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Introduction – A child-friendly criminal justice

How many children and young people enter into contact with criminal justice in Europe?

According to the European Commission, every year in the EU over 1 million children face criminal justice proceedings¹. While a legal system must pursue the rule of law and the principles of a fair trial, it is equally true that children suspected, accused and charged for a crime shall be protected and must enter into contact with a **child-friendly** justice.

The criminal proceedings are to be conceived as an opportunity for a young person to develop and to integrate in society. When it comes to children, the commission of a crime should be read primarily as the expression of a difficult condition and should constitute the opportunity, for the society, to recognize a possible critical situation and to address the issue.

For this purpose, juvenile criminal justice shall be sensitive to the needs and rights of the child.

However, the practice shows that the rights of children are not always safeguarded in criminal proceedings and, in general, by the justice system. It follows that the contact with the law may become, for the young person, a source of harm, or at least of distrust towards society. As a result, most children feel alienated and lost, feeling that the justice system is not based on their needs and rights and not aimed at a true and comprehensive rehabilitation, but mere punishment. This fact has a negative impact on their well-being, self-esteem, contact with professionals, perception of fairness of the procedures and ability to participate, accept and understand the outcomes.

The **Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings**²

The Just Closer project

Coordinated by Defence for Children International Italy, with the participation of the Greek Ministry of Justice, the Universities of Valencia, Amsterdam and Genoa, and the grass-root organization Young Perspectives, the Just Closer project aims at contributing, on the one hand, to giving children the possibility to express their doubts and complaints, request information, claim their rights freely and receive adequate support (right to information, right to be heard, right to address complaints). On the other, the project intends to do so by providing a space where children and youth can engage to build up a safer and more harmonious way out from the justice system, to create spaces in the justice system able to receive, reflect on and put into practice children's and youth orientations as well as provisions of the EU acquis on children's rights in criminal proceedings, to foster cooperation among professionals working with children that are suspects or accused persons, to strengthen cooperation among different European stakeholders and ultimately, to contribute to the harmonisation of practices in relation to the relevant legislation in different Member States. The implementation of the project Just Closer will contribute to making the justice system closer to the rights and

¹ European Commission, 2019.

² 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, in OJ L 132, 21.5.2016, p. 1.

needs of children who are suspects and/or accused persons of crimes by promoting effective participation of children in criminal proceedings concerning them, in accordance with [Directive \(EU\) 2016/800](#), while fostering training of professionals and harmonization of practices in the field of juvenile justice in the EU territory.

The present [Guide of Good Practices](#) is conceived as a practical tool for professionals and operators in the juvenile criminal justice system for them to easily understand and apply the basic standards that each child and young person should enjoy when entering into contact with justice. Stemming from the analysis of the relevant legislation (at the international, EU and national level), as well as research on the current implementation in practice of the Directive 2016/800/EU in six Member States, the Guide highlights the most important areas in which the respect of the Directive's standards needs a particular attention.

Who this Guide is addressed to?

The juvenile criminal justice system is based on the work of multiple actors, each playing a crucial role in the well-being and development of children who enter into contact with this reality.

It is pivotal that those actors receive adequate guidance on how to work with children. It is equally crucial that the professionals involved perceive themselves as a part of a *system*, for which cooperation is essential to meet the targets for a child-friendly justice imposed by international and EU law.

In its recent *Recommendation on developing and strengthening integrated child protection systems in the best interests of the child*³, of 23 April 2024, the European Commission has stressed that

“The responsibility for child protection is shared among a wide range of actors, which include public authorities, private actors, international and civil society organisations.”

The Recommendation supports and calls upon Member States to assess, strengthen, and integrate their child protection systems, which need to be perceived as organic. To respond better to children's views and needs, which is central to this Recommendation, national child protection systems should be context-specific, child-centred and implemented at the most appropriate level of governance.

Those needs are particularly evident in the criminal proceeding, where children suspected or accused of a crime shall have contact with professionals with specific competences and instruments to ensure their well-being and respect their fundamental rights in all stages of the procedure.

