⁵ Malta, Article 534AGJ of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854

⁹⁶ Malta, Article 534AGM of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854

⁹⁷ Malta Report, Project OutinOut, [“Juvenile Justice in Malta”](#), Workstream 1.1: Comparative Investigation, Joseph Giordmaina Coordinator.

Article 534AGK of the Criminal Code states: *“The Executive Police and any other law enforcement or judicial authority, as the case may be, shall, where possible, have recourse to measures alternative to detention.”*⁹⁸ Therefore, various legal options and programs are available for young offenders who break societal norms, while consideration to the age of the young person is the primary aim and that recourse to incarceration, as stated in the previous section, is taken as a last resort.

An option the court can apply as an alternative to imprisonment is the probation order, which aims to facilitate the social reintegration of offenders. **Article 7 (1)** of [The Probation Act](#) provides that the Court may, instead of sentencing the offender, make a probation order, which consists of *“an order requiring the offender to be under the supervision of a probation officer for a period to be specified in the order of not less than one year and not more than three years”*.⁹⁹ The Probation order includes details on the residence of the offender. The Court assesses the environment surrounding the minor and, where necessary, can place him in an institution. The period the offender is required to reside shall not be made more than twelve months from the date of the order. Probation orders are served on the probationer and the Director of Probation Services who will assign an officer to supervise the probationer. Where possible, the Director of Probation Services assigns a probation officer experienced in dealing with children’s offenders under 16 years of age (**Article 7(4) (a) (b)**).¹⁰⁰

When the offender is a drug addict, proper arrangements can be made for adequate treatment in a hospital or other appropriate institutions (**Article 7 (5)**).¹⁰¹

A community service order may be given to an offender aged sixteen years and over, convicted of a more serious offence. This offence must not be punishable only by a fine and cannot be an offence punishable with imprisonment exceeding seven years.¹⁰² The work to be performed under the community service shall be of the period *“of not less than one month and not more than two years beginning on the date of the order”*.¹⁰³

Moreover, **Article 319 (10)** of the *Maltese Code of Police Laws* provides diversion for young offenders below the age of 17 who have consumed alcohol: *if it is their first offence, they can receive a warning, while for a second offence or more the competent Court may order such minor to participate in an educational programme “which, if and as necessary, may be combined with counselling and which will be provided by an agency staff member”*.¹⁰⁴

In a separate wing of the Corradino Correctional Facility (the structure where all persons sentenced to imprisonment serve their sentence) facilities for young offenders in need of special attention are put in place. Children and young persons with mental health problems are admitted to the Young Peron’s Unit next to an hospital in Attard, where a multidisciplinary team provides adequate care and education. Another residential service, the Conservatorio Vincenzo Bugeja (CVB), offers alternative care for girls aged between 11 and 18 years, where also a therapeutic programme called “Programme Fejda” is delivered to girls with behavioural problems, “promoting social and personal skills”. Young

⁹⁸ Malta, Article 534AGK of the [Criminal Code](#), Chapter 9 of the Laws of Malta, 10 June 1854.

⁹⁹ Malta, Article 7(1) of the [Children and Young Person Order \(Care Order Acts\)](#), Chapter 285 of the Law of Malta, 29 November 1985.

¹⁰⁰ Malta, Article 7(4) of the [Children and Young Person Order \(Care Order Acts\)](#), Chapter 285 of the Law of Malta, 29 November 1985.

¹⁰¹ Malta, Article 7(5) of the [Children and Young Person Order \(Care Order Acts\)](#), Chapter 285 of the Law of Malta, 29 November 1985.

¹⁰² Malta, Article 11 of the [Children and Young Person Order \(Care Order Acts\)](#), Chapter 285 of the Law of Malta, 29 November 1985.

¹⁰³ Malta, Article 14 of the [Children and Young Person Order \(Care Order Acts\)](#), Chapter 285 of the Law of Malta, 29 November 1985.

¹⁰⁴ Malta, Article 319 (10) of the [Code of Police Laws](#), Chapter 10 of the Law of Malta, 10 June 1854.

women offenders may be referred to the residence through a care order or through a court order which put in place a care plan.¹⁰⁵

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

All interviewees confirm that the deprivation of liberty is a measure of last resort. This applies to police custody, pre-trial detention, and post-trial detention. A lawyer states that the courts are generally very tolerant given that most children who are suspected or accused of crime come from difficult backgrounds. **The court gives minors several chances to rehabilitate before they are deprived of their liberty.**

Respondents distinguish between various forms of the deprivation of liberty and their alternative measures. A police officer states that during police custody, the minor can be detained for a maximum of 48 hours.

(Police officer, Malta): *“If a minor is involved in a homicide investigation, all the measures to ensure the process of justice should be taken. Even if this includes keeping a minor in custody.”*

A social worker adds that unaccompanied minors from an immigrant background are more likely to remain in custody compared to children of Maltese nationality.

Interviewees have not provided alternative measures to pre-trial detention. When it comes to detention, all respondents refer to post-trial situations. A social worker explains that **alternative measures to deprivation of liberty have the purpose to serve the public interest**. According to four police officers, a probation officer is often consulted to discuss alternatives for detention. The court prefers measures aimed at giving back to society, such as working with the elderly (non-legal specialist). Two police officers continue that measures can include suspended sentences, treatment orders or conditional discharge. As a social worker mentions that the alternative measure depends also on the situation of the minor.

(Probation and parole officer, Malta): *“Alternative measures include a supervision sentence in case of serious offences, where many professionals supervise the child; rehabilitation for children with substance abuse; and admission to the mental health clinic for children with mental health issues.”*

In general, prison sentences will only be given in case of recidivism or more serious crimes (one lawyer and one non-legal specialist). A lawyer specifies that **usually alternative measures to deprivation of liberty do not apply to repeat offenders**.

