

# 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:** the Directive has not been fully implemented in the Polish legal system. Certain rights set out by the Directive are, to an extent, provided for in the Polish criminal procedure (e.g. those related to age assessment, contact with family members or access to health and medical services). However, there are many areas covered by the Directive that remain unaddressed by Polish law. The key shortcomings concern the lack of proper adjustment to children's needs in respect of the right of access to a lawyer immediately after the arrest and the right to information. The absence of full implementation of the Directive has led to interventions of the Ombudsman, which so far have been disregarded by the Polish government. Currently, there is no systemic discussion concerning changes in the criminal law that would adjust the procedure to children's needs and improve the implementation of children's rights established by the Directive.

**Age assessment and the presumption to be a child in case of remaining uncertainty:** the research revealed that a child's age is mainly established based on the child's declaration that is later cross-referenced with official databases. None of the professionals participating in the research observed any practical problems in this area that would prevent law enforcement agencies from determining the child's age.

**The rights to information, having the holder of parental responsibility informed and audio-visual recording of the questioning:** the research revealed that the process of informing children about their procedural rights is similar to the one applied for adult defendants. As such, the former and the latter have the same deficiencies reducing the effectiveness of the information process. A key shortcoming identified is related to the use of an official form (letter of rights) describing, or rather enumerating, the rights of the accused in criminal proceedings. This form is in no way adjusted to children's needs (e.g. the language is not simplified and is full of legal jargon) or their procedural situation (there is no information on the mandatory presence of a legal representative in the proceedings). Furthermore, the research revealed discrepancies relating to informing parents about the situation of their children in the proceedings. In general, children accused in criminal proceedings are treated as adults, so they have the right to notify only one person and this may be anyone, not necessarily a parent. On the other hand, some of the interviewed police officers admitted that they notify a child's parents about the arrest anyway. Furthermore, the child's parents, as legal representatives of the child, have the right to participate in the proceedings but are not formally informed about this right. The research also revealed that children are not informed about the possibility of audio recording procedural acts in which they are involved, which may be linked to the fact that law enforcement agencies, and especially the police, do not have enough technical resources to audio record the acts involving children.

**The rights to be assisted by a lawyer and legal aid:** according to the provisions of the Code of Criminal Procedure, an accused person under 18 years of age must be represented by a defence lawyer in the proceedings. If an accused person cannot afford a lawyer, the court should appoint one for them. The research showed that this procedural obligation is generally observed but revealed that key problems concern the temporal aspect of the lawyer's appointment. Both adults and children accused in criminal proceedings are virtually never assisted by a lawyer immediately after the arrest. In Poland, there is no systemic solution that would ensure that accused persons are accompanied by a lawyer during the first questioning. Although the presence of a lawyer is mandatory during court proceedings,

their presence during investigative acts at the pre-trial stage is ensured only if the accused person so requests. The lack of appropriate implementation mechanisms may expose children's procedural rights to violations.

**The right to an individual assessment:** the Polish Code of Criminal Procedure contains no specific regulations concerning individual assessment. The research findings indicate that the right to individual assessment may be partially implemented through the psychological evaluation or community inquiry. Both measures have a different scope and purpose in the criminal procedure. The key purpose of a psychological evaluation is to determine if a child is mentally fit to stand trial and can be sentenced, whereas a community inquiry serves to perform a broader (albeit not complete) assessment of a child's life and family situation. Both measures are generally ordered by the court *ex officio* but psychological evaluation can also be requested by a party to the proceedings.

**Deprivation of liberty as a last resort and safeguards for children who are deprived of their liberty:** the research revealed significant differences between the situation of detained children related to children's age and the type of institution in which they are detained. Children aged 15-17 accused in criminal proceedings may be placed in pre-trial detention only if other measures (e.g. placement at a juvenile facility) does not serve their purpose. Children detained in juvenile detention facilities have access to a broad range of education, sport and psychological support measures but pre-trial detention facilities offer a much lesser range of support programmes for children. Children aged 17 and older can be placed in pre-trial detention facilities. The research did not reveal any specific adjustments to the needs of such children put in place in pre-trial detention centres or prisons different than a general rule of separating children from adults in detention.

**The rights to effectively participate in and be accompanied during the trial:** the research did not reveal any specific procedural or court setting adjustments concerning child defendants. In principle, child's right to participate in the trial is respected, yet in some cases the court can proceed with the proceeding even if the defendant is not present.

## PART B. INTRODUCTION

The report presents the results of the fieldwork research concerning procedural rights of children accused or suspected in criminal proceedings in the context of the implementation of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (the “Directive”)<sup>1</sup>.

In total, **20 eligible interviews** were carried out between 9 March and 28 July 2021. The research sample comprises four police officers, five lawyers, two prosecutors and three and six specialists from non-legal specialists institutions including one member of an NGO supporting children who are accused in criminal proceedings, three psychologists who serve as experts in criminal proceedings carrying out psychological evaluations of children, one court guardian and a juvenile justice worker employed at a detention facility for children.

The majority of the interviews were conducted on the phone or over an online video link; six interviews (mainly with the police officers) were carried out face-to-face.

The interviews were based on interview questionnaires developed by FRA, adjusted to the scope of experience of each professional group and focusing on the following key issues: i) the child’s right to information on procedural rights ii) the child’s right to access to a lawyer iii) the right to an individual assessment iv) participation in the proceedings v) the conditions in which children are detained. In the Polish legal context, certain questions appearing in the templates were particularly challenging for some professional groups. It was especially apparent in interviews with members of the non-legal specialists group (especially psychologists) who participate only in the certain stages of criminal proceedings, hence have little insight into the process of informing children about their rights or access to a lawyer. Furthermore, not all police officers or lawyers had sufficient experience that would allow them to share their observations on the conditions of children’s detention.

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

Fieldwork preparation included setting up a research team, making preparations for interviews, obtaining a regular peer review and completing interview reporting templates and data protection documents.

Data protection was an important consideration in the entire research process. The files with recordings of interviews were kept in the secured file-sharing systems used by the HFHR or FRA. The reporting templates were anonymised upon completion to avoid disclosure of personal data that would enable the identification of interviewees or their cases in the reports.

The recruitment process was one of the most challenging parts of research preparation. It started at the beginning of March with extensive research on criminal proceedings involving children. The research showed that the number of criminal cases involving child suspects aged 15 or older is relatively low and children aged 15-17 are usually subjects of juvenile justice proceedings.

The recruitment process focused on two major cities in Poland in which the HFHR recruited lawyers, police officers and judges. In general, all lawyers, judges and prosecutors were eager to participate in the research and share their knowledge. Also, the police officers were eager to participate but those who were ordered by their superiors to get interviewed, had experience in juvenile justice cases rather

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<sup>1</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, EUR-Lex - 32016L0800 - EN

than criminal cases involving children as suspects. Another challenging aspect was the identification of representatives of non-legal specialists groups. In Poland, there is no state institution dedicated to supporting children accused of crimes in criminal proceedings and there are very few civil society institutions providing assistance and legal support to children accused in criminal proceedings. For these reasons, the composition of the non-legal specialists group is diverse and includes psychologists (who are, by and large, responsible for the psychological evaluation of children for the purposes of criminal proceedings), NGO representatives and court guardians as well as a member of children's detention facility.

○ **SAMPLE AND DESCRIPTION OF FIELDWORK**

Police officers:

Requested: 4, completed: 4

Defence lawyers:

Requested: 5, completed: 5

Judges/prosecutors:

Requested: 5, completed: 5 (three judges, two prosecutors)

(Non-legal) Specialists:

Requested: 6, completed: 6

No	Group	Expertise in juvenile criminal justice	Gender
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1	Police officer	Limited (mainly cases concerning juvenile proceedings)	Male
2	Police officer	Yes	Male
3	Police officer	Limited (mainly cases concerning juvenile proceedings)	Male
4	Police officer	Limited (mainly cases concerning juvenile proceedings)	Female

1	Defence lawyer	Yes	Male
2	Defence lawyer	Yes	Male
3	Defence lawyer	Yes	Female

P4	Defence lawyer	Yes	Male
5	Defence lawyer	Yes	Male

1	Prosecutor	Yes	Male
2	Judge	Yes	Female
3	Judge	Yes	Female
4	Judge	Yes	Female
5	Prosecutor	Yes	Male

1	(Non-legal) Specialist	Yes, member of an NGO providing support to children in criminal proceedings	Female
2	(Non-legal) Specialist	Yes, court guardian	Female
3	(Non-legal) Specialist	Yes, psychologist, expert witness	Female
4	(Non-legal) Specialist	Yes, psychologist, expert witness	Female
5	(Non-legal) Specialist	Yes, member of juvenile detention facility staff	Female
6	(Non-legal) Specialist	Yes, psychologist, expert witness	Female

**Table 1 Sample composition**

In general, the atmosphere of the interviews was very good, and the level of trust was high. The interviewees did not mind recording their interviews. The average length of an interview was 72 minutes, with the shortest and longest interview lasting 48 minutes (a police officer) and 106 minutes (a court guardian), respectively.

- **DATA ANALYSIS**

The data were analysed to evaluate interview outcomes in the light of the applicable law, policies, based on the cross-referencing of the information shared by interviewees. The questionnaires and

reporting templates provided by FRA were strictly followed, both in the fieldwork phase and during the data analysis phase.

The most concrete and detailed information was obtained during the interview section devoted to **children's right to information and access to a lawyer**. In this regard, all interviewed lawyers, judges and prosecutors, as well as police officers offered numerous observations on how this process was organised in practice.

The most challenging aspect of that section was the identification of **specific differences between the situation of children and adults suspected or accused in criminal proceedings**. Under the Polish Criminal Code and Code of Criminal Procedure, a child aged 17 and older (or, in the case of certain charges, a child aged 15 and older) is treated as an adult, which means that the rules of criminal procedure provide very few safeguards for the procedural rights of children.

Another problem concerning data analysis was the identification of **differences between the criminal procedure and the juvenile justice procedure**. In Poland, children aged 13-17 may be subject to juvenile justice proceedings. The juvenile justice procedure is a hybrid procedure that combines elements of criminal and civil procedure, in which the police collect evidence and prosecute the case heard before a family (civil) court. Three out of four interviewed police officers referred in their answers to their experience in juvenile justice cases (rather than criminal cases). Accordingly, some of their answers may be inaccurate, especially those concerning the process of informing children about their rights.

Furthermore, findings were also analysed from the **perspective of potential promising practices**. None of the interviewees, however, revealed any promising practices adopted as part of the process of informing children about their rights or that of providing them with a lawyer's assistance. The research also revealed the lack of any procedural adjustments for children of non-Polish background apart from law enforcement agencies' obligation to provide a child who does not speak Polish with the assistance of an interpreter.

#### ○ **BRIEF OVERVIEW OF THE REPORT'S CONTENTS**

The report is divided into seven parts, each concerning a specific right provided by the Directive. In the first part, the report discusses the implementation of the Directive by Poland and presents interviewees' experience concerning access to special training on children's rights in criminal proceedings. The second part of the report presents research findings related to the assessment of children's age. Parts three, four and five focus on specific procedural rights, namely the right to information, the right to access to a lawyer and the right to an individual assessment. The concluding parts (six and seven) focus on children's participation in the court proceeding and deprivation of liberty. Each of these parts include information on the legal framework in place concerning each of the aspects of child's participation in the criminal procedure and discussion on findings concerning the practical implementation of these provisions.

In certain parts of the report, its authors outline the lack of differences in adjusting the criminal procedure to the needs of children accused of crimes. In this context, it may be relevant to compare the findings of this report with the results of the FRA research concerning the rights of adult suspects

*Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings.*<sup>2</sup>

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<sup>2</sup> Fundamental Rights Agency, Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings, available at: <https://fra.europa.eu/en/publication/2019/rights-practice-access-lawyer-and-procedural-rights-criminal-and-european-arrest#TabPubOverview0>

## PART C. RESEARCH FINDINGS

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

a.

The Directive has not been fully implemented in the Polish legal system. The key implementation deficiencies concern the right to information and the right to a lawyer.

Referring to the right to information, the Polish Ombudsman<sup>3</sup> has noted that the Regulation of the Minister of Justice of 11 June 2015 on the template forms with information on the rights and duties of suspects in criminal proceedings does not provide for a special form for child suspects. According to the Ombudsman, such information should be adjusted to the needs of children.

Furthermore, the Polish legal system did not adopt a systemic solution concerning the right to a lawyer that would allow a child to be assisted by a lawyer immediately after the arrest or presentation of charges. This systemic gap is particularly striking given the fact that the Code of Criminal Procedure requires that a person under 18 who is a suspect or accused in criminal proceedings should be assisted by a lawyer in the proceedings. However, in practice, a lawyer enters the proceedings usually after the first questioning or at a later stage.

The Polish legal system and its operation are not fully adjusted to the requirements of the Directive concerning the audio-visual recording of the investigation of children and conditions of their detention, especially the requirement to separate children from adults in detention facilities.

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

According to the Polish Criminal Code, the principles of criminal liability apply to a person who commits a "prohibited act" after having attained 17 years of age. However, a child can be held criminally liable after having attained 15 years of age, if the criminal prosecution of the child is expedient due to the circumstances of the case and the level of the perpetrator's development, his or her characteristics and personal circumstances (especially if educational or corrective measures that had previously been applied have proven ineffective). Importantly, the above exception may be invoked only in the case of the explicitly named, most serious crimes (e.g. manslaughter, collective rape or robbery)<sup>4</sup> The minimum age of responsibility for misdemeanours<sup>5</sup>, as well as fiscal offences<sup>6</sup>, is also 17 but that age threshold is subject to no exceptions.

In consequence, the following categories of perpetrators subject to criminal liability remain in the scope of application of Directive 800/2016:

- persons who have committed a crime after attaining the age of 17 (or 15, in the case of most serious crimes and depending on other circumstances) – during all stages of the proceedings, both preparatory (pre-trial) and judicial;

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<sup>3</sup> Commissioner for Human Rights, Letter to the Minister of Justice, 11 March 2019, available at: <https://bip.brpo.gov.pl/sites/default/files/Wyst%c4%85pienie%20do%20Ministra%20Sprawiedliwo%c5%9bci%20w%20sprawie%20dyrektywy%20o%20gwarancjach%20procesowych%20dla%20dzieci%20b%c4%99d%c4%85cych%20podejrzanyimi%20lub%20oskar%c5%bconymi.pdf>

<sup>4</sup> Poland, Criminal Code, 6 June 1997, Article 10(1-2).

<sup>5</sup> Poland, Misdemeanour Code, 6 June 1997, Article 8.

<sup>6</sup> Poland, Criminal Fiscal Code, 10 September 1999, Article 5(1).

- persons who have committed a misdemeanour (petty crime) after attaining the age of 17 – only in the proceedings before a criminal court;
- persons who have committed a fiscal crime of misdemeanour after attaining the age of 17.