In the light of the above, the main recipients of the present Guide are:

- Police officers
- Judges
- Prosecutors
- Lawyers
- Probation officers

³ European Commission, [Recommendation on developing and strengthening integrated child protection systems in the best interests of the child](#), 24 April 2024, C(2024) 2680 final.

- Social Services
- Professional educators
- Operators working in Juvenile Detention Centres and in communities

The method – the nine principles of a child-friendly justice

In accordance with the main international and EU standards on children's rights, children should have access to adequate treatment in the justice system. Those standards are expressed by the UN Convention on the Rights of the Child⁴, by the EU Charter of fundamental rights⁵ and by many other sources of law at the international and EU level⁶.

The Child Friendly Justice Guidelines (CFJG) of the Council of Europe⁷ are now a key international standard in what concerns the treatment of children and young people before, during and after the justice proceedings within the juvenile justice system. Even though the guidelines are not binding in nature, they reflect the content of the aforementioned, binding sources of law and are focused on the application stage. In the framework of the Youthlab project⁸, Defence for Children Italy undertook an in-depth analysis (and child-friendly interpretation) of the characteristics of a child-friendly justice of the Guidelines. The results are represented by the following 9 fundamental principles:



⁴ UN Convention on the Rights of the Child, approved by the United Nations' General Assembly on the 20 November 1989. See also the General comment No. 24 (2019) on children's rights in the child justice system, of 18 September 2019, CRC/C/GC/24, drafted by the UN Committee on the Rights of the Child.

⁵ Charter of Fundamental Rights of the European Union, in OJ C 326, 26.10.2012, p. 391.

⁶ For a comprehensive view, see CHILD-FRIENDLY JUSTICE EUROPEAN NETWORK, *Child Friendly Justice in Europe, CFJ-EN Handbook – 2023 Edition*, available at <https://www.publications.cfjnetwork.eu/medias/762/handbook2023-cfj-en-148x210-231004pdf.pdf>.

⁷ Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, adopted by the Committee of Ministers on November 17, 2010 at the 1098th meeting of the Ministers' Deputies, available at <https://www.coe.int/en/web/children/child-friendly-justice>.

⁸ Youthlab – *Young people become trainers for the juvenile justice system*, co-funded by the European Union under the European Union's Rights, Equality and Citizenship Programme (REC 2014-2020).

The Directive 2016/800/EU

The Directive 2016/800/EU establishes procedural safeguards for all children under the age of 18, who are suspected or accused of a crime (being it of a transnational nature or not). The safeguards are in addition to those which apply to suspected or accused adults.

The Directive also applies to children who are subject to European arrest warrant proceedings pursuant to Council Framework Decision 2002/584/JHA⁹. It is important to note that, according to Article 2, the Directive also applies to children who have reached the age of majority in the course of the proceedings, based on an assessment of appropriateness based on the maturity and vulnerability of the person concerned. In addition, Recital 12 encourages the extension of safeguards also to persons who, although having committed the crime while underage, turn out to be investigated or charged only after becoming of age (providing, even in this case, the limit of twenty-one years). It also enforces the presumption of a youth's age in cases of uncertainty, specifying that the relevant assessment should provide for a medical examination only as a last resort and with full respect for rights, physical integrity and human dignity.



⁹ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), in OJ L190, 18.07.2002, p. 1.

Accessibility

Justice must be accessible for all children. Any barriers to access to justice must be removed and children shall be provided adequate information about their rights. Justice must be free of charge and legal aid must be guaranteed, and so must be access to support services and remedies.

Normative references

UN Convention on the Rights of the Child: Article 12 – Article 40

Directive 2016/800/EU: Article 4 (Right to information) – Article 5 (Information to the holder of parental responsibility) – Article 6 (Assistance by a lawyer) – Article 18 (Right to legal aid)

Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings: Articles 2 and 3

Directive 2012/13/EU on the right to information in criminal proceedings

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings: Article 3

An accessible justice guarantees to children adequate information about their rights and about the proceedings. An accessible justice also guarantees the right to legal assistance, through the promotion and sustainment of legal aid, as well as support services and remedies. Adequate support and translation services shall be provided to children who do not speak the local language or have hearing or speaking impairments.