(Lawyer, Malta): *“Community service would be preferred to restriction of liberty. However, we had two cases where juveniles were beyond help unfortunately. They were already in a cycle of crime. It was our plea as defence to request the restriction of liberty because it was safer for these two juveniles to be in prison rather than anywhere else.”*

Besides the type of crime which influences the decision in court, **the psychosocial and medical situation of the minor impacts the sentence** (social worker). One social worker states that when a child does not have a permanent residence, the judge might consider deprivation of liberty. Another social worker adds that alternative measures are typically given to individuals who have a certain stability in their life. If this stability is not present, the magistrate may lean more towards a custodial

¹⁰⁵ Report of the project “Alternative To Custody For Young Offenders – Developing Intensive and Remand Fostering Programmes”, [Alternatives To Custody For Young Offenders](#) funded by the European Union under the specific programme “DAPHNE III” (JUST/2011-2012/DAP/AG/3054).

sentence. The final choice of the measure is at the discretion of the magistrate (a police officer and a non-legal specialist).

- b. Medical examination
 - i. Legal overview

Article 8 of the Directive is directly transposed in **Article 534 AGH** of the Criminal Code.

The new provision of the **Article 534AGH** specifies that children deprived of liberty have a right to a medical examination without undue delay with a view, in particular to assessing their general mental and physical condition.¹⁰⁶ With regard to the mental condition of the child, **Article 2** of the Mental Care Act defines mental capacity the “*patient’s ability and competence to make different categories and types of decisions and to be considered responsible for his actions*”.¹⁰⁷

The results of the assessments shall be taken into account when determining the capacity of the child to be subject to any measures taken or envisaged against the child. The medical examination can be requested either on initiative of the Court or by request of *the child; (b) the holder of parental responsibility; or (c) the child’s lawyer*. The result shall be evidenced in writing.¹⁰⁸

- ii. The medical examination in practice

All the professionals interviewed confirm there is a right to a medical examination for children deprived of liberty. Children in police custody or in prison have the right to ask and see a doctor immediately after their request (lawyer). Besides the child itself, the lawyer, the holder of parental responsibility and a social worker have the right to trigger a medical examination (psychologist). The examination can be performed either before the interrogation or at a later stage (police officer).

When in police custody, the police can bring the minor to the closest health care centre if they believe it is necessary.

(Police officer, Malta): “*Sometimes, the police request a medical examination if the minor has visible injuries, in order to document them. That is also to safeguard ourselves. This way we can prove the minor was not injured while in police custody.*”

The person who conducts the medical examination differs from one case to another. When the minor requests the medical examination, they will be first taken to the nearest clinic or health centre (police officer). A lawyer adds that the examination will be conducted by a physician and/or a psychologist.

The examination takes place in a separate and private room and has the same confidentiality as a medical examination for someone who is not deprived of their liberty. In the health clinic, the child will be accompanied by a prison warden (non-legal specialist). Three Interviewees (one lawyer, one psychologist, and one social worker) state that **the examination is conducted as non-invasive as possible**. Moreover, the police guarantee the protection of the privacy of the child. A social worker adds that it is carried out in a **highly ethical** manner.

Respondents have different experiences concerning the assessment of the medical examination. A probation and parole officer comments that she can call the prison and request a medical examination of a child if she has any concerns regarding the health, especially the mental health, of the minor. A social worker adds that in psychiatric and medical assessments, the professional considers the child’s previous medical record as well.

¹⁰⁶ Malta, Article 534AGH of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854

¹⁰⁷ Malta, Article 2 of the [Mental Health Act](#) (ACT XXII of 2012), Chapter 525 of the Laws of Malta, 10th October 2014.

¹⁰⁸ Malta, Article 534AGH of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

With regard to whether the examination is conducted ex officio, one social worker states that in the case of a prison sentence, **the examination is always conducted, even without request.**

(Social worker, Malta): *“When children are admitted to the prison, specialists working in the detention facility for children always perform the medical examination, even without request. They are told about the professionals on-site and if they are feeling ill or something else happens, they can request medical assistance.”*

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

When it comes to the use of the medical examination in practice, respondents provide various reasons. In general, authorities will request a medical examination when the minor has endured a medical injury before his detention (police officer). This is also to document that the minor is healthy during police custody to **protect the police from false allegations** (police officer).

Other reasons for the examination focus on the specific needs of the child (one lawyer and one psychologist). A probation and parole officer states that the **medical examination is used to create a medical care plan** for the child. The care plan contains information on the child’s health and mental stability. Two police officers continue that the results are presented in court to determine whether the child is capable of being questioned or can participate in proceedings.

A psychologist states that the documents of the medical assessment are used within the limits of the medical professionals. The magistrate can consult this information if relevant to make a tailored decision. The magistrate will also consider these results when determining the additional measures to be imposed and the need to provide medical assistance (three social workers).

- c. Special treatment in detention
 - i. Legal overview

Article 12 of the Directive is directly transposed in **Article 534AGJ** of the Criminal Code and states that Children need specific treatment in the case of deprivation of liberty.¹⁰⁹

As set out in **Article 534AGL** children shall be held separately from adults, even in police custody; the detention authorities shall take appropriate measures to ensure and preserve their health and physical and mental development; ensure their right to education and training, including where the children have disabilities; to a regular and effective exercise of their right to family life; to the access to programs that foster their development and reintegration; to respect for their freedom of religion or belief.¹¹⁰

Young offenders are housed in facilities that are administratively and physically separate from those where adult offenders serve their prison sentences and which are known as the Young Offenders Unit Rehabilitation Services (YOURS)¹¹¹. The Centre of Residential Restorative Services hosts detainees under the age of 21. The law provides that Prisoners under twenty-one are kept separate from prisoners over that age group and are kept in conditions which take account of the needs of their age and protect them from harmful influences.¹¹²

Interesting project is [OutinOut](#), which aims to take a closer look at the conditions of minors in criminal proceedings. This project includes comparative investigations in several countries of the

¹⁰⁹ Malta, Article 534AGJ of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹¹⁰ Malta, Article 534AGJ of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹¹¹ Council of Europe, [Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) 3 to 10 September 2015.

¹¹² Malta, Subsidiary Legislation, [Prisons Regulations](#), S.L. 260.03 of the Laws of Malta 1st October 1995.