The purpose of criminal proceedings is to ascertain the personal liability for a particular act prohibited by law.<sup>7</sup> Polish law distinguishes between two categories of acts prohibited by law: crimes,<sup>8</sup> described in the Criminal Code, and various other acts and misdemeanours (also known as “petty crimes”),<sup>9</sup> regulated in particular in the Misdemeanour Code. The most significant difference between the two types of prohibited acts pertains to penalties: crimes are punishable by fines, restriction of liberty<sup>10</sup> and deprivation of liberty<sup>11</sup> whereas penalties for misdemeanours are less severe.<sup>12</sup>

The Directive does not apply to juvenile justice proceedings such as those described in the 1982 Juvenile Justice Act<sup>13</sup> since proceedings of that type are not criminal in nature. The Juvenile Justice Act applies to the prevention and addressing of the antisocial and delinquent behaviour of persons under the age of 18, proceedings with regard to persons who have committed a prohibited act while aged 13-17, as well as the imposition of correctional measures. However, the Juvenile Justice Act stipulates that the supreme value in juvenile justice proceedings should be the child’s best interests and efforts made to achieve a favourable shift in the child’s character and behaviour.<sup>14</sup> Therefore, as legal scholars emphasise, the focus of the Polish juvenile justice system based on the 1982 Juvenile Justice Act is to educate, rehabilitate and protect against social pathologies. Since the system has not been set up with the purpose of punishing children for their conduct, it cannot be regarded as criminal in nature.

### c. Special training

#### i. Legal overview

In Poland, there are no legal standards and measures relating to the training of professionals devoted to the participation of children in criminal proceedings.

In 2019, the Ombudsman addressed the issue in a letter to the Minister of Justice.<sup>15</sup> The Ombudsman inquired if such training was organised and, if so, whether it was mandatory or optional. The Ombudsman also asked if there was a possibility to introduce a programme of annual mandatory training on the age-appropriate techniques of questioning, child psychology and communication for the groups such as law enforcement and detention facilities staff, judges, prosecutors and lawyers. It remains unknown if the Minister of Justice has responded to the letter or whether any actions have been taken with regard to the training of professionals.

<sup>7</sup> Grzegorzcyk, T., Tylman, J. (2014), *Polskie postępowanie karne*, Warsaw, LexisNexis, p. 48.

<sup>8</sup> According to Article 1 of the Criminal Code of 6 June 1997, crimes can be defined as acts prohibited under a penalty by a statute in force at the time of their commission, provided that they present a level of social harm higher than negligible and fault can be attributed to their perpetrator at the time of the act’s commission.

<sup>9</sup> The defining elements of misdemeanours are similar to those of crimes, and the main difference lies in a lower level of social harm presented by the former (but still must be higher than negligible).

<sup>10</sup> The obligation to perform an unremunerated, supervised work for community purposes, and a deduction of 10 to 25% of the monthly remuneration for that work for a court-designated community purpose, imposed either individually or jointly with the prohibition of changing the place of permanent residence without the court’s consent and the obligation to provide all required explanations.

<sup>11</sup> Poland, Criminal Code, 6 June 1997, Articles 32, 37.

<sup>12</sup> Poland, Misdemeanour Code, 6 June 1997, Article 1.

<sup>13</sup> Poland, Juvenile Act (*Postępowanie w sprawach nieletnich*), 26 October 1982.

<sup>14</sup> *Ibid*, Article 3(1).

<sup>15</sup> Poland, Commissioner for Human Rights, [Letter to the Minister of Justice](#), 11 March 2019.

A 2017 HFHR study<sup>16</sup> has revealed a pressing need for the intensification of training in the field of juvenile criminal justice for lawyers and the staff of detention facilities. Also, training offered to judges and prosecutors should be improved by embracing a more interdisciplinary approach (e.g. elements of pedagogics, psychology and communication techniques).

ii. Special training received by interviewees

None of the interviewees **has ever participated in, or heard of, the training concerning the rights of children accused or suspected of a crime in criminal proceedings**. Only two judges have heard about training in the psychological aspects of the participation of children in criminal proceedings and training concerning the rights of children accused in criminal proceedings offered by the National School of Judiciary and Public Prosecution.

When asked about available training, interviewed police officers mentioned the training on juvenile justice proceedings offered to police officers. According to one police officer a training course is available for those officers who want to specialise in the juvenile justice area, its duration is ca. 3 months and focuses on all aspects of working with children in the juvenile justice proceedings. The training, however, does not cover topics related to children accused of crimes in criminal proceedings.

d. Effectiveness of measures / Monitoring

In Poland, there are no legal standards or practices that could have been identified as measures to monitor and evaluate the effectiveness of the Directive.

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

a. Legal overview

The age of the accused is crucial and must be determined in criminal proceedings.<sup>17</sup> For persons with an assigned PESEL number (a national identification number recorded in the universal electronic system for registration of population in Poland), their date of birth is encoded in the first six digits of PESEL. The age of persons without a PESEL number should be established based on other identity documents issued to their name. Moreover, pursuant to the operating rules of units of the Prosecution Service, where the accused is a minor or the ascertaining of criminal liability depends on the age of the accused, an excerpt from their identity card, passport or birth certificate should be included in the case file.<sup>18</sup>

Polish criminal law provides for no “presumption of being a child” that would apply in situations where any doubts arise as to the age of the accused. However, the Code of Criminal Procedure sets out the principle according to which any irremovable doubts must be resolved in favour of the accused.<sup>19</sup> Since the principle applies to factual doubts, and the matter of the accused’s age should be considered a factual doubt, the principle should apply to a person whose age cannot be determined in any other way. Only in the case when the identity (and hence the age) of the accused remains unknown, the

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<sup>16</sup> Wiśniewska, K., Wolny, M. (2017), *Mój prawnik, moje prawa. Dostęp dzieci do pomocy obrońcy. Raport krajowy (Polska)*, Warsaw, pp. 53-54.

<sup>17</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 213(1).

<sup>18</sup> Poland, Minister of Justice, Rules of the functioning of common organisational units of the Prosecution Service, 7 April 2016, § 166.

<sup>19</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 5(2).

prosecutor should, before lodging the indictment, file a motion to a family court for issuing a birth certificate for a person whose origins cannot be determined.<sup>20</sup>

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

A child's age is usually established **during their first contact with the police**. According to all interviewed police officers the age is determined either based on the child's identity document (a national ID or a school card) or his or her declaration. Information obtained from the child's ID (possession of an official identification document is mandatory for adults, not for children) or declaration is further verified in the official databases. The police have a procedure for verifying the validity of the presented ID and the declared age is further cross-referenced with records of police databases or the civil status register. In general, if law enforcement officials have information on the child's identity (first name and surname) the child's age will always be established – none of the interviewees has ever had a case in which this information was not determined.

*Jeśli osoba jest zatrzymana, to jest od razu przeszukiwana. Jeśli ma dokument tożsamości, to wiek ustala się na podstawie tego dokumentu. Jeżeli nie to ustala się dane personalne: imię, nazwisko i datę urodzenia i to porównuje się z tymi bazami policyjnymi.*

*If a person is arrested, then they're searched immediately. If they have an ID then the age is established on the basis of this document. If not then we collect their personal data: name, family name and date of birth and check it with the official records.*

*(Police officer, Poland)*

The police officers' answers suggest that **the process of establishing a child's age is a routine procedure**. Therefore, the rest of the interviewees (judges, prosecutors, and lawyers as well as the representatives of support institutions), who enter the pending criminal proceedings at a later stage, do not have broad knowledge on how establishing a child's age looks in practice. A child's age is a piece of information included in the case files that judges and prosecutors receive. None of the interviewed judges and prosecutors was able to say what happens if a child's age cannot be established. Only one judge had a case in which the information on the child's age was not included in the case file but established thanks to the cooperation of a family court that had such information.

*Spotkałam się z sytuacją nie tyle dotyczącą wieku, ale [z problemem] ustalenia w ogóle tożsamości osoby. (...). Wtedy wystąpiliśmy do sądu rodzinnego o ustalenie tożsamości.*

*I've come across a situation not so much regarding the age but the general identity of a person. ... At that time, we applied to a family court requesting that a person's identity be established.*

*(Judge, Poland)*

Similarly, none of the interviewed lawyers had a case in which the age could have not been determined. Also, other interviewed specialists did not have any information in this regard; they were often pointing out that this information should already be established by the police before they enter the proceedings.

The discussion on the practice of establishing a child's age revealed interesting yet **contradicting observations expressed by a prosecutor and a lawyer**. According to the prosecutor, in a theoretical scenario when a child's age cannot be established, the person concerned should be treated as a child

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<sup>20</sup> Poland, Law on civil status documents, 28 November 2014, Article 62(3).

because, from the procedural perspective, this would be much more beneficial for that person. On the other hand, the lawyer said that if a child's age cannot be established he would aim at ensuring that the child is treated as an adult because, in his opinion, the police generally treat children much worse as compared to adults. Furthermore, according to the lawyer, judges in criminal courts are much more professional than judges sitting in family courts.

*Lepsze są warunki [pozbawienia wolności] w areszcie śledczym niż w ośrodkach dla nieletnich. Poza tym jest większe prawdopodobieństwo nieprzedłużenia aresztu niż zaprzestania tymczasowego umieszczenia w placówce [dla nieletnich]. Wydaje mi się, że generalnie policja dużo gorzej traktuje dzieci (...) **straszy je biciem**, a dorosłych mimo wszystko traktuje trochę lepiej. [Ponadto] sędziowie w wydziałach karnych są dużo lepsi merytorycznie niż sędziowie w wydziałach rodzinnych.*

*Conditions [of detention] in pre-trial detention centres are better than in youth institutions. It is more likely that pre-trial detention will not be extended, then, there is a chance that temporary placement in a juvenile facility will be terminated. It seems to me that the police treat children much worse ... **They threaten them with a beating**, while adults are treated a little better. [Moreover,] criminal judges are much more professional than family judges.*  
(Lawyer, Poland)

#### c. Discussion of findings

The determination of child's age is the role of the police during the first phases of the investigation. In general, the child's age is determined relying on the child's declaration that is further verified in the official databases. None of the interviewees had a case in which establishing child's age could not be possible.

### 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

According to the Code of Criminal Procedure, **a suspect or an accused person should be informed of their most crucial rights prior to the first questioning.**<sup>21</sup> This group of rights includes:

- the right to provide statements,
- to refuse to provide statements or to refuse to answer questions,
- the right to information on the charges and amendments thereto,
- the right to submit motions for procedural acts such as hearing a witness or appointing an expert witness in the principal or simplified investigation,
- the right to be assisted by a defence lawyer, including the right to apply for a legal aid, and the right of access to the case file.

The accused should also be informed of certain obligations (e.g., to submit themselves to external examination of the body) and consequences. Such letter of rights should be provided in writing and the accused person should confirm its receipt with their signature.

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<sup>21</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 300(1).

Polish criminal procedure **does not introduce an obligation** to inform the suspect (whether a child or an adult) on the following rights described under Article 4(1) of the Directive:

- the right to have the holder of parental responsibility informed;
- the right to protection of privacy;
- the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings;
- the right to an individual assessment; the right to a medical examination, including the right to medical assistance;
- the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention; the right to be accompanied by the holder of parental responsibility during court hearings;
- the right to effective remedies; the right to specific treatment during deprivation of liberty.

The Minister of Justice specifies, by way of a regulation, a letter of rights' template for an accused person and a suspect, having regard to the need of ensuring that also persons who do not use the assistance of a defence lawyer or legal representative understand the letter of rights.<sup>22</sup> In 2020, a new regulation was issued in this regard.<sup>23</sup> Although the new regulation seems to have been written in a more approachable manner than its predecessor, it still does not respond to the needs of children who are defendants in criminal proceedings. This matter has been addressed by the Ombudsman,<sup>24</sup> who indicated that there is no specific template of a letter of rights for children, written in a simple, comprehensible language and that such notice should be prepared in accordance with guidelines set out in the Directive.

A failure to properly inform a suspect or an accused person in criminal proceedings of their rights can be grounds for an appeal against the judgement (as a violation of procedural provisions, provided that "it may have affected the content of the ruling issued").<sup>25</sup>

ii. Information about procedural rights and safeguards in practice

<b>When child suspects are informed about their rights?</b>	<b>After the arrest / during the first questioning at by the police / a prosecutor</b>	<b>In the courtroom</b>	<b>No answer</b>
<b>Police officers</b>	4		
<b>Judges and prosecutors</b>	Prosecutors: 2 Judges: 2	Judges: 2	
<b>Lawyers</b>	4		1
<b>Non-legal specialists</b>	1		2

<sup>22</sup> Poland, Code of Criminal Procedure of 6 June 1997, Article 300(4).

<sup>23</sup> Poland, Regulation of the Minister of Justice of 14 September 2020 on defining the template for the letter of rights and duties of the accused person in criminal proceedings.

<sup>24</sup> Poland, Ombudsman, [Letter to the Minister of Justice](#), 11 March 2019.

<sup>25</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 438(2).

**Table 2 Informing children about their rights in the criminal proceeding**

If a child is suspected of a crime in criminal proceedings, the procedure of informing them about their procedural rights and safeguards is the same as in the case of adults accused of a crime. In both cases the procedure is organised in the same manner and has the same deficiencies when it comes to its effectiveness and adjustment to specific needs of a suspect.

In general, **suspects are informed about their rights during the first procedural steps involving them.** Depending on their age and the gravity of the potential charges, children are informed about their rights either by the police or the prosecutor upon their arrest or first questioning. In practice, in less serious crimes, in which the police are responsible for the investigation, 17-year-old children are informed about their rights by police officers upon their arrest or first questioning. As regards children aged 15 or more who can be held criminally responsible only in the case of the most serious charges, the investigation is carried out by the prosecution service, and it is the prosecutor's responsibility to inform the child about their rights.

When asked about the moment of informing children about their rights almost all interviewed police officers, judges and prosecutors gave similar answers. The interviewed police officers pointed out that the information should be provided to a child immediately upon the first contact with the police. The interviewed police officers stated that the information on rights was provided in two forms. First, the suspect is given an official document, an A-4-page letter of rights for the whole proceedings – including not only basic rights such as the right to refuse to testify or answer questions but also information on the rights during the evidence procedure or the right to have access to case files once the investigation is closed and the case is about to be referred to a court. Some of the interviewed police officers and lawyers also pointed out that receiving this notice must be confirmed by the suspect's signature and the interviewed judges stated that they checked if the list had been signed by the suspect. One of the judges even stated that a lack of the signature on a copy of the letter of rights may result in referring the case back to a prosecutor's office to complete the investigation. Some of the interviewees pointed out that the letter of rights was written in legal jargon, being too difficult to understand in a stressful situation therefore could not be deemed effective.

*Jest cały druk z pouczeniami o prawach [...] gdy dostaję akta, to sprawdzam, czy formularz jest podpisany [...] teoretycznie więc taką informację otrzymują, ale czy ją rozumieją, to nie jestem w stanie powiedzieć.*

*There is an entire form listing their rights [...] when I get the case file, I check if this form was signed [...] in theory, they receive the information, but I can't say if they understand it.  
(Judge, Poland)*

Furthermore, one of the interviewed lawyers stated that the letter of rights handed to children is not a useful tool and the information contained in the letter of rights should be summarised in a leaflet adjusted to children needs.

On the other hand, however, some of the police officers stated that the letter of rights summarises everything the suspects need to know about their rights and is prepared in a way easy to understand, so suspects should have no problems in understanding it.

Secondly, during the questioning, either **a police officer or a prosecutor instructs the suspect about the key rights such as the right to refuse to provide statements or answer questions.** The short summary of rights is also included in a questioning report template, and it must be read aloud before any questions are asked of a suspect. Furthermore, the suspect must sign the report once the questioning is completed. Thus, while reading it before signing children have yet another chance to

find out about their basic rights. Still, several lawyers and judges think that the process of informing children, or suspects in general, is not very effective. Almost all interviewed lawyers and judges admitted that they paid extra attention to instruct the child suspects about their rights upon their first contact with them. For two lawyers providing proper information about the rights is a part of a defence strategy. Some of the judges stated that they instruct child suspects about their rights and make sure children understand the information even when they are assisted by lawyers and it could be assumed that a standard letter of rights would be sufficient.