At every stage of the proceedings, the child in contact with the justice system **should always know who to contact in case of concerns, complaints, need for assistance**, including in case he or she experiences a problem with his or her lawyer.

Information

An accessible justice system ensures that children involved in a criminal proceeding, from their very first contact with the justice system, are able to understand what is going on – and what may happen in the future – at any stage. They should be guided in understanding their rights and in obtaining all the relevant information, also through an assistance in understanding the acts and documents of the proceeding, characterized by a highly technical language.

All the operators and professionals have a role in ensuring that this right is respected.

At **each phase of the proceedings**, including the arrest, interrogations, the preparatory and merits phases, as well as during probation or other measures, the child shall be able to understand what is going on and what the possible future stages may be. Most of all, **the child should immediately be made aware of his or her rights, since the very first contact with justice professionals or operators (e.g. from the moment of the arrest, of the retainment by the police, or of the search warrant at home).**

The use of a **child-friendly language** is an essential condition to guarantee adequate information. For this purpose, the use of **child-friendly materials** is recommended, and it should be provided to the child from the very beginning. The **Letter of Rights**, developed within the Just Closer project and attached to the present

Guide (Annex I), is proposed as a tool to be made available in communities, first reception centres, police headquarters, etc. for this purpose.

However, professionals and operators must be sure that the Letter is provided to each child and eventually accompanied by explanations by an adult with specific competences to deal with children.

Special needs may arise in relation to children of foreign nationalities or migrant (even unaccompanied) children, who may experience further difficulties in receiving an adequate orientation to the proceedings. When the youth does not speak the local language, or has a hearing or speaking impairment, an **interpreter** must be provided.

The **holder of parental responsibility** shall be informed promptly about the child's rights, the accusation and the conduct of the proceedings, unless it is against the child's best interests, or it may be detrimental for the good conduct of the proceedings (e.g. if the parent is suspected to be involved in the crime). This information shall happen as soon as possible and shall be done by the authorities. **At the same time, informing the parents should not replace informing the child.**

If the holder of parental responsibility cannot be informed, the child can nominate another adult to receive information.

Legal assistance and legal aid

Children suspected or accused of a crime shall have effective legal assistance at all stages of the criminal proceedings.

This right is stated by Article 40 of the UN Convention on the rights of the child, which stipulates that children accused or suspected of committing an offence have the right to legal (or other appropriate) assistance. This is particularly true when the youth has already been arrested and detained: in those circumstances, the Article 37 of the Convention specifies that children have the right to promptly access legal assistance. The same is prescribed by Article 6 of the Directive 2016/800/EU.

Accordingly, governments are obligated to provide **legal aid**¹⁰.

The **presence and assistance of a lawyer** shall be guaranteed **in every stage of the criminal proceedings**: the child shall be assisted by a lawyer **during any questioning with the police officers**. When a child becomes a suspect or accused person during a questioning as a witness, the questioning should be suspended until the child is informed of this and is assisted by a lawyer.

Any consultation between the lawyer and the youth shall be facilitated with an adequate time and space. They shall be **in private, confidential and not supervised** by any other person (e.g. police officers).

¹⁰ See also the UN Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules": Rules 7, 13, 15), as well as the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (Principles 3, 10, 11; Guideline 10).

◆ Good practices and recommendations ◆

- Information and access points should be clearly identified at every stage of the proceedings in order for young persons to always know who to contact in case of requests of information, assistance or complaints.
- Child-friendly material on the rights of young persons in criminal proceedings (see: Letter of Rights) should be made available by default in police headquarters, courts, social services offices, probation institutions, community centres and detention centres.
- Any (formal or informal) questioning to a child or young person should not be performed without the presence of a lawyer.
- Adequate time and space should always be provided for communications between the young person and the lawyer.
- Lawyers representing the youth should always be adequately trained.

Age appropriate

At all stages of the proceedings, children must be treated according to their age, their specific needs, their degree of maturity and their level of understanding. Everything must be explained in a language they can understand.