Mediterranean area, including Malta, and intends to compare the existing regulations and practices. The main objectives of this project encompass the improvement of the juvenile and penitentiary systems of the included countries, building shared knowledge on the organisation and functioning of the services in support of minors in the criminal context, as well as strengthening the relationship between institutes, communities, cities and reference territories. According to the investigation on the judicial and penitentiary system in Malta with a specific reference to juvenile justice, a number of educational courses were organised on an ad hoc basis. Courses of life skills, for instance English or Maltese language were provided. In terms of non-formal educational opportunities, inmates also have access to music and art classes. Additionally, there are also some job opportunities and paid work available, primarily in cleaning and kitchen work.

Convicted children are allowed 90 minutes of contact with family and friends once a week. If still pending trial, children have additional 3 no-contact visits of 15 minutes each per week. All inmates have access to half an hour of phone calls every day, save when there are extraordinary circumstances in which children are allowed more calls. There was no specifically tailored regime for the young persons, nor were there any programmes to help the juveniles and young offenders prepare for reintegration into society.¹¹³

ii. The special treatment in practice

While in police custody, children are held at the Police Headquarter, where there is no separate section for children. Minors stay in a single room for a maximum of 48 hours, and the police make sure that no adult detainees will meet the child (two lawyers and one police officer). One police officer describes the cells as rooms with barred doors so that the minor can look outside.

All respondents confirmed that male offenders under 18 years of age are not held in the same prison as adults. They stay at the Centre of Residential Restorative Services (CoRRS), which is a recent institution. Until a few years ago, children served prison sentences in the same facility as adults. For girls, the situation has not changed yet. **Malta does not have a young offender female prison, which means they stay at the Corradino Correctional facility** together with adult women (probation and parole officer).

Five interviewees believe that children have access to an appropriate level of health care services, physical and mental development measures, education and training, and programmes that foster their development and reintegration into society (two social workers, two non-legal specialists, and a psychologist).

(Psychologist, Malta): *“Over the past few years, there has been an increase in services available for young offenders, especially programmes on education and training. They are usually encouraged to pursue some type of education and at least use the time they have in prison constructively.”*

In addition, a social worker confirms that psychologists and therapists are available to young offenders and social workers support minors during their permanence in prison.

(Psychologist, Malta): *Within the prison, there is a ‘care and integration unit’, which is composed of psychologists, social workers, youth workers, psychology assistants, and other experts who may assist the child. The professionals each carry out their respective assessment and together, they devise a correctional care plan which takes into consideration the length of the sentence and the specifics of the individual case”.*

d. Contact with family members during deprivation of liberty

¹¹³ Malta Report, Project OutinOut, [“Juvenile Justice in Malta”](#), Joseph Giordmaina Coordinator.

In general, all respondents state that children deprived of their liberty can regularly contact their family members. They are able to meet them during the normal visiting hours of the correctional facility. One lawyer adds that even though in-person contact is ensured, all visitations are performed under supervision. Another lawyer continues that there is an obligation that the parents or curators of the child are contacted after their arrest. During police custody, minors have the right to one phone call. After the prison sentence, the child can meet family members and contact them by phone or other virtual means (two police officers).

(Police officer, Malta): *During the first 48 hours, if they are kept under arrest in our custody, they have the right for one phone call. But as I said, during the interrogation there might be a family member with him, if the family member is here they will stay here during the whole process of the interrogating and sometimes even the lawyer present as well. After that, if he is sentenced to prison, he will have contact visits or virtual visits.*

One social worker states that parental involvement is encouraged in normal circumstances. However, whether children deprived of liberty can contact and meet their parents largely depends on the availability of the holders of parental responsibility and degree of engagement with the child. Another social worker elaborates that the magistrate assesses the relationship between the parent and the child before they are allowed to be in contact.

(Social worker, Malta): *“Family members can call and visit their child on a regular basis. The phone call can be restricted or recorded to prevent the child from contacting people who might put the child in danger again.”*

e. Discussion of findings

According to **Article 534AGJ** of the Maltese Criminal Code, deprivation of liberty for children in criminal proceedings is a measure of last resort.¹¹⁴ The findings suggest that, in Malta, the court resorts to prison sentences only when different alternative measures have been attempted without success, when the child lacks stability at home, or when the child is stuck in a cycle of crime.

In general, respondents claim that the court prefers to give minor defendants a chance to rehabilitate through alternative measures. Examples of these measures include suspended sentences, community work, treatment orders, and conditional discharge. The final judgement depends not only on the type of crime committed but also on the psychosocial and medical situation of the minor.

According to **Article 534AGH**, children deprived of liberty have a right to a medical examination without undue delay.¹¹⁵ In general, minors, holders of parental authority, and social workers have the right to request a medical examination. The examination takes place immediately after the request, in the least invasive manner. The authorities use medical examinations for several purposes: **1)** as proof to document the physical and mental state of the minor and protect the police against false accusations, **2)** to determine whether the child is capable of participating in the trial, **3)** to establish a care plan for the child.

In terms of special treatments, **Article 534AGL** sets out that children shall be held separately from adults.¹¹⁶ The findings confirm that male minors stay in the Centre of Residential Restorative Services (CoRRS), separate from the facility for adults. This is a positive development compared to a few years ago when male minors were still detained in the same prison as adults. The treatment is different for young female offenders, who still remain at the same facility as adult women. In the Corradino prison, girls are not followed by experts and do not have access to all the described services available for young offenders. Respondents claimed that there are a few girls sentenced to prison and they stay

¹¹⁴ Malta, Article 534AGJ of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹¹⁵ Malta, Article 534AGH of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹¹⁶ Malta, Article 534AGL of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

with the other female inmates at the Corradino Correctional Facility for practical reasons. However, this is an important issue **to address to ensure equality in treatments between males and female young offenders.**

The findings suggest that there are several services in place for children deprived of their liberty. In general, children have access to health care services, physical and mental development measures, education and training, and programmes that foster their development and reintegration into society. Children also have the opportunity to consult psychologists and therapists and obtain support from social workers.

Regular contact with the parents is not an issue. Minors deprived of liberty are able to have regular meetings with family members. Both phone calls and in-person visits are encouraged. To note, communication with people outside the prison is controlled by guards and social workers, within the limits of the best child's interests.