*Czyli nawet jeśli dziecko ma ustanowionego obrońcę to Pani I tak upewnia się, że informacje zostały przekazane i dziecko je rozumie?*

*Tak jest.*

*So [during the court hearing] even when a child has an appointed defence lawyer you still try to make sure that the defendant got the information and understood it?*

*That's right.*

*(Judge, Poland)*

All interviewed lawyers agreed that this process **does not differ in any way from informing adult suspects about their procedural rights and there is no additional information provided to children.**

*Nie, bo [nieletni] są traktowani dokładnie tak jak dorośli. Specyfika polskiego kodeksu postępowania karnego jest taka, że nie rozróżnia się ich sytuacji. Dostają taki sam komplet informacji jak osoba, która ukończyła 18 lat.*

*No, because [children] are treated just like adults. The Polish Code of Criminal Procedure does not distinguish their situation. They receive the same set of information as that given to persons who have attained the age of 18.*

*(Lawyer, Poland)*

Only two police officers stated that the scope of information obtained by children differed from the information received by adults and included the information on the right to have their parents informed. Yet this observation refers to juvenile proceedings, not criminal proceedings. Still, the issue of whether the child is informed about **the right to have their parents informed** triggered several contradicting observations. One of the interviewed prosecutor stated that even though the right to have a child's parents informed is not listed in the letter of rights, children's parents are usually informed about the case. To the contrary, one judge recalled a case of an arrested child who requested to have their parents informed yet the police failed to do so. On the other hand, the interviewed lawyers (stated that if, under the criminal procedure, a child is treated as an adult, they do have the right to have a third person informed about their arrest, hence the police can notify the parents if the child wishes to do so. If, however, the child does not want to inform parents but someone else, the police should act accordingly. These observations revealed a systemic gap in respecting a child's rights to have their parents notified about the arrest. On the one hand, they are treated as adults under the criminal procedure, yet on the other hand, they are still children under parental custody (this problem was spotted by some of the interviewees, including one police officer and one judge).

*[...] widzę tu pewną lukę w systemie. Dziecko w wieku 17-18 lat jest już traktowane jako dorosłe w postępowaniu karnym, ale wciąż jest niepełnoletnie. Więc z jednej strony ono może samo decydować kogo mamy poinformować w przypadku zatrzymania, ale po zakończeniu czynności z nim dalej musimy poinformować jego rodziców. To nie jest dokładnie określone. Powinna być taka regulacja, że w przypadku osób wieku 17-18 lat trzeba poinformować rodziców.*

*[...] I think there's a certain gap in the system. The child aged 17-18 years is treated as an adult in criminal proceedings, but they are still underage. So, on the one hand, this person can decide about themselves on their own, but on the other hand, after the questioning we have to inform their parents about their child's arrest. It's not fully regulated. There should be some provisions concerning informing parents of 17- or 18-year-old children.  
(Police officer, Poland)*

Furthermore, when it comes to **the right to privacy** none of the interviewed lawyers was sure if children receive such information and they tended to claim that such information is not included in the letter of rights. Some of the lawyers also stated that having the case heard in camera was beneficial for the child. The interviewees noted, however, that a request to have the case heard in the absence of the public filed with a court is a matter of defence strategy. Also, none of the interviewed judges and prosecutors was sure if children receive the information on their right to privacy and have their case heard in camera. The same doubts were shared by the police officers and the representatives of non-legal specialists groups.

The questions concerning informing children about their rights prompted also striking observations shared by one lawyer and one judge. According to these interviewees, the key problem is not necessarily the automatism of informing children about their rights but rather **police officers' actions that are not recorded in reports**. Both interviewees stated that the police officers tended to either informally question suspects, intimidate them or force them to plead guilty – these conversations are not documented and suspects are not advised of their rights beforehand. According to those interviewees, this practice could have a detrimental impact on the procedural rights of the suspect and a further conduct of the procedure.

The research also revealed that the manner of informing children about their rights is in **no way adjusted to any specific needs of children**. None of the interviewees could indicate any potential methods of informing, e.g., children with disabilities about their rights. The only method identified by a police officer that could constitute an example of adjusting the practice to the distinct needs of the suspect was providing assistance of an interpreter to a child speaking a foreign language. Still some of the interviewees stated that in practice there was a systemic problem in accessing interpreters. As there is no duty-hours system for interpreters and the police only have a list of interpreters that may be available, it takes some time to find an available interpreter.

In the absence of any examples of promising practice, it was also difficult for the interviewees to determine **if children understand the information on their rights provided to them**. The interviewed police officers observed in general that the information on the rights is clear and any further explanation is rarely needed. Still, the same officers admitted that every time when a child had further questions about their rights, such explanation would be provided to them. All the interviewed police officers stated that they asked the child if they understood the information (a similar observation was shared by one of the interviewed non-legal specialists).

Likewise, the interviewed judges and prosecutors ask children in general if they understood the information provided (with one exception being the prosecutor who stated that he did not ask this question); however, their formal role is basically limited to checking if informing children about their rights was conducted according to the rules of procedure. That means that their main task is to check if a child received a copy of the letter of rights and confirmed it with their own signature. The majority of the interviewed judges and prosecutors asserted that if a judge or a prosecutor informs the child about their procedural rights, they try to speak in a plain language without using a legal jargon.

Unlike police officers, interviewed judges and prosecutors tended to agree that children do not understand the information or may have at least serious problems in understanding the full range of information provided.

These observations are also reflected in the observations provided by some non-legal specialists (e.g., a worker of an NGO providing legal aid and support to children). In the opinion of this interviewee (an NGO worker) children usually claim that they did not receive any information about their rights which may result from the fact that they did not fully understand the information. Furthermore, another interviewee (a court guardian) noted that children did not speak much during the conversation preceding the questioning, so it is difficult to assess if they understood the information. Some of the interviewees in this group pointed out that children accused of crimes often came from dysfunctional families with low social-economic status and had significant difficulties in understanding the situation they were in.

*Nasi podopieczni mają trudności ze zrozumieniem tego, co czytają. Nie dlatego, że są bardzo młodzi tylko dlatego, że są bardzo słabo wyedukowani. Myślę, że w ogóle nie czytają, a gdyby przeczytali to by połowy nie zrozumieli.*

*Children under our care have difficulties in understanding the text they are reading. It is not because of their age, but rather their poor education. In my opinion, most of them don't read the letter of rights at all. If they did, they would not understand half of it.*

*(Non-legal specialist, Poland)*

For all of the interviewed lawyers (with an exception of one lawyer) the process of informing children about their rights was a key element of a defence strategy. The lawyers stated that they usually do not check if children received the information about their rights as they inform them about their rights on their own during a separate meeting. Still, the lawyers did not mention any other measures applied by them to make sure that children understood the information other than asking children if they have any questions or understood the information.

*Czy upewnia się Pan, że klient zrozumiał przekazane informacje na temat jego praw?*

*To też jest jakaś subiektywna ocena, ale tak maksymalnie się staram, żeby klient zrozumiał przekazane mu informacje, żeby wiedział, co się będzie działo w postępowaniu i jakie sankcje mu grożą i jakie możemy poczynić ruchy i jakie będą miały konsekwencje. Staram się nie spieszyć w takich rozmowach, ale to jak klarownie staram się przekazać takie informacje zależy od klienta. Można ocenić, czy ktoś jest zagubiony w tej procedurze, czy się orientuje, co się będzie działo.*

*Do you check with your clients if they understood the information about their rights?*

*It's very subjective, but I try as much as I can to make sure that my client understands all information so that he or she knows what will happen in the proceedings and what kind of sanctions he or she faces. Also, I make sure that he or she understands what we can do and what will the consequences of our actions be. I try not to hurry in such conversations, but the way in which I communicate with the client depends on the client himself or herself. It's possible to assess if someone is lost in this whole process or if they have a certain understanding of what will happen next.*

*Lawyer, Poland)*

- iii. Information about the general conduct of the proceedings

Do children receive information about the general conduct of the proceedings?	Yes	No
Police officers	1	3
Judges and prosecutors		Judges: 3 Prosecutor: 2
Lawyers	2	3
Non-legal specialists	1 (employee of a detention facility for children)	5

Table 3 Providing information on the general conduct of the proceedings

All interviewed judges and prosecutors admitted that **children were not informed about the general conduct of the proceedings**. One of the overarching themes in the answers of this group was the observation that since providing such information is not required by law, neither judges nor prosecutors feel the necessity to do so. Some of the interviewees (e.g., prosecutor or judge) stated that in some cases, depending on the police officer or judge, such information could be provided to a child; yet it does not happen very often. Also, most interviewed lawyers stated that children did not receive such information. Only two lawyers said that such information may be provided either by a police officer (yet not in all kinds of cases and this mainly depends on the police officer) or by lawyers themselves.

*W takich sprawach bardzo wiele zależy od funkcjonariusza, który prowadzi pierwsze czynności. Postępowanie karne nie jest dostosowane do dzieci.*

*In such cases, a lot depends on the officer who conducts the actions in the criminal proceedings. Criminal proceedings are not adapted to children.  
(Lawyer, Poland)*

The non-legal specialists stated in general that children do not receive information on the general conduct of the proceedings. Two psychologists stated that they explain to children the scope of the proceedings before the initial questioning – these observations, however, are relevant to a situation in which the child is questioned as a witness and not as a suspect. Still, these observations revealed a **significant disproportion in the information provided to children depending on their role in proceedings**. Only one interviewee in this group, an employee of a detention facility for children, stated that children received such information. In the interviewee's opinion, such information is provided by staff members of facilities in which children stay. It seems from this answer that the general information about the scope of the proceedings is provided when a professional has regular contact with a child and works with them on a daily basis, outside the procedural framework in which informing children about their rights seems to be a routine procedure.

On the other hand, police officers were split in their answers. All of them admitted that it was not a standardised procedure to inform children about the conduct of the proceedings, yet some of them admitted that it was easier to work with a child if the child knew what would happen next. Hence, it depends on the police officer handling the case if the child receives such information.

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

i. Legal overview

Pursuant to the Code of Criminal Procedure, if an accused person is a child, their legal representative or the person that has custody over them may decide to act on their behalf in the proceedings. Such a person is entitled, in particular, to file appeal measures, petitions, and appoint defence counsel.<sup>26</sup> Moreover, the CCP stipulates that rulings, orders, notifications and copies of documents which are required to be served upon the parties, shall also be served upon legal representatives unless otherwise provided by applicable law.<sup>27</sup>

First, it should be indicated that no provision guarantees that a legal representative or holder of parental responsibility will be informed about the initiation of criminal proceedings against a child, as a summons falls outside the scope of documents mentioned above and is only served on the suspect. Therefore, as scholars note, the existing provisions should be amended so that they would oblige authorities conducting criminal proceedings to notify a legal representative of their intention to present charges to a child.<sup>28</sup> Second, the provision guaranteeing the right to notify of detention a close relative or another person stipulates that the notification should be effected upon the request of the arrested person.<sup>29</sup> In the light of the Directive, it should be amended in order to make such notification obligatory when the suspect is a child.

Finally, the existing provision concerning the written letter of rights requires that only the suspect or accused person obtain such notice.<sup>30</sup> As regards children facing criminal liability, the Directive demands that holders of parental responsibility should be provided with such information as well. The law does not provide the holder of parental responsibility with any remedies in case their rights are breached or violated.

ii. Informing the holders of parental responsibility

<b>Are holders of parental responsibility informed about the proceedings pending against their child?</b>	<b>Yes</b>	<b>No</b>	<b>No answer</b>
<b>Police officers</b>	3 (mainly concerns juvenile proceedings)	1	
<b>Judges and prosecutors</b>	Judge: 1	Prosecutor: 2 Judge: 1	Judge: 1
<b>Lawyers</b>	2	3	
<b>Non-legal specialists</b>	1 (in some cases), 2 (only in cases	2	1

<sup>26</sup> Ibid, Article 76.

<sup>27</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 140.

<sup>28</sup> Fingas, M. (2019), „Podmiot odpowiedzialności rodzicielskiej w procesie karnym – wybrane zagadnienia implementacji dyrektywy 2016/800”, *Europejski Przegląd Sądowy*, listopad 2019, pp. 11-17.

<sup>29</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 145(3) in conjunction with Article 261.

<sup>30</sup> Ibid, Article 300(1).

	involving the questioning of a child in the presence of a psychologist)		
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Table 4 Informing holders of parental responsibility

Although according to the Code of Criminal Procedure, the parents of an accused child have a right to participate in the proceedings, it seems that in practice the implementation of this right raises significant difficulties.

It seems from the answers of judges and prosecutors that **parents are not informed about the case pending against their children**. In this group, most interviewees pointed out that a child accused in criminal proceedings should be treated as an adult and is the subject of all procedural rights and duties. Only one judge stated that she informs parents about the rights in the official correspondence sent to a child with information on the date of a court hearing. This was, however, an example of **outstanding practice**, not shared by other representatives of the justice system. Judges and prosecutors as well as representatives of support groups were split in their answers. Half of the interviewees in this group stated that children’s parents did receive information on the pending proceedings (with an exception of interviewee who is a psychologist and limited her answer only to her own experience of carrying out children’s questioning in criminal proceedings). Yet the interviewees were not sure what the process of informing parents by official institutions look like. Those of the interviewees who work with children (employee of a youth educational centre –or psychologist) stated that parents did receive information on procedural rights from them.

Furthermore, two lawyers also stated that parents did receive such information, whereas the remaining lawyers claimed that parents were not informed about their child’s rights. Nevertheless, one of the interviewed lawyers stated that he himself informs the parents on the rights as a part of working on a defence strategy. Another lawyer stated that in one of their cases parents were informed about their rights by the police.

On the other hand, three out of four police officers claimed that a child’s parents were always informed. These answers, however, were influenced by these police officers’ experience of juvenile cases, in which it is mandatory for the police to notify of a child’s arrest. The fourth police officer who deals only with criminal cases stated that parents were not informed about the rights.

All answers of the interviewees revealed that national authorities do not have any effective measures to verify if a holder of parental responsibility should not be informed about the proceedings pending against the child. There is no single database or any other source available for either courts or the police to cross-check if there are any conditions such as, e.g., limited parental responsibility that would justify not informing parents about the pending proceedings.

iii. Having a nominated/designated person informed

Under the criminal procedure (Article 245 § 3 of the Code of Criminal Procedure), child suspects similarly to adult suspects **have the right to designate a third person who should be notified about, e.g., their arrest**<sup>31</sup>.

As a rule, none of the interviewees observed any major problems in this regard. The child is notified of the right to have a third party informed upon their arrest (requirement to inform about this right is

<sup>31</sup> Code of Criminal Procedure (*Kodeks postępowania karnego*), Article 245 § 3

included in the arrest report and a proper section needs to be filled out by the police). The interviewed police officers stated that if a child wished to inform the third party about their arrest, the police usually do so. Those interviewed police officers who had experience in juvenile proceedings also stated that in addition to informing the third party, they were also obliged to inform parents (see the observations in the above paragraph).

Speaking in a context wider than one of the arrest, some of the interviewees (a judge or a lawyer) pointed out the institution of a court guardian that could be appointed for a child by the family court. The interviewee noted that in one of the cases in which she adjudicated the accused child requested to have a court guardian appointed so as not to be represented by her own parents as the child was ashamed to speak in front of her parents about her sexual experience. This, however, seems to be a rather isolated example of a practice that has not been observed by other interviewees. None of the interviewed lawyers has had any experience in cases involving the participation of a court guardian.