Normative references

UN Convention on the rights of the child: Article 3 – Article 37 – Article 40

Directive 2016/800/EU: Article 2 (Age responsibility)

The appropriateness of the justice environment

The overall justice system may be adapted to the needs of children, who must be treated according to their age and degree of maturity. This not only means informing children and communicating with them in a language they can understand (see *supra*, Accessibility), but also conceive the criminal proceedings as a tool to pursue the best interests of the child. For this purpose:

- All professionals working with the youth in the justice system must maintain a behavior which is adequate for the age of the child concerned.
- Police treatment must be respectful of the age, the rights and the needs of protection of the child.
- The environment in which the arrest and retainment, the police questioning, the hearings, the meetings with different actors take place should all be child-friendly.
- The separation between children (as well as young adults) and adults shall be guaranteed at any stage, especially in detention and community centers.

Minimum age of criminal responsibility

Children who are below the minimum age of criminal responsibility at the time of the commission of an offence cannot be held responsible in criminal law proceedings.

At the present moment, the Directive 2016/800/EU leaves to the Member States to fix the minimum age of criminal responsibility, in accordance with human rights standards.

Therefore, the effective capacity in relation to the offence shall be ascertained on a case-by-case basis, by considering psychological, social, cultural elements, which may be also inferred by the behavior of the child during the criminal proceedings.

Any punitive measure applied to a child must be accompanied by an evaluation on age appropriateness.

The age assessment procedure is crucial for the application of the special rules envisaged for children in criminal proceedings. It applies not only for accused children, but also to merely suspected ones. Age shall be assessed through ordinary means, such as identity documents of the child or civil registry. When age cannot be assessed by the ordinary means, it shall be assessed in the less invasive way possible by virtue

of an expert report and/or and overall evaluation of the child concerned. Any automatism (such as the mere x-ray of the bone structure) shall be avoided since they are often arbitrary, inaccurate and traumatic¹¹.

Those standards shall apply to all children, **unaccompanied minors included**. Sufficient attention should be paid to the differences in physical and developmental features of the different ethnic groups.

◆ Good practices and recommendations ◆

- **The adaptation of the overall justice system to the needs of young persons should apply to all professionals, operators, environments and procedures. In principle, children and young persons suspected or accused of a crime should never be treated as adults.**
- **Specific regulations should be enforced for police treatment of children and youth. These regulations should include: 1) policies for the treatment of youth during the arrest and in temporary transit cells or police rooms; 2) reporting obligations; 3) limitations on the handcuffing of youth; 4) guidelines on nude searches; 5) child-specific regulations for the questioning of youth.**
- **Criminal responsibility should not be based solely on the age, but it should be assessed on a case-by-case basis on the basis of a multidisciplinary procedure. This applies to all children, unaccompanied migrant children included.**

¹¹ UN Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system, par. 33.

Rapidity

The principle of urgency must be applied in order to provide a quick response, in the light of the child's best interest. Preliminary decisions must be reviewed.

Normative references

UN Convention on the rights of the child: Article 40

Directive 2016/800/EU: Article 13 (Timely and diligent treatment of cases)

Criminal proceedings, even those involving children, can be very slow. This can lead to detrimental effects of the passage of time on a young person who is accused, suspected or charged of a crime. The main purpose of a criminal proceedings should be to reintegrate the youth into society: this objective is compressed if the proceedings become the reason impeding the child to continue to study or to accept a new job.

Criminal proceedings involving children shall be treated with swiftness, urgency and priority. They should be shorter than the proceedings reserved to adults. This includes not only the trial, but also the investigation stage and the application of any sanction, probation or measure of deprivation of liberty.

The time between the commission of the offence and the conclusion of proceedings should be as short as possible.

At the same time, the proceedings must be adequate to the age, needs and best interests of the child: while being as rapid as possible, they still should allow an accurate individual evaluation, an adequate participation of the child, the respect for the right of due process.