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

a. Legal overview

Article 15 of the Directive is directly transposed in **Article 534AGN** of the Maltese Criminal Code.¹¹⁷

The new provision of **Article 534AGN** specifies that *“Children shall have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved. Where the holder of parental responsibility cannot be present, another appropriate adult shall be designated and usually will be indicated by the child. If the child has not nominated another adult, the Court will designate this person, who could be a tutor working for an institution responsible for the protection of welfare of children.”*¹¹⁸

In choosing that person, the child's best interest should always be taken into account by the Court.

The right for children to be accompanied by the holder of parental responsibility must be guaranteed during all the stages of the proceedings other than court hearings, e.g., during questioning at the police station. For instance, this right is also mentioned in the [Police Act](#), when describing the practice for interrogation of arrested persons. **Article 38(15)** states that special attention should be given to persons under 18 years old, and that minors should be interviewed only in presence of their parents or their tutor.¹¹⁹

In the case of *El Hiblu 1.*, the spokesperson for the UN High Commissioner for Human Rights has made clear the Commissioner's concern to the Maltese authorities about the treatment of the three young migrants and asked to reconsider their charges and treatments. In spite of the fact that two of them are minors, all three of the accused were held in the high-security division of an adult prison after they were reportedly interrogated by the authorities without being appointed legal guardians or placed in the care of independent child protection officials, responsible for ensuring their best interests.¹²⁰ This is in violation of both the right to be supported and accompanied as provided for in Article 534AGN of the Maltese Criminal Code and the right of minors to be interviewed in presence of the person who has his effective care and custody, under **Article 38(15)** of the Police Act.¹²¹

¹¹⁷ Malta, Article 534AGN of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10th June 1854.

¹¹⁸ Malta, Article 534AGN of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10th June 1854.

¹¹⁹ Malta, Article 38 (15) of the [Police Act](#), Chapter 164 of the Laws of Malta, 12th May 2017.

¹²⁰ Amnesty International Public Statement, [Malta: The El Hiblu 1 Case- Three Teenagers In The Dock](#), 23 October 2019.

¹²¹ Malta, Article Article38 (15) of the [Police Act](#) of the Laws of Malta, 12th May 2017.

Right to effectively Participate in the trial

Article 16 of the Directive is transposed in **Article 534AGO** of the Maltese Criminal Code.

Children or minors accused of being involved in crimes have the right to be present and to participate effectively in their trial. Effective participation means giving the child the opportunity to be heard in court and to express his/her opinion. **(534AGO (1))**.¹²² Children who were not present at their trial have the right to a retrial. Everyone, including minors, have the right to defend themselves by expressing their own opinions and by telling their version of events based on personal experiences. The conditions to do so are set forth in Subtitle XII of Part I of Book Two of the Criminal Code.

This article sets out the child's right to be present at the trial, and the right "to a new trial or to another legal remedy, in accordance with, and under the conditions set out in Subtitle XII of Part I of Book Second" where they are not able to be present at the first hearing.

Regarding the available legal remedies in case the right to the effective participation is violated, **Article 366C (2)** of the Criminal Code outlines that "*any person who alleges that his rights (..) have been breached shall have a right to file an application in the Court of Magistrates within ten days, from the date of the fact which allegedly gave rise to the breach, to demand a finding of such a breach and an appropriate remedy*".¹²³

Right to privacy

The right to privacy of children suspected or accused of a crime is mentioned in **Article 534AGD (2) (iii)**, under the provisions related to the right to information. This Article states that children shall be informed of "*the right to protection of privacy as provided for in article 531*" of the Criminal Code.¹²⁴

[ACT No. XVIII of 2020](#) includes an amendment of **Article 531** of the Code. In detail:

"In sub-article (1) of article 531 of the Code, immediately after the words "*with closed doors*" there shall be added the words "*in all cases involving children below the age of eighteen (18)*".

The amendment to **Article 531** provides that in all cases where children are involved in criminal proceedings the court has the discretion to decide whether the case will be held with closed doors or not. In case of hearing with closed doors, "*the court shall previously make an order to that effect stating the reasons for so doing*".¹²⁵

In addition to the new amendments to the Criminal Code, **Article 7** of the Juvenile Court Act makes detailed provisions regarding the exclusion of the public from hearings, stating that: "*No person other than the officials of the Juvenile Court and of the prosecution, the parties to the case and their counsel or other members of the legal profession, representatives of the Ministry responsible for social welfare, witnesses or other persons directly concerned in the case, the parent or other relative or the guardian of the child or young person charged or concerned in the proceedings, and bona fide representatives of newspapers, shall, except by leave of the Juvenile Court, be present at a sitting of the same or in any place adjacent to the room in which the hearing of the case or proceedings is held*".

In addition, **Article 8(1)** provides also that "*no newspaper report of, or sound or television broadcast relating to, any proceedings in the Juvenile Court shall reveal the name, address or school, or include*

¹²² Malta, Article 534AGO (1) of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854

¹²³ Malta, Article 366C of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹²⁴ Malta, Article 534AGD of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹²⁵ Malta, Article 531 of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

*any particulars calculated to lead to the identification, of any child or young person concerned in those proceedings”.*¹²⁶

There are cases where no protection of privacy for children accused or suspected of crimes is guaranteed. Both media and NGOs have expressed their concern about such situations. Two cases will be discussed here. First, In January 2020, Malta Police Force escorted a group of arrested migrants, including a number of minors, to Court. There were public images and videos show the arrested migrants brought to Court via one of Malta's busiest pedestrian streets. Several NGOs complained about this treatment, saying that *“it should be stressed that minors should be awarded specific protections throughout criminal proceedings, which include restriction on the publication of their names and images. This is not the first time we are witnessing migrants, including children, brought to Court in this manner”*.¹²⁷ Furthermore, In the El Hiblu 1 case, OHCHR and Amnesty International reported that three teenagers were *“brought to court through the main door, putting at risk their right to privacy by being exposed to journalists and cameras, despite a court order instructing for their identity to be protected in line with the best interest of the child undergoing a criminal trial”*.¹²⁸ An issue arises between privacy of what goes on within the courtroom and what goes on around the courtroom more broadly where maintenance of privacy has been far more complex.