Also, one of the interviewed judges stated that in general a third person can participate in court proceedings as a member of the audience, but due to the COVID-19 pandemic restrictions the audience is no longer allowed in courtrooms.

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

Although the Code of Criminal Procedure allows a parent to act for their child who is an accused person, in practice this possibility is relatively seldom used.

Only a few of the interviewees have come across parents who were actively involved in the proceedings. The remaining majority of the interviewees have never encountered such a situation and generally stated that parents did not have the right to actively participate in criminal proceedings and observed that in this respect criminal proceedings substantially differ from juvenile justice proceedings before family courts.

#### **The assessment of parents' engagement in the proceedings varied depending on the professional group.**

The interviewed judges and prosecutors offered very limited observations on the extent of engagement of the holders of parental responsibility in proceedings; they have conducted none or few cases in which parents were representing their children. Commenting on the involvement of court guardians in proceedings, some of the interviewees (a judge: and a psychologist) assessed the guardians' involvement as rather passive and minor.

*W większości przypadków jest tak, że o ile kurator zostanie powiadomiony zgodnie z procedurami, to jego obecność nie jest wymagana w kontekście prowadzenia przesłuchania (...). Natomiast w bardzo wielu sprawach, w których uczestniczyłam, to kuratorzy byli obecni, ale najczęściej oni nie zadawali pytań.*

*In most cases, if a court guardian is notified in accordance with the procedures, their actual presence is not required for conducting a hearing.... On the other hand, in many cases I was involved in, guardians were present, but most often they did not ask any questions.  
(Non-legal specialist, Poland)*

Both police officers and lawyers observed two different ways in which the parents engage in the proceedings. Interviewees from this group noted that **parents either were extremely involved in the process of their child's defence or were not engaged at all**. Two interviewees linked the level of parents' involvement in the proceedings to their intellectual aptitude and the general commitment to

the process of raising their children. Some of the interviewed police officers expressed quite a critical opinion on the approach involving defending the child at all costs even in minor cases in which the evidence incriminating the child is very strong. As he stated, in such cases an extremely actively mounted defence can be counter-effective because the ultimate purpose of the proceeding against children is to educate them. The police officer’s opinion, well-aligned with the key purpose of the juvenile justice proceedings (to educate a child and prevent them from delinquency in the future) was not shared by other interviewees, e.g. interviewed lawyers.

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

i. Legal overview

The Code of Criminal Procedure provides only a possibility of recording the course of procedural acts (steps) by means of image or sound-recording and requires that the persons participating in the steps must be informed about the recording prior to the activation of the equipment.<sup>32</sup> In any case, the questioning of the accused must always be recorded in writing.<sup>33</sup> Written records (reports, transcripts), except for the record of a trial or a court hearing, have to be signed by the persons participating in a given procedural step.<sup>34</sup>

According to the Ombudsman, the existing provisions, according to which the audio and video recording of procedural steps depends on a decision of the authority conducting the questioning, do not meet the requirements of the Directive.<sup>35</sup> Therefore, the Ombudsman suggests that the audio-visual recording of questioning by the police or other law enforcement bodies, as well as any other procedural steps involving a child suspected or accused in the criminal proceedings, should be mandatory. This would prevent officials conducting the questioning from asking leading questions or applying improper pressure during the questioning, as well as guarantee that children are properly treated by the police or other law enforcement bodies.

Since the video and audio recording is only optional, the suspected or accused child is unable to challenge the decision concerning recording. However, where the law stipulates that a written record should be prepared, a failure to do so can constitute grounds for an appeal against the judgement (as a violation of procedural provisions, provided that “it may have affected the contents of the ruling issued”).<sup>36</sup>

ii. Implementation in practice

<b>Is the questioning of children suspected or accused of a crime (conducted by the police or other law enforcement authorities) audio-visually recorded?</b>	<b>Yes</b>	<b>No</b>	<b>No answer (not known)</b>
<b>Police officers</b>		3	1

<sup>32</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 147(1).

<sup>33</sup> Ibid, Article 143(1)(2).

<sup>34</sup> Ibid, Article 150.

<sup>35</sup> Poland, Commissioner for Human Rights, [Letter to the Minister of Justice](#), 11 March 2019, p. 7.

<sup>36</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 438(2).

<b>Judges and prosecutors</b>		Prosecutor: 2 Judges: 2	Judge: 1
<b>Lawyers</b>		5	
<b>Non-legal specialists</b>	3	1	2

Table 5 Audio-visual recording

Interviewees' answers revealed that the option of audio-visual recording of questioning of children is never used in their practice. Some of the interviewees (e.g. a judge) pointed out that although the option may theoretically be used, it is never chosen in practice and the questioning is documented by a written record.

An interviewed judge, a police officer and a lawyer indicated that the video-recording of the questioning is mandatory only in a situation where a child is a victim of a crime. These answers may be linked to the information provided by 3 non-legal specialists, who mainly assist in the questioning of child victims of crimes and said that the questioning of a child was recorded. In other cases concerning minors, such a possibility is virtually never used. In the opinion of some of the interviewees, the reasons for not recording the questioning could be linked to the lack of appropriate equipment and legal provisions that would make the recording mandatory.

#### d. Discussion of findings

The research revealed certain problems in reference to protecting child's procedural rights as stipulated in the Directive.

First of all, the research showed that there are **no practical solutions used to inform children about their procedural rights in an effective manner**. If a child is accused of a crime in criminal proceedings, the procedure of informing them about their procedural rights and safeguards is the same as in the case of adults accused of a crime. In both cases the procedure is organised in the same manner and has the same deficiencies when it comes to its effectiveness and adjustment to specific needs of a suspect. The information on rights in its written form is not adjusted to children's needs and level of maturity. The information provided orally to children is limited only to the key rights of defendants in the criminal procedure. Neither the police officers nor the representatives of judiciary system use any techniques intended to help children understand the entire scope of the information.

The research also showed that there is **no substantial difference in the scope of information provided to children or adult defendants**. Children are not informed about the general conduct of the proceeding. Furthermore, the right to inform children's parents is not regulated in details, which results in certain practical problems. Although the child accused in the criminal procedure is treated as an adult, their parents still have the parental responsibility. The interviewees' answers showed different approach to this problem - either parents are not informed about the proceeding pending against their child or they are informed about its certain aspects e.g., arrest of a child. The police, however, does not have any possibility to check if a parental responsibility has not been limited in any way. Also, parents do not receive information on their right to participate in the proceeding in the name of their child. Parents' level of engagement in the proceeding may vary depending on the case as well as family's social and economic background.

Although in theory the audio-recording of the procedural acts is possible, in practice this solution is rarely ever used.

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

### a. Legal overview

In criminal proceedings, the accused below the age of 18 is legally required to have a defence lawyer. In such a case, a defence lawyer is obliged to participate in the trial and other court hearings in which the presence of the accused is mandatory.<sup>37</sup> If the accused has no defence lawyer of choice, the president or a clerk of the court competent to examine the case must appoint an ex officio defence lawyer for the accused.<sup>38</sup> The above mandatory defence requirement also applies to proceedings concerning fiscal offences but does not apply to proceedings concerning misdemeanours.<sup>39</sup>

The accused without a defence lawyer of their own choice may demand that an ex officio defence lawyer be appointed for them provided that they can show that they are unable to bear the costs of defence without detriment to their ability to support themselves and their family.<sup>40</sup> The above rule applies in situations where the accused demands the appointment of an ex officio defence lawyer for the purpose of performing a specific procedural step. In cases brought by a public accusation, the accused who is found guilty is obliged by the court to pay the cost of ex officio legal assistance.<sup>41</sup> If the accused is acquitted, the State Treasury pays the costs related to the defence against the charges they have been acquitted of.<sup>42</sup>

A number of challenges can be pointed out with regard to suspected or accused children's right to access to a lawyer. First, the Code of Criminal Procedure does not address the issue of a lawyer's presence during certain procedural steps performed with respect to the accused.<sup>43</sup> In addition, a lawyer's assistance is not mandatory during confrontations<sup>44</sup>, identity parades<sup>45</sup> and procedural experiments (conducted during the proceedings in order to verify circumstances of essential relevance to the case).<sup>46</sup> This, according to the Ombudsman, is contrary to the Directive which requires a lawyer's presence during certain investigative or evidence-gathering acts.<sup>47</sup>

Second, a concern can be raised as to the lack of precise regulation of the right to consult a lawyer before a child is first questioned as a suspect.<sup>48</sup> Such a possibility is not afforded by the applicable provisions which stipulate that a suspected person should be questioned immediately after being presented with charges,<sup>49</sup> and the presence of a lawyer during the questioning is only mandatory if one has already been appointed.<sup>50</sup>

Third, Polish criminal procedure does not guarantee the full confidentiality of communication between children and their lawyers. According to the Code of Criminal Procedure, in exceptional cases justified by specific circumstances, the arresting officer may reserve the right to be present during the

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<sup>37</sup> Ibid, Article 79(1)(1) and 79(3).

<sup>38</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 81(1).

<sup>39</sup> Poland, Code of Procedure in the case of Misdemeanours, 24 August 2001, Article 21.

<sup>40</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 78.

<sup>41</sup> Ibid, Article 627.

<sup>42</sup> Ibid, Article 630.

<sup>43</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 74(3).

<sup>44</sup> Ibid, Article 172.

<sup>45</sup> Ibid, Article 173.

<sup>46</sup> Ibid, Article 211.

<sup>47</sup> Poland, Ombudsman, [Letter to the Minister of Justice](#), 11 March 2019.

<sup>48</sup> Ibid, p. 5.

<sup>49</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 313(1).

<sup>50</sup> Ibid, Article 301.

suspect's conversation with the lawyer.<sup>51</sup> Although the relevant provision does not explicitly states that the exception applies in particular where there is a risk of obstruction of justice (a justified risk that the accused would induce other persons to give false testimony or attempt to obstruct the criminal proceedings in some other illegal manner) or where the alibi needs to be checked out, in practice, these circumstances are invoked to justify the arresting officer's presence.<sup>52</sup> The above rule should be relied on only in exceptional circumstances, justified by the interests of the criminal proceedings and must not be considered a standard measure (even in cases related to organised crime).<sup>53</sup> A recording of the conversation between the suspect and their lawyer can be used as evidence in further proceedings.<sup>54</sup> An equivalent arrangement can be used in preparatory proceedings, where the prosecutor who issues their permission for such communications may request that a prosecutor or a person appointed by the prosecutor be present during a client-lawyer conference provided that such presence is particularly justified and required to advance the interests of the investigation.<sup>55</sup>

If the accused minor had no defence lawyer in judicial proceedings, or a defence lawyer did not participate in steps in which their participation was mandatory, the appellate court must reverse the appealed judgment, even if the reversal has not explicitly been sought in the appeal and irrespective of the infringement's consequences for the contents of the first-instance judgment. The above reasons justifying the reversal of a judgment may only be invoked for the benefit of the accused.<sup>56</sup>

b. Assistance by a lawyer and legal aid

<b>Do national authorities apply any special measures to ensure that children suspected or accused to crime are always actively assisted by a lawyer throughout the proceedings?</b>	<b>Yes (access to free legal aid or the mandatory presence of a lawyer)</b>	<b>No</b>	<b>Not aware of any</b>
<b>Police officers</b>		3	1
<b>Judges and prosecutors</b>	Prosecutors: 2 Judges: 2		Judge: 1
<b>Lawyers</b>	5		
<b>Non-legal specialists</b>	5		1

Table 6 Special measures to ensure the presence of a lawyer during proceedings involving children

Children accused of crimes receive the **information on their right to a lawyer** in the letter (notice) of rights that is handed to them before the first questioning. However, the letter of rights is not adjusted

<sup>51</sup> Ibid, Article 245(1).

<sup>52</sup> Świecki, D. (ed.) (2021), *Code of Criminal Procedure. A commentary*, Warsaw, LEX/el, commentary to Article 245.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 73(2).

<sup>56</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 439(1) and (2).

to the children's specific situation in the criminal proceeding. The letter reads only that a suspect has a right to a lawyer and if cannot afford one the court will appoint a lawyer for them. The letter does not include information that for persons under 18 the presence of a lawyer is mandatory.

The research did not reveal any specific measures in place that would secure the presence of a lawyer, apart from **the requirement of the mandatory presence of a defence lawyer** in proceedings against children and the **scheme of free legal aid**. According to one of the prosecutors, in practice, this procedure takes 7-14 days. Therefore, according to several interviewed prosecutors and judges (e.g. a prosecutor and two judges) an ex officio defence lawyer is hardly ever appointed before to the first questioning of a child as a suspect. Two interviewed lawyers had worked as ex officio lawyers appointed by the court. Both interviewees said that the lawyers were appointed either at the end of the investigation or when the case was sent to the court. In the opinion of both lawyers, the late appointment of a defence lawyer may constitute a violation of a right to a fair trial. Some of the interviewed police officers (stated that children were not accompanied by lawyers during the first questioning at a police station. Nevertheless, this observation was not shared by one of the judges and two representatives of the non-legal specialists group who said that children are usually accompanied by lawyers during the investigation but noted that these were usually lawyers of choice.

*Czy jeśli dziecko zawnioskuje o przyznanie mu pomocy prawnej z urzędu, czy jest szansa, żeby obrońca uczestniczył w pierwszym przesłuchaniu w sprawie?*

*Myślę, że w praktyce jest to mało prawdopodobne. Prokurator nie może takiej prośby rozpatrzyć ad hoc, musi zwrócić się do sądu. W praktyce sekwencja wygląda tak, że przystępuje się do przesłuchania, pojawia się ten wniosek i dopiero wtedy jest on kierowany do sądu.*

*When a child requests ex officio legal aid, is there a chance for appointing a lawyer quickly enough to have them present during the first questioning?*

*I think that in practice this is unlikely. A prosecutor cannot address such a request immediately, he or she has to ask the court. In reality, they proceed with the questioning of the suspect, during which the request for legal aid is made, and it is referred to the court only after they are done.*

*(Judge, Poland)*

Some of the interviewees (a prosecutor, a lawyer and a member of an NGO supporting children) criticised the work of court-appointed (ex officio) lawyers claiming that they tend to be less engaged in the case as compared to lawyers of choice. The interviewees, however, did not provide any justification for that observation.

The discussion on the court appointments of ex officio lawyers for underage suspects signified yet another practical problem. The presence of a lawyer is mandatory until the person attains the legal age of 18. In practice, the average length of criminal proceedings is over one year. Therefore, the requirement of mandatory presence of a lawyer that applies to a person aged 17 may expire as the proceedings continue for another year. The interviewed judges were split on how to deal with this problem – one stated that in such a case the person no longer had their right to have a court-appointed lawyer (if there are no other reasons for the appointment, e.g. low income). On the other hand, according to one of the judges, although the person reaches the legal age, the proceedings started when the person was a minor so the state authorities remain obliged to provide them with free legal aid.

Interviewees' answers also revealed certain **discrepancies in how the rule of mandatory presence of a lawyer is applied in practice**. In general, the participation of a lawyer in the investigation was considered by some of the interviewed lawyers and representatives of the justice system (e.g. prosecutor) as the defence's right rather than a mandatory requirement. However, if a lawyer is appointed during the investigation, they may challenge investigative acts involving their clients (e.g. the questioning) based on certain irregularities related to the lawyer's receipt of notification of such an action. Interviewed lawyers, judges and prosecutors stated that **defence lawyers are usually appointed after the first questioning of a child during the investigation** (e.g. two judges and a lawyer). That means that a crucial element of the proceedings such as the first questioning usually takes place without the presence of a lawyer and the testimony given during the questioning may still be recognised as valid proof by the prosecution and the courts (as noted by e.g. a judge and a lawyer). In this context, one of the interviewed lawyers shared a striking observation on one of his cases in which his client was questioned by the police during the investigation and without the presence of a lawyer. The questioning was not recorded in a written record but in a form of a police memo that was later included in the case files, which means that the entire questioning was conducted outside of any procedural framework.