◆ Good practices and recommendations ◆

- **In order to preserve the educational and social reintegration function of juvenile criminal justice, the shortest possible time should elapse between the commission of the offence and the end of the proceedings. This, without disregarding the rights and needs of the young person involved in the proceedings.**

Diligence

Diligence is the quality in which commitment, care, thoroughness and converge. Juvenile-friendly justice must encompass all of these qualities, respecting the rights of children and always acting in their best interests.

Normative references

UN Convention on the rights of the child: Article 3 – Articles 37 and 40

Directive 2016/800/EU: Article 13 (Timely and diligent treatment of cases) – Article 20 (Training)

Specialized professionals and operators

All the professionals and operators working in contact with children shall have adequate training: this should be ensured by national government as a uniform and non-renounceable standard. Specific resources should be allocated for this purpose.

This also applies to lawyers assisting children in criminal proceedings: specialization ensures that the lawyer, who often is an important vehicle of connection and communication between the child and the other professionals (such as the judge), is able to effectively pursue the best interests of the child, to listen to him or her and to communicate.

All professionals and operators working with children shall not, under any circumstances, treat children as adults.

Specialization in the field of child (criminal) law and in dealing with children is needed at all levels (police officers, social service staff, judges, public prosecutors, lawyers). This should also involve the provision of continuing education.

Coordination and cooperation among professionals and operators

The juvenile justice system is characterized by the involvement of a large number of different professionals who operate at different levels and stages of the proceedings. A system characterized by the protection of the best interests of the child should involve a high level of cooperation - and above all communication - between legal practitioners.

The lack of communication is not only a reason for delays in the proceedings, but also the cause of lack of performance of certain acts which have a key role for the rights and well-being of the child. For instance, the individual assessment is a key instrument for the judge to assess the best solution for the individual child or to create the most appropriate probation project: it should be drafted in the first stages of the proceedings, and it should be continuously revised (as a dynamic document) in order to “grow” with the child. It would benefit of a high degree of collaboration between the social services, the lawyer of the child, experts, etc. The individual assessment should also be made at disposal of the public prosecutor, of the judge and of the probation officers as soon as possible.

Communication shall exist between the criminal and civil system: an exchange of information on the situation of a child – who is, for instance, already known by the Social Services as concerns civil proceedings on custody and finds himself/herself involved in a criminal proceedings – would enable the professionals to take in consideration the overall situation in order to find a solution that best corresponds to his/her best interests.

◆ Good practices and recommendations ◆

- **An integrated, mandatory and continuous training on children’s rights, the principles of child-friendly justice and communication with children should be implemented and applied to all professionals and operators working in the juvenile justice system.**
- **Further collaboration between justice professionals and civil society in training and advising on child-friendly justice should be enhanced and upgraded, including through the participation of young people with experience in the system.**
- **A high level of cooperation among professionals and operators working in juvenile criminal justice should be enhanced.**

>>> In Belgium, a good practice exists in this regard: legal professionals take the ‘chain approach’ (ketenaanpak), which requires a broad range of professionals to sit together at a table and discuss options for the youth.

>>>In the Netherlands, legal professionals adhere to the fast-track system. Within nine hours of arrest, the police, prosecutor, and Child Protection Board representative meet to discuss with (?)the youth. In the following days, this group decides on the path forward for the case and the youth based on circumstances, individual assessment, and other factors

>>> In Italy there is a “specialized” social services is in charge of cases of children and youth involved in criminal proceedings under the head of the Ministry of Justice (USSM).

Adapted to - and focused on - the rights and the needs of the child

The entire proceedings must be carried out with the child's needs and rights in mind. Any form of deprivation of a child's freedom must be a measure of last resort and of the shortest duration possible. Alternative means must be encouraged if they are in the best interests of the child. This section concerns, in particular, the individual assessment, detention (in child institutions) and probation.