Article 8(2) of the Juvenile Court Act states that when a person publishes or broadcasts any information that could lead to the identification of a child, this person *“shall be guilty of contempt of the authority of the Juvenile Court and shall be liable to a fine (ammenda or multa) or to detention in terms of the Criminal Code”*.¹²⁹ The police must immediately notify the Juvenile Court of any report concerning the publication or broadcast of information about children involved in a criminal proceeding. After this notification, the Juvenile Court shall give oral or written instructions to the police, to proceed against the offender, either by summons or by arrest (**Article 8 (3)** Juvenile Court Act).¹³⁰

b. Right to effective participation in practice

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

All lawyers and non-legal professionals unanimously state that the **setting of the juvenile court is more informal and child-friendly** than the standard criminal court. In particular, one lawyer believes that the informal setting of the juvenile court means it does not have the pressures of a traditional courtroom.

When asked to describe the rooms in which the trial is conducted, nine interviewees (three lawyers, two non-legal specialists, two social workers, one psychologist, and one probation and parole officer) describe the juvenile courtroom as **a standard-looking room with a table in the form of a horseshoe**. The magistrate is said to preside at the head of the table with her two assistants. The prosecutor sits at one end of the table together with an educational representative, who provides the magistrate with information about the school attendance of the child. On the other end of the table, there is the deputy registrar, the child defendant, his/her lawyer, the probation officer, and the child’s family if present (probation and parole officer).

Four professionals (two non-legal specialists, one senior social worker, and one psychologist) continue that the courtroom is **a standard hall without pedestals**, which ensures that all parties including the magistrate are on the same level. In addition, police are not in uniform in order to create an informal atmosphere and environment for the child (probation and parole officer). A psychologist explains that

¹²⁶ Malta, Article 7 of the [Juvenile Court Act](#), Chapter 287 of the Law of Malta, 25th July 1980.

¹²⁷ Malta Independent, [NGOs condemn how police escorted group of arrested migrants to court](#) 9 January 2020.

¹²⁸ Amnesty International Public Statement, [Malta: The El Hiblu 1 Case- Three Teenagers In The Dock](#), 23 October 2019.

¹²⁹ Malta, Article 8(2) of the [Juvenile Court Act](#), Chapter 287 of the Law of Malta, 25th July 1980.

¹³⁰ Malta, Article 8(3) of the [Juvenile Court Act](#), Chapter 287 of the Law of Malta, 25th July 1980.

this informal setting helps to transform the trial into an informal discussion, which reduces the impact of going through court proceedings on the child. On the contrary, one lawyer argues that **the informality of the setting is criticised by many professionals**, including herself, for not being authoritative enough. In her opinion, the experience of the court is not "threatening enough" to children and in turn, they do not take it seriously.

(Lawyer, Malta): *"[...] We have been criticised and many professionals have voiced their disagreement that this informality is leading to an increase in delinquency, because the juveniles don't consider the court as threatening or as authoritative so they are not bothered by the court. It's just another room. Even, for example, the magistrate does not wear the robes, so it's very informal."*

Regarding the **conduct of the proceedings** in the juvenile court, the magistrate as well as other experts communicate with children in an **age-appropriate way** in court (psychologist). The magistrate often asks children direct questions about the specific case, and most importantly, requests feedback from social workers (social worker). Another non-legal specialist also highlights that the magistrates approach minors in a **parental way**.

(Non-legal specialist, Malta): *"[...] and I know that they used to make it a point to have conversations, non-formal conversations with the minors. [...] I can tell you that both the previous and current magistrates, that I know, speak about the accused minors very differently and they seem to have a relationship with them as opposed to the accused adults. They approach them in a more maternal or parental way; they form relationships with the accused, and they actually try to support them."*

Moreover, eight professionals (four social workers, three non-legal specialists, and one probation and parole officer) affirm that **the public and the media are not permitted to attend court proceedings**.

(Probation and parole officer, Malta): *"No, they're not open to the public at all. So, they're always by a closed door. No public and media are allowed in."*

Along the same line, one lawyer confirms that hearings are held private.

(Lawyer, Malta): *"The juvenile court does not permit the public to be present; not even legal counsels waiting for other court cases, they are asked to wait outside"*

Two social workers, however, express their concern over some allegedly **"emergency' instances"**. In the event of an 'emergency,' children over 16 can be arraigned in the standard criminal court, where hearings are open to the public and are less child-friendly. One of them comments that all minors should be, in any case, tried in the Juvenile Court, and to be heard by the specialised magistrate.

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

Three lawyers agree that **children are heard in the same manner as adults**. Children, for example, have the right to remain silent in court and cannot be forced to testify. Four specialists (two social workers, one psychologist, and one probation and parole officer) continue that children are given many opportunities to speak and express their feelings during hearings.

(Social worker, Malta): *"Yes, they are heard. They are given the chance to talk. They are given the chance to express their feelings, what they want, obviously they are taken into account together with all evidence gathered, especially from the professionals involved."*

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

The interviewees reported that children can be accompanied during the trial, minors can **be escorted by the holder of parental responsibility or a support person** such as a social worker, according to two lawyers. Moreover, 10 interviewees (four social workers, two psychologists, two lawyers, one non-legal specialist, and one probation and parole officer) agree that **children are allowed to confer with their lawyers and support persons during the court hearing**. According to one psychologist, the magistrate permits a brief break during the hearing for the child to communicate with his/her lawyer. Having said that, one lawyer interviewed points out that children cannot just have a conversation with their lawyer at any time of the trial. Instead, minors usually consult with the lawyer before the court hearings.

(Lawyer, Malta): *“Yes, so the child would be sitting just next to the lawyer. From experience, there would be so much going on that it’s not effective or you would need to actually get to know the client before. You can’t really have the luxury of having a conversation at the time of the trial.”*

However, **private conversations between children and their lawyers before the hearings is an issue**. Due to a lack of space in the juvenile court, children can only confer with their lawyers in the corridor (outside the courtroom), without privacy. It is even more alarming when the accused child gets to see the victim, who is there to testify before the hearing (one psychologist and one social worker).