*Czy w praktyce obserwuje Pan jakieś problemy z udziałem w czynnościach dotyczących Pańskich klientów?*

*Co do zasady nie [...] przypomina się tylko jedna sprawa podejrzanego poniżej 18 roku życia, który został zatrzymany i w którego sprawie zostałem okłamany, gdzie ta osoba się znajduje. Dzwoniłem do dyżurnego oficera Policji, mój klient był w tej komendzie, ale mówiono mi, że nie ma tej osoby. Myślę, że nie był to błąd dyżurnego, tylko celowe działanie mające na celu wydobycie informacji od tej osoby pod nieobecność obrońcy.*

*Are there any practical problems in allowing the defense attorney to participate in the proceeding?*

*A: In general, no [...] however I do remember a case of an 18-year old defendant who was arrested and the police lied to me regarding the place of his arrest. I called the police station where my client was and the officer on duty told me that there was no such a person. I don't think it was officer's mistake but it was done on purpose to question my client without me.*

*(Lawyer, Poland)*

On the other hand, some of the interviewed judges and prosecutors (e.g. a prosecutor or a judge) stated that the absence of a defence lawyer during the first questioning may influence the courts' assessment of the given testimony.

*Czy może się tak zdarzyć, żeby 17-latek został przesłuchany w postępowaniu przygotowawczym bez udziału obrońcy?*

*Może się tak zdarzyć, przy czym ja sobie nie przypominam, żebym miała taką sprawę [...] jeśli jednak jest przesłuchany bez udziału obrońcy, to takie przesłuchanie pozostaje w materiale dowodowym. Można pomyśleć o zwrocie takiego materiału do prokuratury celem uzupełnienia tej czynności, ale można też oceniać te wyjaśnienia pod kątem tego, że podejrzaný nie miał zapewnionego prawa do obrony.*

*Is it possible that a 17-year old is questioned during the investigation without the presence of his lawyer?*

*Yes, it's possible, but I don't recall such a case ... still, if they are questioned without the presence of a lawyer, such questioning is recognised as a source of evidence. The case file can be returned [by the court] to the prosecutor who would need to amend that procedural step but the testimony so obtained may also be assessed from the perspective of the violations of the suspect's right to defence.*

*(Judge, Poland)*

The interviewed lawyers, judges and prosecutors (e.g. a lawyer, two prosecutors and a judge) also agreed that **children are questioned without the presence of their lawyers even when their personal liberty is at stake**. A similar observation was made by interviewed police officers and representatives of the non-legal specialist group.

*Czy zdarzają się sytuacje, w których podejrzani są przesłuchiwani bez obecności obrońcy?*

*Nie ma tak jak w filmie, że pierwsze przesłuchanie ma miejsce w obecności adwokata.*

*Are there instances where children who are suspects or accused persons are questioned at the pre-trial stage without a lawyer?*

*It is not like in movies, where the initial interrogation happens in the presence of a lawyer.*

*(Non-legal specialist, Poland)*

The observations made by judges, a prosecutor and a lawyer show that lawyers are usually appointed just before the indictment is sent to the court or during the court proceedings. **A lawyer is present during the first questioning** only when a child is already aware of their right to have legal representation, knows at least the lawyer's name of and wants to contact the lawyer or when the parents notified about the child's arrest contact the lawyer on their own. Referring to such cases, a prosecutor and police officers stated that the police would call the lawyer and notify them about the arrest of their client. However, three interviewed police officers also said that the police cannot in any way facilitate access to a lawyer by e.g. suggesting whom the child should call. On the other hand, interviewed lawyers stated that they are not always able to take such calls, especially when a prospective client is a person they do not know or if they did not expect a call. Furthermore, one of the interviewed lawyers mentioned the police practice of handling arrested participants of the mass protests that took place in Poland in 2020. In these cases, arrested persons were taken to police stations away from the locations of the protests. In the opinion of the interviewee, this was done to limit the arrestees' ability to contact a lawyer.

Interviewed lawyers distinguished between the situation at the pre-trial and trial stage of proceedings, claiming that the courts pay attention to whether the accused person's lawyer is present during court sittings. This conclusion was shared by interviewed judges and some lawyers who claimed that without a defence lawyer present a hearing could not move forward (e.g. a judge, a prosecutor and a lawyer).

#### c. Effective participation of a lawyer

What do you understand by "effective participation of a lawyer" in the context of criminal proceedings against children?	Lawyer's active involvement in the case	Mounting a successful defence for the client	Allowing lawyers to participate in all steps of the proceedings
Police officers	4		

<b>Judges and prosecutors</b>	Prosecutor 1 Judges 3		Prosecutor 1
<b>Lawyers</b>	2	2	
<b>Non-legal specialists</b>	4	2	

Table 7 Effective participation of a lawyer

All interviewed police officers agreed that a lawyer's effective participation in proceedings generally relates to a **lawyer's ability and willingness to participate in the proceedings and during police interviews of their clients**. The question concerning a lawyer's participation in proceedings triggered certain negative comments of police officers concerning the quality of lawyers' work. Some of the police officers observed that in some cases lawyers try to impress their clients by adopting a confrontational approach that is unnecessary in certain kinds of cases. None of the interviewed police officers observed any problems related to enabling lawyers' participation in procedural steps.

In the opinion of judges and prosecutors participating in the research, the effective participation of a lawyer, as a rule, means their **active involvement in a case** including the knowledge of the case files and ability to mount a successful defence and act in the best interest of their clients. In general, neither judges nor prosecutors observed any practical problems related to lawyers' participation in all stages of proceedings. However, two interviewees (a judge and a prosecutor) noted that in some instances, lawyers may not have a practical ability to participate in steps of the investigation especially when these are taken ad hoc and on an emergency basis or when steps are taken before the charges are presented to the accused, before the accused's lawyer is appointed.

For interviewed lawyers, "effective participation" **means active engagement in the defence and providing legal support to their clients**. When it comes to participation in all procedural steps involving their clients, interviewed lawyers stated that in general they can participate in all types of steps but need to request that the prosecutor should notify them about the date when a step is to be performed. In their requests, lawyers need to specify the steps involving their clients in which they want to participate. Some of the interviewees (e.g. one of the lawyers) noted that in some cases they had not been properly notified of dates of procedural steps, which ultimately prevented their participation. Secondly, one of the interviewees pointed to problems related to access to a client in cases where pre-trial detention is used. In such cases, a lawyer needs to seek permission to speak with their client.

*O: Skuteczny obrońca to taki, który ma wiedzę o poszczególnych czynnościach postępowania przygotowawczego.*

*A: An effective defense lawyer is the one who has knowledge about the particular activities of the preparatory proceedings.*

(Lawyer, Poland)

Also, representatives of the non-legal specialists group interpreted the notion in a slightly different way. For them, the key aspects of active participation in a case was a lawyer's engagement in defence, participation in court hearings and providing the child with all necessary explanations. Two interviewees in this group defined the notion of "effective participation" by referring to the results of lawyers' work and noted that the effective participation of a lawyer entails gaining an advantage for the client. None of the interviewees had any experience related to the investigation phase of proceedings so they were unable to identify any particular challenges concerning lawyers' participation in the works of the judicial system that has an impact on their clients.

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

What do you consider particularly important in the context of communication with children?	Plain language adjusted to the needs of a child	Providing information on the child's rights
Lawyers (multiple answers)	4	2

Table 8 Communication with children

All interviewed lawyers considered using **plain language adjusted to a child's needs as the most important element of communication with a child client**. Furthermore, interviewees noted that it was equally important to make sure that a child understands the situation they are in and is fully aware of their rights. One of the lawyers stated that communication with a child client could be very challenging and lawyers may need special training in this area, which is not available.

Speaking about representing a child, interviewed lawyers agreed that the crucial element is to present all possible outcomes of the proceedings and be honest with the child about it. As one of the interviewees stated, sometimes children expect their lawyers to make the entire case "go away" and do not fully understand the potential consequences. It is a lawyer's role not only to protect the best interest of the child but also to explain to them the long-term consequences of the case, i.e. the sentence.

- e. Confidential and private consultations and meetings

Out of five interviewed lawyers, three were involved in cases in which children under 18 were detained pending trial. All these lawyers stated that **children have the right to consult with a lawyer** in detention and did not observe any major difficulties in this regard. A prosecutor needs to approve a lawyer's meeting with a client in the pre-trial detention. Once the visit is arranged, the interviewees did not observe any obstacles in the confidentiality of their face-to-face conferences with detained clients. On the other hand, the interviewees noted difficulties related to telephone communication between detained children and their lawyers. As one of the lawyers observed, detention facilities rarely make it possible for detainees to have a confidential phone call with a lawyer. A similar observation was made concerning communication between lawyers and arrested clients during the questioning at a police station. One of the interviewees noted that usually confidentiality of such conversations was not secured, and lawyers confer with their clients in corridors outside interview rooms.

Interviewed lawyers noted that **the COVID-19 pandemic restrictions influenced the visiting arrangement at pre-trial detention facilities** as the number of visitors allowed is limited and it takes longer to schedule a visit.

Similar observations were made by three out of six representatives of the non-legal specialists group who had certain experiences in this regard. All interviewees stated that in general a child's right to consult with a lawyer was respected and if a lawyer's visit is arranged, e.g. if a child facing criminal charges is placed in a juvenile detention facility, the confidentiality of communication is protected.

Interviewed judges and prosecutors also confirmed that in general the right of a child to consult with a lawyer is respected. One of the judges noted that at the initial stage of proceedings the prosecutor may stipulate that for a prescribed period all contacts between the lawyer and the client must take place under a prosecutor's supervision. Furthermore, the interviewee noted that the correspondence

exchanged between the client and the lawyer may be censored. Also, two interviewees (a judge and a prosecutor) indicated that COVID-19 pandemic restrictions influenced the arrangements of lawyers' visits at detention facilities and the administrators of some facilities denied lawyers physical access to inmates.

Interviewed police officers noted that children's right to confer with a lawyer is respected at police stations. However, they presented a much more conservative approach toward securing the confidentiality of such conversations, reminding that they are responsible for the safety of both the arrested child and the lawyer, which effectively prevents any completely unsupervised contacts. If there is no separate secured room, a lawyer can talk to their client in the corridor or a room with the door open and a police officer monitors the situation.

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

All interviewed lawyers stated that they **cooperate, to a certain extent, with their clients' parents**. According to almost all interviewed lawyers the cooperation mainly entails gathering information on the child's background and consulting the defence strategy. Only one interviewed lawyer admitted that he did not involve parents in his work on a case as, in his opinion, they are hardly ever interested in the proceedings.

Depending on a case, lawyers may use different methods of managing the child-parent dynamics – in some cases, lawyers meet with children separately as children may feel ashamed to discuss certain aspects of the case in their parents' presence. On the other hand, in other cases, there are no counter-indications for meeting the child and their parents together.

None of the interviewees referred to a situation in which a child and the parents would have a contradicting vision of the defence strategy. One of the interviewed lawyers mentioned the case of his client who turned 18 during the proceedings. Afterwards, the client's father asked for information regarding the case but, since the interviewee's client did not wish to share the information with their parents, the interviewee had to decline the father's request.

g. Discussion of findings

In the criminal proceeding, **child defendants must be assisted by a lawyer**. Both in law and in practice, this requirement is limited only to the court proceeding whereas in the investigation the lawyer's mandatory presence is limited only to certain procedural steps that, however, does not include the questioning. Such regulations and practice may be found as contrary to the Directive.

The interviewed judges, prosecutors and lawyers indicated that lawyers are **usually appointed after child's first questioning at the police station**. If a child wants to have a lawyer assisting them during the first questioning, they should present at least the name of the lawyer, so the police could contact them. The police officers pointed out that contacting the lawyer upon the request of the child is the maximum of what they can do as they are not entitled to facilitate contacts between prospective clients and lawyers in any way.

Almost all interviewees tended to interpret the notion of "effective participation of a lawyer" in terms of lawyers' engagement in the proceedings. The interviewees did not observe any systemic obstacles for lawyers to participate in the procedural steps involving their clients.

All interviewed lawyers stressed out the necessity of proper communication with their clients. In general, the interviewees agreed that using plain language adjusted to a child's needs as the most important element of communication with a child client. Furthermore, interviewees noted that it was

equally important to make sure that a child understands the situation they are in and is fully aware of their rights. In the opinion of the majority of the lawyers, the proper communication with child and instructing them about their procedural rights is the foundation for the defense strategy.

The interviewed lawyers, police officers and prosecutors in general confirmed that child's right to consult with a lawyer is respected in practice.

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

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

In the Polish criminal procedure, the individual assessment is not regulated. The objectives of an individual assessment of suspects can be achieved through the use of a psychological evaluation or a community inquiry.

Under the Code of Criminal Procedure, the psychological evaluation of a suspect, regardless their age, is required when there are justified doubts regarding the suspect's mental condition and ability to control their actions. A psychological evaluation is ordered ex officio either by a prosecutor during the investigation or by the court during the trial. A psychological evaluation has to be carried by at least two psychiatrists.

Pursuant to the Code of Criminal Procedure<sup>57</sup>, a community inquiry concerning the suspect may be ordered by the court, if a need arises, in particular when it is necessary to determine the suspect's personal characteristics and conditions, as well as their past and current lifestyle. During an investigation, a community inquiry may also be ordered by a prosecutor. There are no concrete criteria, other than the general need to make the above determinations, for the ordering of a community interview. A community inquiry is carried out by a court-appointed family officer (*kurator sądowy rodzinny*) or another entity authorised on the basis of separate regulations, and in particularly justified cases, by the police. The interview is conducted by inquiries made from sources other than the suspect in question such as members of the suspect's family, teachers or other persons and institutions. A community inquiry is compulsory in the cases of major crimes (felonies) and with regard to the accused who, at the time of committing the act, was under 21 years of age if they are charged with an offence against life. The findings of a community inquiry are included in a case file and considered to be communicated to the court and parties to the proceedings without the necessity to be read out during the proceedings. However, they may be read out during a court hearing upon the request of the accused or the defence counsel.<sup>58</sup>

Findings of a community inquiry must include a concise description of the past and current lifestyle of the suspect and detailed information about the suspect's environment, including the family, school or professional environment, but also information about the financial condition and income sources of the suspect. They should also include information concerning the health of the suspect, describe any history of alcohol abuse, the use of drugs or legal highs or other psychotropic substances, as well as include personal observations and conclusions made by the person conducting the interview, in particular related to the personal characteristics and conditions and the past and present lifestyle of the suspect.

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<sup>57</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 214.

<sup>58</sup> Ibid, Article 394(1).