Normative references

UN Convention on the rights of the child: Article 3 – Article 24 – Article 28 – Article 31 – Article 40

Directive 2016/800/EU: Article 7 (Individual assessment) – Article 8 (Right to a medical examination) – Article 10 (Limitation of deprivation of liberty) – Article 11 (Alternative measures) – Article 12 (Specific treatment in the case of deprivation of liberty)

The juvenile justice system shall pursue the best interests of (every) child by recalling and enhancing the principles of adequacy, de-stigmatization, minimum offensiveness, and detention as an *extrema ratio*. Overall, the justice system shall always protect and enhance the physical and mental well-being of every child.

Individual assessment

The individual assessment is the instrument that ensures the specific needs of the children concerning protection, education, training and social integration are taken into account. The individual assessment helps to ensure that procedural safeguards are sensitive to the needs and rights of the child and that all decisions and measures taken including in the process of sentencing, support the child's (re-) integration and transition to adulthood and independent life¹².

The individual assessment shall be presented **at the earliest appropriate stage of the proceedings** and before indictment. At the same time, the document should also be continuously revised and updated.

The individual assessment should be drafted with the **close involvement of the child and, where appropriate, of the holder of parental responsibility or another appropriate adult or professional**. It shall be drafted by qualified personnel, preferably through an interagency and **multidisciplinary approach**. **It should be prepared as quickly as necessary** in order to have a **clear picture** of the situation of the child and also in order to adopt protective measures for the child himself/herself and also for the other children who are close to the child at stake (such as, for example, brothers or sisters).

For this purpose, the individual assessment should have the following minimum content:

1. **Legal framework of reference** in the case at stake, taking into consideration whether the child has

¹² For further resources on the individual assessment, with particular reference to the Italian legal system, see DCI Italy, *Towards a child-friendly justice system: Securing the rights and procedural safeguards of children who are suspects or accused persons in Italy. Methodological orientations*, October 2022, available at <https://www.defenceforchildren.it/it/news-352/crew-orientamenti-metodologici-per-un-sistema>.

- already contact with the Social Service or with the juvenile justice system;
2. **Description of the familiar, social, environmental situation**, pointing out the evolution of the child inside his/her family, the attendance of school, the extra-school activities (such as sports), the attitudes and passions of the child (which is a very important aspect to tailor the best probation or other diversion instrument). Specific indications concerning the relationship between the parents and the child should be included;
 3. **Observation and treatment**: this part is particularly relevant since it provides the judicial authority with information/evaluation on whether the child can be dangerous, whether the child is in conflict with the social setting where he/she lives, hypothesis on the origin and causes of his/her behaviour;
 4. **Conclusions**: The conclusions may include a few hypotheses on the path that the child should follow, with specific proposals (and sometimes also solutions) on the project to be followed.

The lawyer of the child should provide to the other professionals, as soon as possible, a document describing the relevant elements at their disposal on the overall situation of the child. This document would be very useful for the other actors of the juvenile justice system (also) in order to draft the individual assessment. In fact, the lawyer who is able to be trusted by the child may collect important information not only for the immediate protection of the child and of the other children who might be involved/interested, but also in order to find the best solution possible for the specific child at stake.

Right to a medical examination

Children deprived of liberty have the right to be medically examined **without undue delay** to establish their **mental and physical condition**.

The examination should not be reduced to merely a formal step, but must constitute the application in practice of every child's right to health and well-being.

Medical care must be provided as soon as possible after admission and must be guaranteed with **continuity** for the entire application of the measure.

Deprivation of liberty

The deprivation of a child's freedom must always constitute **a measure of last resort**, even when the child is suspected or accused of a serious crime. Children should be deprived of their liberty **for the shortest possible time**, considering their situation and the circumstances of the case.

The decision to impose detention should be subject to **judicial and periodic review**.

Pre-trial detention (including police custody) shall be considered only when strictly necessary, **regardless of the gravity of the crime** at question.

Any alternative to detention should be considered and applied with priority. Alternatives include house arrest, restriction on movements and residence, placement in community centres or childcare institutions, probation, participation in educational programmes, restorative justice.

The **access to alternative measures to detention** should not be inhibited by the fact that the child is a foreign national or an unaccompanied minor.