(Psychologist, Malta): *“There is no separate room; there’s no waiting room so it’s the first time that you get to see the victim, for example, who is there to testify, and the offender in the same corridor. They can get to see each other before court and then again it is because of lack of resources.”*

d. Discussion of findings

According to **Article 534 AGO** of the Maltese Criminal Code, minors accused of being involved in crimes have the right to be present and to participate effectively in their trial.¹³¹ The findings suggest that the settings of the juvenile court in Malta are more informal and child-friendly, which allows minors to effectively participate in the trial. Two modifications of the courtroom were identified, namely a table in the form of a horseshoe, and a courtroom without pedestals. These settings, on the other hand, have been said to be criticised for not being authoritative enough. One interviewee also mentioned that children cannot confer with their lawyers privately before the hearings due to a lack of space in the juvenile court. It is reported that court hearings are held privately. It also appears that the magistrate speaks to children according to their age and gives them opportunities to speak and express their feelings during the hearing. It is confirmed that children in court have the right to remain silent, and they cannot be forced to testify.

The new provision of **Article 534 AGN** of the Maltese Criminal Code specifies that *“children shall have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved”*.¹³² Similarly, it is reported that minors are allowed to be accompanied by the holder of parental responsibility as well as support persons. They are also allowed to confer with their lawyers and support persons during the court hearings even though, in practice, they might not have time to do so. It is worth noting that the public and the media are not permitted to attend juvenile court proceedings. However, a concern is raised amongst some interviewees over the allegedly ‘emergency’ situations. In such a case, a minor over 16 can be arraigned in the standard criminal court where the hearings are open to the public and less child-friendly.

¹³¹ Malta, Article 534AGN of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10th June 1854.

¹³² Malta, Article 534AGN of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10th June 1854.

PART D. GENERAL ASSESSMENT

D.1 Challenges

There were a number of challenges identified by interviewees with regard to guaranteeing the procedural safeguards of children. Three lawyers raised concern over the lack of training for lawyers dealing with children in criminal proceedings (**please refer to the section C1cii**). Similarly, two of the lawyers claim that the members of the judiciary lack training in the area of juvenile criminal law, including the concept of the best interest of the child.

Moreover, six professionals (two psychologists, two social workers, one lawyer, and one probation and parole officer) adhere that the biggest challenge remains the availability of **human resources**. In particular, there is a deficit of child guardians and other support service persons such as probation officers who could work with children holistically in order to stop them from reoffending (lawyer). A social worker and a psychologist also describe the challenge of finding qualified psychologists, social workers, police officers, and other experts who specialise in working with children, especially children with mental health issues. In addition, one psychologist observes that there is a lack of cooperation between different entities involved in juvenile criminal justice such as child protection services, social welfare agencies, and the police.

(Psychologist, Malta): *“Possibly, I would say, not enough cooperation between agencies. We can draft thousands of memorandums of understanding, but at the end of the day, there is no willingness to cooperate. It's very difficult to achieve. Whereas here, we need particular cooperation between for example child protection services and police.”*

Furthermore, cooperation between lawyers and parents or legal guardians remains one of the biggest challenges (lawyer). Additionally, one police officer remarks that it is not always beneficial to have the parental guardian present during the interrogation, as is the procedural norm. He explains that parents may hinder the child from disclosing all the details of the case.

(Lawyer, Malta): *“The biggest problems are the parents and legal guardians. There are those parents that are overprotective and don't recognise their children have done something wrong and these parents keep also bringing up excuses. They should cooperate more with everyone in order to educate the child that s/he did something wrong. In other cases, parents are not interested in the child.”*

As a side note, another lawyer points out that members of the judiciary remain reluctant to introduce changes in the juvenile criminal justice system, although awareness surrounding children's rights is increasing significantly in Malta. One of the non-legal specialists confirms that despite the fact that there is an abundance of ideas and proposals for improving the procedural safeguards for children, it is difficult to convince all the different parties involved to enact them. In addition, one of the lawyers' voices concern over the quality of legal aid services (**please refer to section C4b**).

(Lawyer, Malta): *“The awareness about children's rights is growing in Malta. However, there is reluctance by members of the judiciary to change to introduce change. For Example, we have found a lot of resistance to introduce the children's house until we compromised by having a member of the judiciary attending the sittings via a video conference. It is because these are in their comfort zone.”*

Regarding the court hearings, one of the police officers addresses the long waiting time for trials in juvenile court. **As there is just one magistrate presiding the juvenile court, most cases are not heard immediately.**

While another police officer shows concern over the recent reform of the criminal code which has raised the age of criminal responsibility to 14 years. He explains that children under 14 are not held responsible even though they committed a serious crime. He believes that the juvenile justice system could help even younger minors to get back on the right track and mitigate further social problems. A social worker confirms that it remains a challenge for her to engage and help minors under 14 who are involved in criminal activities.

(Police officer, Malta): *"[...] When you arraign a minor in court and he is 14 years, the magistrate will not give him a jail term, but will give him alternative sentencing such as a probation order. A Probation order can help the minor on the right path. In this case sometimes we have 13-year-olds who are already showing signs of delinquency, and we can do nothing to assist in the upbringing of the child [...]. If we had a law which could cater at least from 13 and if possible 12 years and over, we would be able to help the minors before they get to a point of no return."*

Regarding the arraignment in court, one of the non-legal specialists points out that minors over 16 years old who are co-accused with an adult are tried in a standard criminal court, which, in her opinion, goes against the children's rights and principles of child-friendly justice. As a consequence, those aged 17 and 18 can receive the same sentences as adults. She emphasises that being tried in the juvenile court where it is more welcoming and informal is crucial for the psychological state of the minors. On a similar note, two social workers reiterate that in allegedly "emergency instances", children over 16 years old are arraigned in the standard court (**please refer to section C7b**).

One non-legal specialist further notes that currently the biggest challenge is the availability and quality of rehabilitation services and facilities. In particular, she stresses that these settings and services are not engaging for children who have special needs. A social worker together with a lawyer add that the current system lacks a secure place where the child would be provided with stability, professional help and support, as introduced in the Minor Protection (Alternative Care) Act that came into force in Malta on July 1st, 2020. A social worker also mentions that certain police officers lack sensitivity towards people with mental health issues and foreigners. Moreover, a psychologist states, the biggest challenge is to make sure that the criminal proceedings in Malta are performed in a child-friendly way in order to prevent trauma.