The findings of a community inquiry constitute stand-alone evidence in criminal proceedings, which is of particular importance for the application of probative measures, as well as from the point of view of the rehabilitative function of criminal law.<sup>59</sup>

A failure to conduct a community inquiry in the cases where an interview is compulsory can be grounds for appeal against the judgement (as a violation of procedural provisions, provided that “it may have affected the contents of the ruling issued”).<sup>60</sup>

b. Individual assessment and exceptions in practice

<b>Is the individual characteristics and situation of children suspected or accused of committing a criminal offence assessed by a specialist?</b>	<b>Yes</b>	<b>No</b>	<b>Only in specific cases</b>
<b>Police officers</b>	2 (psychological evaluation) 2 (other measures)		
<b>Judges and prosecutors</b>	Judges: 1 (psychological evaluation and community inquiry), 1 (community inquiry), 1 (psychological evaluation) Prosecutor: 1		Prosecutor: 1 (mandatory in the cases of persons under 21 accused of offences against life)
<b>Lawyers</b>	1 (psychological evaluation) 1 (community inquiry) 1 (psychological evaluation and a community interview) 1 (psychological evaluation) 1 (community inquiry)		
<b>Non-legal specialists</b>	1 (community inquiry and		

<sup>59</sup> Stefański, A., Zabłocki, S. (eds.) (2019), *Code of Criminal Procedure. A commentary*, Warsaw, WKP, commentary to Article 214.

<sup>60</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 438(2).

	psychological evaluation), 5		
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Table 9 Individual assessment

Since the Polish Code of Criminal Procedure does not provide for any specific regulations concerning individual assessment, different interviewees answered this question in different ways, providing examples of psychological evaluations or community inquiries as the procedural acts that may be treated as forms of an individual assessment of a child’s situation.

The **psychological evaluation**, which purpose is to assess the legal sanity of an accused person, is ordered by a prosecutor or the court to determine if the accused is fit to stand trial. The assessment is carried by psychiatrists and psychologists and focuses mainly on the subject’s mental state, yet according to some interviewees (e.g. one of the lawyers) it can as well include an assessment of a child’s family situation and background. Still, this information may not be very elaborate as there is no standardized template for the evaluation and each evaluation can be reported in a different format. The conciseness and lack of detailed focus of some psychological evaluation reports was criticised by one of the court guardians who claimed that the evaluation do not reveal enough information on the psychological state of the accused and focus on very limited aspect of their fitness to stand trial.

The **community inquiries** was a measure of individual assessment most often pointed out by interviewed judges and prosecutors. The community inquiry focuses on the accused’s social and family background and less individual characteristics, yet the interview report can also summarise suspect’s criminal history, especially that concerning juvenile delinquency. The interview covers such aspects as the subject’s maturity, personality and situation at school.

As stated above, the community inquiry is compulsory in the cases of persons under 21 accused of an offence against life punishable with a minimum term of deprivation of liberty of three years. However, one of the interviewed judges stated that she orders the interview in almost every case she hears. To the contrary, one prosecutor said that he had never ordered a community inquiry in a case in which it was not obligatory. In general, however, the research did not reveal any categories of cases in which the community inquiry would not be conducted.

One of the judges stated that although the community inquiry is obligatory in cases involving persons under 21 accused of committing e.g. an offence against life, it is often not conducted during the investigation. The **interview is ordered by either the court or a prosecutor** and is carried out based on a standard template. The interview is usually performed by one person and as such it does not have a multidisciplinary nature. As one of the prosecutors and one of the judges stated, children can request a community inquiry but the information on this right is not included in the letter of rights. None of the interviewed police officers recalled that a suspect or their lawyer would have requested a community inquiry.

As the majority of the interviewees’ answers suggest, the **psychological evaluation and the community inquiry are ordered only once** during the proceedings and are rarely every updated during the proceedings. Nevertheless, some of the interviewees (e.g. one of the lawyers) did not exclude a possibility that a psychological evaluation may be updated during the proceedings, especially when new circumstances emerge.

Furthermore, one of the interviewed judges noted that the court also can collect information on the accused ex officio and request the accused's school records or the history of placement in foster families. A similar observation was made by one of the lawyers who stated that the goal of gathering the maximum volume of information about the situation of the child may be achieved also on the initiative of the court, prosecutor and defence lawyer. A similar observation was made by one of the interviewed police officers who noted that the police is obliged to collect all information about the suspect including that on their family and social background.

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

**The findings of a psychological evaluation have a significant impact on the proceedings.** If a person is unfit to stand trial due to their mental condition, the proceeding must be discontinued.

Commenting on findings of community inquiries, almost all interviewed judges, prosecutors and lawyers (e.g. two prosecutors and two judges, a lawyer) stated the findings are used mainly for the purpose of determining sanctions or isolation measures.

*Dobre zaplecze w postaci rodziny czy tego, że sprawca uczy się, może być argumentem przemawiającym za tym, żeby nie stosować tymczasowego aresztowania (zwłaszcza, jeśli jest to osoba bez przeszłości penitencjarnej). Dobrze, żeby sąd miał tę wiedzę – wtedy może budować przekonanie, że dozór będzie wystarczający. Na etapie wymierzania kary chodzi o indywidualizację – żebyśmy wiedzieli, czy musimy izolować sprawcę, czy jeszcze mamy szansę go wychowywać.*

*A good background, such as having a family or attending school, can be an argument against applying pre-trial detention (in particular if the person has no criminal record). It is good for the court to have such knowledge which reinforces the view that [police] supervision would be sufficient. At the sentencing stage, it is about an individualised approach so that we know if the perpetrator should be detained or there is still the chance of them being reeducated.*

*(Judge, Poland)*

Some of the interviewees noted that if a **community inquiry** is performed on the stage of the investigation, its results may inform the prosecution to apply to the court for conditional discontinuation of the proceedings or be relevant to the court's own decision to discontinue the proceedings. Also, a specialist employed at a youth detention facility noted that during the stay in the facility children undergo extensive psychological and multi-disciplinary assessment. The findings of the assessment are shared with the family court that may decide whether to allocate the case to the juvenile justice procedural track or refer it to a criminal court (in the latter case, the child would be treated as an adult in the proceedings).

None of the interviewees observed that a **special situation of a child**, e.g. their foreign nationality or ethnic background, would be a factor that additionally motivates law enforcement agencies to carry out community inquiry or psychological evaluation. Some of the interviewees (e.g. a judge) observed that certain aspects that a community inquiry could reveal, e.g. a child's disability or special communication needs, may be relevant to, and facilitate, the proceedings. For example, the court can be notified that a child may require an assistance of a sign language interpreter. On the other hand, one of the prosecutors made a practical observation that the community inquiry is usually performed at the end of the investigation phase and as such it is ill-suited as a tool for assessing and addressing the special needs of a child.

*Wywiad [środowiskowy] jest zazwyczaj czynnością końcową [w postępowaniu przygotowawczym]. Więc jeżeli ja z wywiadu bym się dowiedział, że osoba ma trudności w komunikowaniu i porządnym zrozumieniu swojej sytuacji, to na etapie postępowania przygotowawczego jest już [po wszystkim, za późno]. Czasami już z protokołu przesłuchania takiej osoby można wywnioskować, że widać, że coś jest z nią nie tak, (...) Sam wywiad nie pomógłby nam wiele, bo to jest taka czynność, że jak nie mamy już nic do zrobienia, to kończymy wywiadem.*

*The [community] inquiry is usually the final step [in pre-trial proceedings]. So if I learn from the interview that a person has difficulties in communicating and properly understanding their situation, it is already too late [to do anything] at the pre-trial stage of the proceedings. Sometimes you can see from the transcript of the questioning that something is amiss with such a person... The [community] inquiry itself would not help us much, because it is done already when we have nothing left to do, we conclude [the pre-trial proceedings] with the [community] inquiry.*

*(Prosecutor, Poland)*

One of the interviewed lawyers was sceptical as to whether the findings of a community inquiry **would lead to any adjustments for children with special needs**. Referring to the effectiveness of individual assessment, the member of the juvenile facility staff gave the example of a 17-year-old girl under her care whose level of mental development was assessed to be equal to that of a 13-year-old. The interviewee's youth detention facility recommended in an assessment report that the girl should remain in the centre so that she can receive further support from the institution. However, the court decided that the girl should be prosecuted as an adult and ordered her transfer to a pre-trial detention centre. According to the interviewee, this was a consequence of the fact that the court focused on the offence that the girl was charged with and failed to take into account her personality and needs. The staff of the interviewee's institution found the court's decision surprising and misguided.

#### d. Challenges

The majority of the **interviewees have not observed any challenges related to conducting psychological evaluations or community inquiries**. Only few interviewees (e.g. one lawyer) noted that for certain groups of children (e.g. children with disabilities or a migrant background) carrying out a community inquiry may raise certain difficulties. In the opinion of an interviewee, in such cases, the inquiry would require some special accommodations (e.g. providing assistance of an interpreter) and training for the professionals involved. One of the police officers referred to a systemic shortcoming that makes the carrying out of individual assessment more difficult – in the opinion of the interviewee the assessment should always be performed by a psychologist who is familiar with the situation of the child concerned and aware of the impact of the assessment on the decision as to the child's criminal responsibility. A similar observation was made by one of the court guardians who strongly criticised the current framework of community inquiries, pointing to the **lack of a multi-disciplinary approach** and the dysfunctional nature of the community inquiry as a procedural measure. The interviewee noted the manpower shortages and temporal constraints which reduce specialists' ability to properly perform community inquiries.

#### e. Discussion of findings

The research revealed **two main methods of individual assessment of a child in the criminal proceeding** – the psychological evaluation and the community inquiry. Both methods are carried out ex officio (only in the case of psychological evaluation the defence can request the court to order the evaluation). Each of the methods has different aims. Whereas the psychological evaluation is done to determine if a child is fit to stand a trial, the community inquiry is ordered to assess the child's life situation and social-economic background.

The psychological evaluation should be done by at least two psychiatrists whereas the community inquiry is carried by the court guardian. None of the methods have a multi-disciplinary approach.

The results of the assessment may either influence the further proceedings or have impact on the final sentence. If the person is declared not fit to stand a trial, the proceeding should be discontinued. The results of the community inquiry, in turn, can be used by the court in assessing the guilt and determining the punishment.

One of the key challenges identified in the area of the individual assessment is the fact that the Polish legal system lacks measures that would assess child's situation in a broad, multi-disciplinary manner.

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

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

#### i. Legal overview

The Polish Criminal Code provides for five types of penalties: fine, restriction of liberty, deprivation of liberty, deprivation of liberty for a term of 25 years, deprivation of liberty for life.<sup>61</sup> The code does not provide for any rule that deprivation of liberty of children accused of crimes should be a last resort measure. Nevertheless, the Code provides that in cases of children accused of less serious crimes (*występek*), the court, should adopt educational, therapeutic, or corrective instead of punitive measures.

As mentioned earlier, the Criminal Code stipulates that a child who has committed one of the expressly indicated prohibited acts after having attained 15 years of age may be subject to criminal liability if it is expedient due to the circumstances of the case and due to the degree of the perpetrator's development, their characteristics and personal conditions (especially, if educational or correctional measures that had previously been applied have proven to be ineffective).

In such a situation, the imposed penalty may not exceed two-thirds of the upper limit of the statutory penalty prescribed for a crime attributed to the perpetrator.<sup>62</sup> The court may also apply extraordinary mitigation of the penalty, namely impose the penalty below the statutory minimum, or a more lenient penalty, in accordance with the principles set out in the Criminal Code.<sup>63</sup> Moreover, the penalty of deprivation of liberty for life may not be imposed on the perpetrator who has not attained 18 years of age while committing a crime.<sup>64</sup>

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<sup>61</sup> Poland, Criminal Code, 6 June 1997, Article 32.

<sup>62</sup> Poland, Criminal Code, 6 June 1997, Article 10(3).

<sup>63</sup> Ibid, Article 60(6).

<sup>64</sup> Ibid, Article 54(2).

Depending on the circumstances of the case, if the right to restriction of deprivation of liberty is violated, the accused can appeal against the judgement, alleging a violation of the provisions of substantive law and demanding that the judgement should be reversed or amended.<sup>65</sup>

Furthermore, in criminal proceedings, the court may order, at the prosecution’s request, pre-trial detention of the suspect. Pre-trial detention can be ordered in a situation when there is a justified concern that the suspect may flee or go into hiding or there is a good reason to expect that the suspect may obstruct the course of justice. Also, the ordering of pre-trial detention may be justified by a severe penalty that the suspect may receive, if convicted. The Code of Criminal Procedure provides no further limitations concerning the application of pre-trial detention against persons aged 17-18.

If a family court decides that an act committed by a child between 15 and 17 years of age constituted a crime and the child should be subject to criminal proceedings, pre-trial detention should be used only in situations in which the child’s placement in a youth detention facility would not be sufficient.

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

In practice, is deprivation of liberty a measure of last resort for children?	Yes	No	Don't know
<b>Police officers</b>	2	1	1
<b>Judges and prosecutors</b>	Judges: 3	Prosecutors: 2	
<b>Lawyers</b>	3	2	
<b>Non-legal specialists</b>	3		2

Table 10 Deprivation of liberty

In the opinion of judges, **deprivation of liberty is used as a measure of last resort at the sentencing phase**. Instead of deprivation of liberty, courts use measures such as conditional discontinuation or conditional suspension of the proceedings. In the opinion of one of the interviewees from the non-legal specialists group, the courts should more often resort to the penalty of restriction of liberty (community sentences) as a sanction imposed on children. Nevertheless, interviewed judges generally agreed that, depending on the gravity of the charges and the degree of the perpetrator’s depravity, a child can be sentenced to imprisonment.

On the other hand, the application of pre-trial detention is based on different grounds than merely the age of the accused. The interviewees (a prosecutor and two judges) observed that **pre-trial detention is used in practice**, especially in cases in which a suspect was arrested, the suspect does not reside in Poland or is likely to obstruct the course of justice. In the opinion of one of the non-legal specialists, a child is more likely to be deprived of liberty in cases that attract public attention. In such cases, pre-trial detention is used regardless of the accused’s age. Notably, the general practice of applying pre-trial detention in criminal proceedings raises significant concerns. In 2019, courts granted 90% of prosecutors’ pre-trial detention requests. In the opinion of civil society

<sup>65</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 438(1a).

organisations and the Ombudsman's office, pre-trial detention is overused in criminal proceedings.<sup>66</sup> Still, both judges and prosecutors observed that in cases concerning children courts apply a range of different measures such as police supervision which was found an effective measure (one of the judges).

Referring to deprivation of liberty of children, a lawyer's answers revealed a significant **problem in applying custodial measures** against children aged 15-17 in criminal proceedings. As a rule, pre-trial detention should be used against members of this age group only when other custodial measures are insufficient. A child may be placed in a youth detention facility for 3 months subject to a court-ordered extension.

Two lawyers noted that **it is less likely that a child would be sentenced to imprisonment than an adult**, even if placed in remand detention pending trial. A similar observation was made by some of the interviewees in the non-legal specialists group who stated that before being placed in detention, children are often subject to other measures such as a family officer's supervision. In the opinion of interviewee who works in a detention facility, detention is used in cases in which a child commits a serious offence or has a difficult family situation. Also, one of the police officers stated that many elements should be taken into consideration to inform a decision on deprivation of liberty and the fact that a child committed a crime does not automatically mean that the court would order pre-trial detention.

The judges and prosecutors who had experience with children deprived of liberty (all but one judge) stated that, as a rule, children are separated from adults in pre-trial detention centres and prisons. The lawyers, representatives of the non-legal specialists group and police officers who had experience concerning deprivation of liberty of children stated that in general children do not stay in the same cells as adults but did not offer any observations on how this separation was arranged in practice.