(Social worker, Malta): *"We also lack a secure unit and a place, whereby the child is provided stability, professional help and support. Walk away from the chaotic lifestyle they were living outside. It will surely be a good alternative before a prison sentence. Since we do not have a secure unit at the moment, I believe that will be a huge step forward."*

(Lawyer, Malta): *"We do not have the actual place for the secure unit. The law provisions are there but they are not effective."*

D.2 Improvements

Respondents were often sceptical when talking about recent improvements in the field of juvenile criminal justice. There were only three significant improvements identified during the interviews. To begin with, one of the lawyers notes that the communication between police, child protection services, lawyers and other entities has become more effective.

Apart from that, a psychologist confirms that the number of services and programmes accessible to children in detention, particularly education and training, has risen in recent years.

Most importantly, an employee from the Commissioner for Children shared a new improvement in guaranteeing further safeguards for young offenders. According to their information, minors over 16 years old will be arraigned in juvenile court in future.

(Non-legal specialist, Malta): *“The juvenile court usually treats cases of children up to 16 years old, but we have been pressing for the age to be brought up to 18, because usually if the children committed an offense when they are 17, because of events, then they will be admitted as an ordinary adult, but we are happy to be informed that they will be arraigned in the juvenile court.”*

D.3 Promising practices

Several promising practices stem from the interviews. To begin, three professionals (one lawyer, one senior social worker, and one probation and parole officer) praise the informal setting of the juvenile court, which makes the proceedings less chaotic for children (**please refer to section C7 bi.**). Regarding court hearings, two social workers appreciate the sensitivity and integrity of the **new specialised magistrate** appointed for the juvenile court. According to another social worker, the magistrate always requests an individual assessment and works closely with other professionals.

(Social worker, Malta): *“The new magistrate is brilliant. I have known her for a very short while but she comes across as very sensitive. She seems like a person who is willing to listen to the children and give that kind of importance to things she observes. She also asks for a professional assessment and she listens to what the professionals say.”*

Moreover, 5 respondents (three social workers, one lawyer, and one non-legal specialist) state that **efficient communication among the different entities** is one of the most promising practices. One non-legal specialist explains that since some families in Malta are very close-knit, the magistrate often works closely with the parents, who tend to cooperate and then follow the advice they were given in court. Along the same line, a social worker, applauds the cooperation between the social workers and the police, particularly the victim support unit and the vice squad. She alleges that the police would refuse to speak to the child unless they are accompanied by a lawyer and social worker.

(Lawyer, Malta): *“Malta is a small island so there is no problem in relation to distances. In relation to communication, there is full access to anyone. Persons could be reached by telephone and met in court.”*

(Social worker, Malta): *“We (the Foundation for Social Welfare Services) have a brilliant relationship with the vice squad and the community policing. So we’ll be able to deal with the youths who are breaking the law with community policing.”*

The rehabilitative strategy of the support (social and probation) services is also regarded as one of the most promising practices. One lawyer and a non-legal specialist, in particular, appreciate the new programmes developed by the correctional facility's social worker unit, which are specifically focused on children's reintegration back into society. According to them, the authorities try to include children who have been detained in prison in extracurricular activities. Two police officers also laud the rehabilitative approach of the juvenile justice system in Malta, that is helping young offenders to refrain from recommitting a crime.

(Non-legal specialist, Malta): *“When children are deprived of liberty, the authorities try hard to involve them in extracurricular activities. They are involved in cooking and crafts. They can also sow and make their own money which they receive only if they behave well, so, I think that is a really good practice because it makes them motivated to do well.”*

Furthermore, a social worker and a probation and parole officer acknowledge the high quality of probation services. They specify that the probation officers are very considerate of the holistic needs of the client. In addition, for children who don't have a stable home, the care homes do their best to help rehabilitate them (non-legal specialist).

D.4 Suggestions

Interviewees made several suggestions for improving and protecting the procedural rights and protections of children who are suspected or accused individuals in criminal proceedings. Firstly, there was a proposal on the juvenile criminal justice system. One non-legal specialist adheres that the juvenile justice system should handle cases up to the age of 18 instead of 16. She notes that if the crime is committed when the child is 17, it is likely that s/he will be prosecuted in the adult court. In her opinion, **the child who is co-accused with an adult should be tried separately in the juvenile court.**

There was also a suggestion for moving the juvenile court's physical location. One lawyer believes that relocating the juvenile court to Valletta, where all stakeholders are located, will result in a more effective judicial system for minors. She believes that juveniles should appear before the adult Court of Magistrates in Valletta as it demonstrates more authority for the young offenders to realise the seriousness of their actions.

In a similar vein, it was suggested that the juvenile court physical setting be changed. Two specialists voiced their dissatisfaction with the lack of privacy in the juvenile court building. They propose that a room be set up where the minor can confer privately and confidentially with their lawyer and social worker.

When it comes to an individual assessment, a probation and parole officer recommends that upon the arraignment of a child, the police should immediately contact the probation and parole services so a probation officer can perform an individual assessment of the child before the court hearing.

(Probation and parole officer, Malta): *"If I had to make a suggestion and then even at higher levels, I think that a lot of cases get to court when sometimes it's a bit too late. I think it would be good if there was a structure in place with the police when they arraigned minors. Those in need are referred to services immediately, maybe to us so that we can do the assessment even before the court proceedings so that we can go to court already armed with information about the child."*

Moreover, a police officer raises the issue of criminal liability for children under the age of 14. She proposes that childcare organisations implement more programmes at schools for children under 14 to enhance their self-discipline and provide guidance in order to avoid juveniles from committing crimes at a young age. She adheres that the parents should also be held accountable for not acting responsibly. She adds that different agencies that work with children should work hand in hand to improve the quality of children's services.

Along the same line, one non-legal specialist believes that the authorities should improve the quality of psychological services, especially in the 'adolescent home'. In addition, another non-legal specialist mentioned the service of children's houses, which is a public entity designed for children who are witnesses to crimes; he believes that the children's house may also be used for accused or suspected children.

Last but not least, a senior social worker claims that the Restorative Justice Act should be amended to allow more restorative justice settings and introduce restorative sanctions for children. This revision would provide minors with more alternative options for rehabilitation and prevent cases from having to be heard in court.