#### b. Medical examination

##### i. Legal overview

The Code of Criminal Procedure stipulates that, whenever necessary, the court or a prosecutor during the investigation may order an examination of the accused by expert psychologists or doctors.<sup>67</sup> The examination may prove necessary in particular where a decision as to the application of a preventive measure (e.g. pre-trial detention) should be made, as well as to assess if the accused is fit to participate in procedural steps or if any circumstances capable of affecting the penalty occur. An examination is allowed only when it is indispensable, does not pose any threat to the accused and does not require surgical intervention. Whereas a psychological examination may be ordered if it is necessary to explore the background of the act committed by the accused, a medical examination has a different purpose and may serve as a part of the individual assessment (see C.5). An examination of the accused's body may be performed in search for evidence related to a prohibited act, as well as to address the accused's complaints concerning medical conditions and their possible impact on the course of the proceedings (e.g. resulting in the necessity of giving the accused more time to read the case file or adjourning certain procedural steps, such as questioning or hearing, or even suspending the proceedings).<sup>68</sup>

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<sup>66</sup> Helsinki Foundation for Human Rights, [Raport HFPC: Tymczasowe aresztowanie – \(nie\)tymczasowy problem](#), Ombudsman, [Długotrwałość aresztów znów jest w Polsce problemem systemowym](#)

<sup>67</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 215.

<sup>68</sup> Grzegorzczak, p. 530.

Moreover, the prosecutor is always obliged to order the medical examination of the accused who complains about medical conditions or has sustained injuries. The findings of the examination are later attached to the request for pre-trial detention.<sup>69</sup> An obligatory medical examination performed promptly after a suspect's admission to a detention facility is guaranteed under laws governing the application of pre-trial detention<sup>70</sup> and the penalty of deprivation of liberty.<sup>71</sup>

The relevant rules concerning police custody require, among other things, that the examination is mandatory for children under the influence of alcohol or other controlled substances (the medical examination is also mandatory in cases of among others pregnant women or persons with mental disturbances).<sup>72</sup> The examination of a detainee should be carried out by a doctor immediately (i.e. without undue delay) after the arrest and, if possible, before other scheduled examinations. After the examination, the doctor determines if there are any obstacles to the examined person's placement in detention.

ii. The medical examination in practice

A medical examination of children is **ordered as a part of the intake process in detention facilities**.

According to interviewed police officers, after the arrest and conclusion of the first questioning, if detention is ordered, a child is transported to a hospital and authorised doctors examine the health of the child. According to one police officer who has experience in this area, the examination is not invasive and focuses on determining the general health of the child. The examination may entail a gynaecological check-up, if necessary as stated by one of the non-legal specialists. The process does not include a psychological interview to assess the child's mental state, but children may be psychologically evaluated in a detention facility. The medical examination also includes a medical interview with arrested persons during which they are questioned about their medical complaints, symptoms and medical history.

Usually, a medical examination is done ex officio but some of the interviewees, both lawyers and non-legal specialists observed that children have the right to request a medical examination. Also, interviewed non-legal specialists and a police officer stated that a detained child may request a doctor's appointment.

*A: Gdy chłopcy są zatrzymywani w izbie dziecka i chcą kontaktu z lekarzem, albo mówią, że się źle czują, to zawsze ten kontakt jest im zapewniany.*

*A: When [boys] are detained in a remand home and they want to see a doctor or say they are unwell, they are always assisted by a doctor.*

*(Non-legal specialist, Poland)*

Most interviewees do not know whether children are informed about this right. One of the interviewed lawyers said that children receive such information and one of the police officers stated that if a child is arrested and taken to a hospital for examination, police officers explain to the child in detail every step of that procedure. They do so to calm the child and make sure they know what

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<sup>69</sup> Poland, Minister of Justice, Rules of the functioning of common organisational units of the prosecution, 7 April 2016, § 182.

<sup>70</sup> Poland, Minister of Justice, Organisational rules of application of pre-trial detention, 22 December 2016, § 9(3).

<sup>71</sup> Poland, Minister of Justice, Organisational rules of application of deprivation of liberty, 21 December 2016, § 9(1).

<sup>72</sup> Poland, Minister of Internal Affairs, Regulation on medical examinations of persons detained by the police, 13 September 2012.

will happen to them. This process, however, is informal and outside the official framework of informing children about their procedural rights.

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

According to interviewed police officers and non-legal specialists the main purpose of the examination is **to determine if a child can be placed at a detention facility**. If the medical examination reveals that the child should take certain medications or need medical treatment during their detention, specific instructions are made and the medicine is dispensed by police officers at the facility or the child is transported from the facility to a hospital to receive it. Furthermore, one of the interviewees stated that the results of the medical examination may be also used for the purposes of the child assessment report later submitted to the court.

Furthermore, according to one of the interviewed judges, the conclusions of a medical examination may affect the severity of the penalty, if, for example, it turns out that the offender was also injured during a brawl, so they also suffered some harm. The findings of a medical examination can also be invoked to confirm the necessity to suspend the proceedings due to the accused's poor health (according to one of the prosecutors).

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

According to the Criminal Enforcement Code, a person of age between 15 and 21 should serve their sentence in a prison for young adults.<sup>73</sup>

In the context of pre-trial detention, the Criminal Enforcement Code stipulates that detained persons should be kept in a manner that eliminates the risk of them demoralising each other. In particular, the Code requires that persons of age between 15 and 21 should be separated from adults, unless “specific educational reasons” justify not doing so.<sup>74</sup> The term “specific educational reasons” describing grounds for an exception from the requirement to separate detained persons has a different meaning than the term “child’s best interest” used in the Directive. The notion of “specific educational reasons” is not defined in the Code, leaving the assessment to the discretion of prison’s administrators.

Young adults (convicted persons below the age of 21) are placed in semi-open facilities unless exceptional circumstances justify placing them in closed-type facilities.<sup>75</sup> In both types of prisons, they have the right to one additional visit per month as comparing to adult prisoners.<sup>76</sup> Moreover, they are compulsorily covered by correctional programmes and measures such as employment or education schemes, family contact schemes or other activities needed to re-integrate them with the society.<sup>77</sup> Convicted persons under the age of 21 also have priority with access to secondary school education and vocational training.<sup>78</sup>

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<sup>73</sup> Poland, Criminal Enforcement Code, 6 June 1997, Article 84(1) and (2).

<sup>74</sup> Poland, Criminal Enforcement Code, 6 June 1997, Article 212(1).

<sup>75</sup> Ibid, Article 88(1) in conjunction with Article 95(1).

<sup>76</sup> Ibid, Article 91a.

<sup>77</sup> Ibid, Article 95.

<sup>78</sup> Ibid, Article 130.

If special treatment is not afforded, detained persons are entitled to file motions, petitions and requests to authorities in charge of the execution of the penalty of deprivation of liberty or pre-trial detention.<sup>79</sup>

ii. The special treatment in practice

Do children deprived of liberty have access to:	Health care services	Physical and mental development measures	Education and training	Rehabilitation programmes	No answer
Police officers	4	1	1		
Judges and prosecutors	Prosecutor: 1 Judge: 1	Judge: 1		Judge: 1	Judges: 2 Prosecutor: 1
Lawyers	3				2
Non-legal specialists	3	1	2	2	2

Table 11 Special treatment in detention

Interviewed judges and prosecutors offered **very limited observations concerning children's special treatment in practice**. According to two interviewees from this group, in general, detained children have access to health care services and physical and mental development measures. None of these interviewees was sure how the process of education looks like in detention.

All police officers confirmed that children in detention have **access to medical and health services**. They were not, however, sure if the children are given access to other activities stating that it depends mainly on the length of detention (the shorter the detention is, the fewer activities are available to children). On the other hand, one of the police officers who had been working in a police detention facility stated that the facilities offered a relatively wide range of activities available to detained children. According to one police officer, children have access to sports activities and education.

Interviewed lawyers had very limited observations regarding the special treatment of children in detention. The lawyers who indicated that children had access to medical and health care services in detention also noted that the quality of the services provided was rather low. Also, their answers suggest that pre-trial detainees are provided with only basic and necessary services (e.g. health care services), whereas access to education or rehabilitation programmes is available for prison inmates (sentenced persons). Similar observations were made by some of the non-legal specialists group who stated that children who are detained on remand cannot enrol in school education programmes.

*Czy dzieci pozbawione wolności mają dostęp do edukacji?*

*Na dostęp do szkoły mają szansę tylko ci, którzy w więzieniu mogą ukończyć jakiś poziom edukacji. Trzeba mieć określoną długość wyroku.*

*Do children deprived of liberty have access to education?*

*Only those who have enough time to complete some level of education when imprisoned. The length of the sentence has to be sufficient.*

*(Non-legal specialists, Poland)*

<sup>79</sup> Poland, Criminal Enforcement Code, 6 June 1997, Article 6(2).

The situation seems to be **different for children staying in youth detention facilities**. According to an interviewee who works in a juvenile institution, children have access to a wide spectrum of services, including medical and educational services, sports activities, as well as primary and vocational education and training. Some of these activities (e.g. education) are compulsory for persons under the age of 18.

d. Contact with family members during deprivation of liberty

Can children deprived of liberty contact and see their family members?	Yes	No	Don't know
Police officers	3		1
Judges and prosecutors	Judge: 1 Prosecutor: 1		Prosecutor: 1 Judges: 2
Lawyers	4		1
Non-legal specialists	3		3

Table 12 Contact with family members

In general, children **have the right to contact their family members**, but this contact may be restricted depending on the stage of the proceedings and the institution in which a child is detained.

**In pre-trial detention**, contact between detained children and family members is subject to the same restrictions as those applicable to the right of contact of adult suspects – the prosecutor must authorise a family visit. According to one of the prosecutors, such requests are relatively rarely granted as detainees' frequent contact with other persons would undermine the purpose of pre-trial detention. Also, family members need to obtain authorisation to visit a person staying in detention and such visits may be restricted due to the COVID-19 pandemic regulations. The same observation was made by the majority of police officers who stated that children can contact parents on the phone and that during the COVID-19 pandemic face-to-face visits may be restricted.

One of the staff members of an NGO providing aid to children noted a practical problem that is related to the costs of detainees' family phone calls in detention facilities. According to the Criminal Enforcement Code, a detainee has the right to use a payphone at their own expense or make a collect call. In justified cases, the administrator of the detention facility may allow the use of the phone at the expense of the facility. The Ombudsman, referring to several complaints received from detained

persons, stated that detainees are not provided with an equal access to the phone in all detention facilities and the costs of such services vary between the facilities.

Children's right to contact their parents is also respected in **youth detention facilities**. According to one member of the staff of detention facility for children, a child can meet their parents in person or make phone calls (access to telephone have been extended to compensate for the COVID-19 pandemic restrictions reducing the availability of in-person visits).

According to interviewed lawyers, children's right to communicate with family members is generally respected but in practice is subject to different limitations related to the COVID-19 pandemic restrictions or procedural hurdles as referred to above.

#### e. Discussion of findings

The research revealed that deprivation of liberty is indeed the last measure used while deciding on a child's sentence. Nevertheless, the application of pre-trial detention in cases of children of 17 years old, who are suspects or accused persons does not differ much from the practice applicable to adult defendants. In general, in Poland, almost 90% of prosecutors' motions for the pre-trial detention is granted and the age of the defendant is not a decisive factor in courts' decision making. On the other hand, however, the interviewees tended to agree that the imprisonment sentence is in fact used as a measure of the last resort.

The research revealed differences between the situation of detained children depending on the type of institution in which they are detained. Children aged 15-17 accused in criminal proceedings can be placed in pre-trial detention only if other measures (e.g. placement at a juvenile facility) does not serve the proceedings' purpose. Children detained in juvenile detention facilities have access to a broad range of education, sport and psychological support measures but pre-trial detention facilities offer a much lesser range of support programmes for children. Children aged 17 and older can be placed in pre-trial detention facilities. The research did not reveal any specific adjustments to the needs of such children put in place in pre-trial detention centres or prisons different than a general rule of separating children from adults in detention.

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

#### a. Legal overview

According to the relevant provisions of the Code of Criminal Procedure<sup>80</sup>, the accused has **the right (but is not obliged) to participate in the trial**. The presiding judge or the court may, however, order the presence of the accused mandatory. Moreover, in cases of major crimes (felonies), the presence of the accused is mandatory during the presentation of charges and a hearing when they plead guilty or provide explanations.

The presiding judge, at the request of the prosecutor, may agree that the accused may participate in the trial conducted with the use of technical devices enabling "remote" attendance through simultaneous direct audio-video transmission, provided that no technical issues prevent the remote attendance. The presiding judge may also waive a detained accused person's obligation to appear at the trial, provided that the accused may participate in the trial with the use of technical devices enabling simultaneous direct audio-video transmission.

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<sup>80</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 374.

Where a case has been heard in the absence of the accused whose attendance was mandatory, the accused can appeal against the judgement and expect it to be quashed by the appellate court.<sup>81</sup>

The defendant's right to effectively participate in the proceedings not only includes the right to be present during the trial but also entails several other aspects listed in the Code of Criminal Procedure. For instance, accused persons have a right to apply to obtain and adduce evidence.<sup>82</sup> Moreover, the accused person must be allowed to freely make statements within the limits defined by the purpose of a given procedural step, and only afterwards they may be asked questions to supplement, explain or verify the answers provided.<sup>83</sup> The accused has also the right to cross-examine witnesses.<sup>84</sup> The suspect has the right to provide explanation or to refuse to do so or refuse answering particular questions.<sup>85</sup> Finally, the accused has the right to challenge any decisions or findings prejudicial to their rights or interests.<sup>86</sup>

Violation of any of the above rights of the accused may give grounds to appeal against the judgement (under the heading of a violation of procedural provisions provided that *"it may have affected the contents of the ruling issued"*).<sup>87</sup>

In criminal proceedings in which at least one of the accused persons is a minor, **the court may order the trial to be closed to the public**, in whole or part.<sup>88</sup> A trial closed to the public may be attended, apart from the parties, by persons designated by the prosecutor, subsidiary prosecutor, private prosecutor and by the accused, each of whom may designate two persons. Moreover, the presiding judge may allow certain persons to be present at the trial.<sup>89</sup>

The presiding judge informs the persons attending the trial about the prohibition of disclosing any information obtained during the trial closed to the public and advises them of the consequences of non-compliance.<sup>90</sup> Although judgments must always be announced publicly, the reasons for a judgment may also be given, in whole or part, in camera in the situation where the trial has been held, in whole or part, in camera.<sup>91</sup>

b. Right to effective participation in practice

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

None of the interviewed professionals observed **any differences in the setting of the courtroom in which children's cases are heard when compared to adult proceedings**. The hearings take place in the same courtrooms and the procedure is the same as in the case of adult defendants.

The criminal procedure provisions do not introduce any procedural distinctions that would apply to proceedings against children with an exception to the mandatory presence of the defence lawyer.

*Poza tym, że dodatkowo uzyskuje się informacje o [nieletnich] w ramach wywiadu [środowiskowego], mają zagwarantowaną obecność obrońcy i [występuje w postępowaniu*

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<sup>81</sup> Ibid, Article 439(1)(11).

<sup>82</sup> Ibid, Articles 167 and 169(1).

<sup>83</sup> Ibid, Article 171(1).

<sup>84</sup> Ibid, Article 171(2).

<sup>85</sup> Ibid, Article 175(1).

<sup>86</sup> Ibid, Articles 425 and 444.

<sup>87</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 438(2).

<sup>88</sup> Poland, Code of Criminal Procedure, 6 June 1997, Article 360(1)(2).

<sup>89</sup> Ibid, Article 361(1) and (3).

<sup>90</sup> Ibid, Article 362.

<sup>91</sup> Ibid, Article 364.

*rodzic] (...) to ich sytuacja się nie różni, wszystko dzieje się tak samo. (...) Bardziej jestem [skłonna] dopuszczać np. dowód z opinii biegłego psychologa na okoliczność rozumienia słów, wiarygodności danej osoby. Albo częściej [angażowani będą] psychiatrzy, żeby ocenić, czy [nieletni] był poczytalny w czasie czynu z uwagi na wiek. Ale to zależy od sprawy i nie ma żadnych wytycznych.*

*Apart from the fact that information about [children] is additionally obtained from an [community] inquiry, they are guaranteed the presence of a lawyer and [the parent is involved in the proceedings] ... their situation is not different, everything happens in the same way. ... I am more [inclined] to admit, for example, evidence from an evaluation of an expert psychologist on the verbal comprehension, the credibility of a child. Or psychiatrists are likely to be more often involved to assess whether [the child] was legally sane at the time of the commission of the crime, given their age. But this depends on the case, and there are no guidelines.*

*(Judge, Poland)*

The interviewees, however, observed **several practical differences in the judges' approach to children who are accused persons**. First of all, the interviewed lawyers stated that judges take extra care to make sure that children do understand every stage of the process. Secondly, judges seem to be more patient towards children who are accused persons than towards adult defendants allowing the child defendants and their lawyers to take time to consult during the court hearing.

The hearing may be held in camera upon the decision of the court and this decision can be influenced by numerous factors not only the child's age. The interviewed lawyers stated that in some cases involving children they requested the court to hear the case without a public in order to avoid any distractions for their clients.

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

As adult defendants in the criminal proceedings, also **children have a right to testify during the trial and their testimonies are recorded and evaluated by the court**. In the opinion of one of the interviewed lawyers, the questioning of a child defendant is less formal than the questioning of an adult and more empathetic. This observation corresponds with statements made by some judges who stated that they try to communicate with child defendants in a calm, easy way in order to avoid adding more pressure or stress on the defendants. Furthermore, some of the judges admitted that sometimes they help children (even though they have a lawyer) informally expressing their requests and conclusions.

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

Parents, as the legal representatives of the child, **can either act on their side or participate in the hearing as an audience**. The interviewed lawyers and representatives of the support group did not observe any significant problems in parents' participation in the hearings – according to some of the interviewees, parents may consult and support a child during the hearing. However, the imposed COVID-19 pandemic restrictions made it impossible for the audience to participate in the court hearings, hence the participation of parents as members of the audience could also be limited.

d. Discussion of findings

The research did not reveal any specific procedural or court setting adjustments in the court hearings of the child defendants. In principle, child's right to participate in the proceeding is respected, yet the court can proceed with the proceeding even if the defendant is not present.

The decision on hearing the case in camera depends on the court discretion, however the defense can request the court to hear the case without an audience present. Child's parents can participate in the hearing either acting in the name of the child or as members of the audience. Notably, due to the COVID-19 pandemic restrictions, the participation of the audience in the hearing was severely limited.

## PART D. GENERAL ASSESSMENT

### D.1 Challenges

The interviewees indicated several challenges when it comes to the protection of children rights in criminal proceedings.

In general, the interviewees did not question the **set minimum age of criminal responsibility** of 17 years old or 15 years old, however, some of them observed some problems in this regard. First, one of the judges mentioned a case of a 16-year-old who was first accused of an attempted murder yet in the course of the proceeding it turned out that his behavior constituted only the causing of a minor injury. In this case, the criminal procedure should be discontinued, and the child should have been released from pre-trial detention, yet there was a significant risk of the child's demoralization. On the other hand, another interviewee from the non-legal specialists group noted that prosecuting children of 15 years old should not be allowed as the more effective process would be correctional programs aimed at helping the children instead of prosecuting them.

One of the key challenges identified by judges, prosecutors and lawyers was **access to a lawyer** during the initial stages of the proceedings. The interviewed judges and prosecutors indicated that there is no effective systemic solution that would guarantee a child the assistance of a lawyer during the investigation and may deeply influence the child's situation in the entire process. Some of the interviewees (e.g. one of the judges) also stated that the child's rights should be stronger protected in this area by e.g. introducing the obligation to repeat all actions involving the child undertaken during the investigation without the lawyer's presence.

Another challenge spotted by the interviewees (e.g. one of the prosecutors) concerned the **way of informing children about their procedural rights**. In the opinion of some of the interviewees, the format in which the information is prepared (4 pages listing all rights) is not adjusted to children's needs and make it hard for most defendants to understand. This deficiency is particularly striking in the context of research findings that did not identify any promising practices in a process of instructing children about their rights by law enforcement. Regardless of using plain language and limiting the information on rights provided orally to only key rights, the law enforcement does not use any other techniques such as e.g. leaflets with rights adjusted to children's level of maturity that could help children understand their situation better.

Some of the interviewees also noted that a lack of **proper training on the procedural rights of children** also influences the works of the judiciary system as neither judges nor prosecutors are prepared to deal with children's specific needs or understand their behavior and mental state. Also, interviewed lawyers and guardians noted that there is a lack of training available for the police officers or justice system institutions that would prepare the officers to work with children. According to interviewed psychologists, the training available for expert witnesses should be also broadened, in particular, it should standardize the diagnostic methods used in cases concerning children.

On the other hand, the interviewed police officers while discussing the challenges more **focused on the lack of crime prevention**. In the opinion of e.g. one of the police officers, the reaction to crimes committed by children should be more firm and potential crime perpetrators should be aware of the inevitability of the punishment. Another interviewed police officer noted the lack of proper legal education among children and parents which would be required to prevent crimes properly. The interviewed police officers also mentioned the lack of proper technical solutions especially the lack of possibility to audio-video record the questioning as one of the key challenges in the police daily works.

Finally, two lawyers and indicated that the key challenge in the context of the situation of children in the criminal proceeding is **protecting their safety in contact with law enforcement officials**. Both lawyers mentioned cases of their clients who were beaten up by the police yet these incidents were not properly investigated by the prosecutor. In their opinion, the fact that children's safety cannot be properly secured at the police station is one of the key systemic problems. The lack of proper supervision over the police officers' work was one of the problems observed by the court guardian. On the other hand, however, one of the interviewees stated that police's approach towards children has improved over recent years.

## D.2 Improvements

None of the interviewees observed any improvements that would result from the implementation of the Directive.

Only two interviewees, who assessed the changes in the criminal procedure from the perspective of their long professional experience, noted that over the years the criminal procedure became much more adjusted to the needs of the defendants and e.g. the right to information is better implanted that it used to be. The interviewees, however, did not link this progress with the implementation of the Directive.

## D.3 Promising practices

Some judges and lawyers stated that the **mandatory presence of a lawyer** in the court proceeding could serve as an example of promising practice. The interviewees perceived this regulation as the main safeguard for children's procedural rights in the criminal proceeding.

The criminal justice response is focused mainly on prosecuting the crime, also in cases of children suspected or accused of crime. In the opinion of one of the police officers, this reaction may not be enough and children who committed a crime should be **provided with supervision and support to prevent committing crimes again in the future**. However, in the opinion of the interviewee, the institutions such as courts, police or social service institutions or court guardians (family officers) did not have enough possibilities to strengthen the cooperation in works on cases involving children. The interviewee mentioned one meeting between the representatives of each of the institutions organized in his city as an example of promising practice. The meeting aimed at starting the coordination between all institutions working with children, yet since it was a one-off initiative, it is not possible to assess its real impact on the cooperation of the institutions.

**The lack of cooperation between criminal and juvenile justice** institutions was visible in some of the cases mentioned by interviewees from non-legal specialist group. One of the interviewees indicated a case in which a boy was sentenced to imprisonment for not serving the previous sentence imposing community works. The problem was, however, the child could not serve the latter sentence as he was placed in the juvenile detention facility on the decision of the juvenile court.

## D.4 Suggestions

The interviewees noted that the provisions regulating the minimum age for criminal responsibility are not accompanied by any other procedural regulations that would better protect children's rights in the proceeding. First of all, judges and prosecutors noted that the provisions regulating the age of criminal responsibility should be connected with the **obligation to assess children's maturity** and their availability to understand the meaning of their actions. Furthermore, judges noted that compulsory psychological assessment of defendants under 18 years old combined **with broader access to children records** (especially the information on their stay in foster care institutions) would be helpful in

assessing child's level of guilt and a criminological perspective. This observation was concurred by the statement of one of the interviewees who works with children on daily basis – in the opinion of this interviewee judges' assessment of a child should be broader and should rely also on direct contact with a child not only evaluation of the psychological and community inquiry reports.

Also, one of the judges and one lawyer noted that from the perspective of children in criminal proceedings it would be desired to **enhance the role of support persons** who, aside from the lawyer, would help children to go through the proceeding.

## PART E. CONCLUSIONS

The position of children accused or suspects in the criminal procedural is **prone to violation of their procedural rights due to children immaturity and lack of knowledge of the legal system i.e. their vulnerability**. The research revealed that the Polish criminal law system is not fully adjusted to recognise these needs.

The set age limit of criminal responsibility is, in general, 17 years old (with an exception to the most serious crimes such as e. g. murder when the age limit is 15 years old). In general, children of 17 years old are treated as adults in the criminal procedure with only few safeguards for their procedural rights. Children of age between 15 and 17 years old who are accused of crimes first stand before the family court who decides whether given the child's maturity level and criminal records the child should be bear criminal responsibility or should be held liable in the juvenile delinquency proceedings. The juvenile justice proceedings and criminal proceedings differ in the scope of procedural rights, yet due to systemic deficiencies in the juvenile justice proceedings (e.g. the mandatory presence of a lawyer only in specific cases), it cannot be stated that some of these procedures recognise children's needs better.

The research did not reveal any practical problems in **determining children's age** in the criminal procedure. Almost all interviewed professionals agreed that the age is determined based on the child's declaration that is further verified in the official databases.

The key problems revealed by the research concerned the right to information, access to a lawyer and support and participation of the child's parents in the procedure.

As it was stated earlier, children bearing criminal responsibility are treated as adults in the process. Therefore, the law enforcement agencies do not recognise children different maturity levels. This deficiency is striking in the context of the **procedure of informing children about their rights** that is the same procedure as applied to adults. Similarly to adults, children receive the same form of a list of rights that is not in any way adjusted to their needs and position in the process. The interviewed professionals did not indicate any special techniques that would ensure that children understood the information received. On the margin, it is worth noting that similar deficiencies in protecting the right to information were identified in the country study "[Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings](#)" of 2018.

Although the presence of a lawyer is mandatory in the proceedings concerning accused children, the interviewed professionals indicated significant gaps in implementing **the right to access a lawyer**. First, the research revealed that rarely ever children are assisted by lawyers during the first questioning at the police station or before the prosecutor. In the context of the investigation, the mandatory presence of a lawyer is treated rather as a child's right and not law enforcement officers' duty to secure a lawyer's presence. That means that the crucial elements of evidence such as the child's first testimony can be given without the lawyer's assistance. In some cases, interviewed judges indicated that this might be a reason to repeat the questioning, yet it is not a general rule. On the other hand, however, the court hearing cannot proceed without the lawyer being present.

The research also revealed a significant gap when it comes to the **rights of parental responsibility holders** in the criminal procedure. As a rule, in the criminal proceeding, children are treated as adults. At the same time, however, according to the Code of Criminal Procedure parents can act on behalf of their children in the criminal proceeding. This lack of consistency causes certain problems in practice. For example, in the case of arrest, children have a right to notify a third person chosen by them (not necessarily the parents). Yet, some of the interviewed police officers noted that such a child, even though treated as an adult from a procedural point of view, is still a child for whom their

parents are responsible, hence they should be notified about their children situation. Furthermore, parents acting in the name of their children can assist them during the court hearing, yet the research shows that the role of the parents is being mainly the source of information that could be useful for defence, while the entire defence is solely the lawyer's responsibility.

The research revealed two main methods of **individual assessment of a child in the criminal proceeding** – the psychological evaluation and the community inquiry. Both methods are carried out ex officio (only in the case of psychological evaluation the defence can request the court to order the evaluation). Each of the methods has different aims. Whereas the psychological evaluation is done to determine if a child is fit to stand trial, the community inquiry is ordered to assess the child's life situation and social-economic background. As the psychological evaluation has a significant impact on the results of the trial – if a child is determined not fit to stand trial, the process must be discontinued, the results of the social inquiry may have an influence on the court's final sentence. None of these methods, however, is developed enough to comprehensively assess a child's family situation, background, and specific needs.

In reference to **deprivation of liberty as the last resort**, the research showed that indeed it is the last measure used while deciding on a child's sentence. This approach is, however, not used when it comes to deciding on a child's detention in the pre-trial or trial phase of the process. The legal and systemic deficiencies influencing courts' practice in applying the pre-trial detention are applicable also in the situation of children defendants in the criminal proceeding. As many of the interviewees' observations show, age is not a decisive element informing a decision concerning pre-trial detention. The research also showed that the conditions in detention facilities differ depending on the institutions. As the access to any education, sport or psychological support measures are strongly limited in the pre-trial detention (so, children of 17 years old would be effectively deprived of access to them), the situation differs in prisons in which access to these measures is broader. From child's development and well-being, it seems that the juvenile detention facilities recognise their needs in the broadest way, yet in the juvenile detention facilities can be placed only children of age between 15 and 17 years old.

With regard to the **right to participate in the trial**, the research did not reveal any challenges that children may face neither any adjustments to children's needs. In practice, even though the court settings and the criminal procedure do not differ from the criminal hearings in which adults are tried, the judges and lawyers indicated that the court's approach towards children who are accused persons is slightly different. It was an overarching observation among judges and lawyers who stated that in cases involving child defendants' judges show more patience and understanding to the procedural situation of a child allowing e.g. for longer consultations between a child and their lawyer as well as use simpler language while addressing children.

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

Organisation	Focus	(Publicly available) Contact details
Criminal courts	criminal divisions in common courts (district, regional and appellate), established to exercise law enforcement in criminal matters. They determine, among others, criminal liability of persons who have reached the age of 17 (in some cases 15).	
Family courts	family divisions in common courts, established to adjudicate on matters such as marriage, consanguinity and affinity or guardianship and custody. With regard to criminal matters, they apply correctional measures to perpetrators who have committed a crime between the age of 17 and 18.	
<a href="#">Prosecution</a>	prosecutors of organizational units of the prosecution. The duty of the prosecution is to investigate crimes and safeguard the rule of law.	
Po Drugie Foundation (Fundacja Po Drugie)	NGO based in Warsaw. Provides support to children and young adults affected by homelessness and social exclusion, among others to ex-protéges of juvenile rehabilitation centres. Its clients can obtain legal, vocational, psychological and therapeutical help, as well as shelter.	<a href="http://podrugie.p/">http://podrugie.p/</a>
Ombudsman (Commissioner for Human Rights)	a constitutional body established to safeguard civic rights and freedoms, including non-discrimination. The Office of the Commissioner for Human Rights examines whether other state	<a href="https://bip.brpo.gov.pl/">https://bip.brpo.gov.pl/</a>

	<p>institutions, by their activities or inactions, have breached the law. The Ombudsperson is entitled to file motions for constitutional review of laws to the Constitutional Tribunal, as well as to lodge cassation appeals and extraordinary appeals in criminal proceedings upon request of their parties.</p>	
<p>Court guardians</p>	<p>specialists appointed by regional courts' presidents to perform certain rehabilitation, diagnostical, preventive and control tasks pertaining to the implementation of courts' judgements. They perform their tasks in the environment of their proteges, as well as in closed detention centres (e.g. prisons, juvenile rehabilitation centres).</p>	
<p>Juvenile correctional facilities</p>	<p>correctional facilities in which convicted persons who have not attained the age of 21 are placed. They can be either semi-open or closed.</p>	