D.5 Additions

A few interviewees make additional comments in relation to the practical implementation of the procedural safeguards for children, which are not mentioned in the above sections. Thus, a psychologist criticises the direct adoption of foreign good practices as sometimes these ideas get lost

in translation. Malta, in her opinion, should instead strengthen and expand the practices that are already available.

Moreover, a social worker mentions the implementation of child advocates during the interview. In 2020, the children's advocate under the **Minor Protection Act (Cap. 602 of the Laws of Malta)** was introduced, and seven child advocates were appointed in January 2021. According to **Article 25 of Cap. 602** of the Laws of Malta, it stipulated the duties and obligations of the child advocates that the s/he shall **(1)** provide legal assistance and advice to the minor; **(2)** submit the views of the minor in any court or with any administrative body as related to him by the key social worker or by an expert on minor protection as appointed by the Court for said purpose; **(3)** provide explanations to the minor on the possible consequences should they conform to his or her wishes; and **(4)** provide the minor with any relevant information.¹³³

In light of this, one non-legal specialist expressed her concern over the role of child advocates in court. She criticises child advocates who neither challenge the magistrate nor present evidence or information. Instead, the child advocate is appointed to privately consult with the minor about their position in the proceedings. The child advocate will then make a report about this consultation and submit it to the magistrate. As a result, she does not consider this kind of practice to be "effective participation".

PART E. CONCLUSIONS

The findings suggest a positive development towards a more child-friendly justice system for children in criminal proceedings in Malta. However, respondents also highlight there are still shortcomings in practice. Throughout the research, six key recurring issues of procedural safeguards for children, who are suspects or accused persons in criminal proceedings, were identified.

1. Lack of training for professionals working with children in criminal proceedings:

Lawyers, police officers, and other professionals do not receive special training when working with young offenders. The only exception is the training offered to the social workers from the state's Foundation for Social Welfare Services (Agenzija Appogg).

2. Lack of equipment for the audio-visual recording of the questioning:

According to **Article 542AGI (1)** of the Criminal Code, questioning of children shall be audio-visually recorded "where this is proportionate in the circumstances".¹³⁴ The police have the discretion to make this decision based on the best interests of the child. However, several interviewed specialists claimed that, in some cases, children are not audio-visually recorded because police stations lack technological equipment.

3. The juvenile justice system only addresses children under the age of 16 while older children in the criminal justice system are treated as adults:

The Maltese juvenile justice system does not always guarantee special treatment of minors compared to adults in criminal proceedings. The juvenile court exclusively hears matters involving minors under the age of 16. Respondents express their concern as it implies that defendants between the age of 16 and 18, who are a minor by definition, will go to the adult court. A 2019 statement by the Committee on the Rights of the Child has also scrutinised this finding.¹³⁵

¹³³ Chapter 602 of Laws of Malta, [Minor Protection \(Alternative Care\) Act](#), enacted on 1 July 2020.

¹³⁴ Malta, Article 534AGI of the [Criminal Code](#) (Act No. XVIII of 2020), Chapter 9 of the Laws of Malta, 10 June 1854.

¹³⁵ United Nations Human Rights Office of the High Commissioner, [Committee on the Rights of the Child examines report of Malta](#), 16 May 2019

4. Cases involving children being co-accused with adults are not heard before the juvenile court:

Article 6 (3) of the Juvenile Court Act states that children between fourteen and sixteen years, who are co-accused with one or more persons who exceed the age of sixteen, are heard in the standard criminal court, together with the older person(s). This disposition establishes **the co-accusation policy, which precludes the child to be heard in front of the specialised Juvenile Court**. In Malta, minors arraigned in the standard criminal court do not enjoy the right to a private trial in an informal setting. According to the Committee of Ministers of the Council of Europe on child-friendly justice, “any referral of children to adult courts, adult procedures or adult sentences should not be allowed”.¹³⁶ The non-legal specialists agree with the Committee, stating that this practice is not considering the best interest of the child and should be changed. In particular, the Maltese Commissioner for Children has mentioned some proposals to improve this policy, but there is no public information available in this regard.

5. Lack of privacy to consult the lawyer before and during the hearings:

When describing the setting of the juvenile court, respondents raised concerns about the lack of private spaces outside the courtroom. The juvenile court does not have private rooms where children can talk with their lawyers privately and confidentially before and during the hearing. The only place outside the courtroom would be the corridors, where both parties are waiting before the hearing (including victims). The lack of privacy may be particularly problematic for those represented by a legal-aid lawyer, as these legal representatives may not have enough time to meet with their clients prior to the hearing. With this in mind, several interviewed specialists propose that a room should be set up in the juvenile court where the minor can confer with their lawyer and social worker in private.

6. Female minors are detained in the adults’ prison:

Interviewees noted that the number of female minors serving a prison sentence in Malta is relatively low. As a result, girls sentenced to prison are held with female adult inmates at the Corradino Correctional Facility. This could be an issue as girls may not be able to attend the same programmes and activities offered to male young offenders in the youth correctional facility.

¹³⁶ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 17 November 2010

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

Organisation	Focus	(Publically available) Contact details
Foundation for Social Welfare Services (FSWS)	Providing social welfare services in line with the real and emerging needs of children, families and the community.	Telephone: +356 22588900
Alternative Care Directorate (within FSWS)	Providing children with inclusive and holistic alternative care. This includes foster care, community homes for children, aftercare service, adoptions, youth services and looked after service and supervised access visits.	Ms Remenda Grech Telephone: +356 22959000
Child Protective Services (within FSWS)	Offering protection to vulnerable children and adolescents under the age of eighteen years, who have been abused and/or neglected or who are at risk of being abused and/or neglected.	Mr Steve Libreri Telephone: +356 22959000
Probation and Parole Directorate	Enhancing community safety by reducing recidivism through the implementation of Restorative Justice measures and the use of community-based sanctions.	Director - Probation and Parole Ms. Miriam Sevasta Department of Probation and Parole Millennia Building, 3rd Floor, Aldo Moro Road, Marsa Telephone: +356 2295 1300 E-mail: miriam.sevasta@gov.mt
Agency for the Welfare of Asylum Seekers (AWAS)	Conducting the age assessment of minors involved in criminal proceedings.	Telephone: +356 2568 7200 Email: awas@gov.mt