When applied, detention, as well as placement in community centres or childcare institutions, should constitute an opportunity for the child to grow and to have access to **adequate education and training (as well as to leisure activities and physical education)**. Access to programmes that foster their development and reintegration into society shall be considered a basic and not renounceable part of the experience in the detention centre.

Foreign or unaccompanied children shall be granted the same access to education, training, leisure activities and physical activities. Specific measures must be implemented to grant their integration in the institution or community centre.

Regular exercise of the **right to family life** must always be granted. Contacts with family and friends should not be restricted as punishment. **Freedom of religion or belief** must be respected and facilitated.

Children deprived of liberty must always have the **possibility to have access to complaint mechanisms**.

Probation¹³

Probation is an instrument of diversion and an educational pathway, inspired by the principles of minimum offensiveness and adequacy which inspire the juvenile criminal proceedings. It is a pivotal instrument in order to justice to pursue an effective re-educational and social reintegration effect.

Therefore, access to probation must not be limited to less serious crimes. On the contrary, it is preferable in presence of serious criminal offences, where an educational pathway is needed the most.

Probation shall be **adequate to the personality of the child and to his/her educational needs** and it should not interrupt – but instead support – his or her personal development.

The probation project should **be tailored on the child** and it should be drafted with the **participation** of the child¹⁴, on the basis of the individual assessment, on the personality and on the educational needs. This requires a high degree of cooperation between the professionals involved (social services, the lawyer of the child, the judge...), who should collaborate in order to find the solution that corresponds to the child's best interests and the resources available to conduct the probation.

Probation must respect the **presumption of innocence**: it shall not be equivalent to an admission of responsibility, and it must not be used as an instrument of bargain in order not to be convicted.

The probation project should clearly state:

- The general objectives, which are to support the child in reflecting on the offence and its social consequences as well as self-reflection;
- The specific objectives, which are tailored on the particular child.
- The reasons underlying the specific choices that have been made, linking the type of need to the actions and commitments that the child will undertake.
- The methods of involvement of the various parties in its implementation: parents, private social services, other specific services.

¹³ See also DCI Italy, *Towards a child-friendly justice system: Securing the rights and procedural safeguards of children who are suspects or accused persons in Italy. Methodological orientations*, cit., p. 82 ff.

¹⁴ This is a very important passage, since it lays the foundation for fostering the child's active participation and its commitment.

Verification checks on the execution of probation should be done at least monthly.

The **final evaluation of a probation** period focuses on the **evolution of the child's personality**. It is therefore not considered a mere return of information to the judge on the achievement of objectives, but rather a tool to review the development of awareness of the offence, maturation and (re)integration of the child.

The end of probation should always be accompanied by a feedback and remand to the child, as a recognition of the results obtained.

◆ Good practices and recommendations ◆

- The individual assessment of a child or a young person, performed at the earliest possible stage of the proceedings and on the basis of a strong collaboration between the professionals involved, should be drafted on the basis of a common format. It should be object of continuous updating.

>>> A good example is the practice of “Lij Tools” used in the Dutch legal system, a platform with thousands of available questions, structured according to the stage of the proceedings in which the child finds himself, and formulated in child-friendly language. The system provides a risk assessment in the form of graphs and tables based on the answers given by the minor person. After the risk assessment, the assessment of the protective factors of the juvenile takes place, followed by a balance between risk (of reoffending) and protection (individual, of the juvenile).

>>> In Italy, lawyers operating in some areas of the Italian territory – who are specialized in the field of child criminal law – knowing the importance of the individual assessment, make on their own initiative a document (called “memoria”), describing the relevant elements in their knowledge to the social services and the prosecutor.

>>> In Italy, the Office of social services of the Ministry of Justice (USSM) operating within the Court of Florence has adopted and regularly applies an operative protocol for the construction and application of a probation project¹⁵.

- The medical examination should be performed without undue delay and with diligence. It should comprehensively assess the physical and mental well-being of the child. Medical care should be granted with continuity when children or young persons are deprived of liberty.
- The principle of detention as a last resort should be applied substantially. The deprivation of a child's freedom should be considered, in principle, against the child's best interests, unless there are specific and motivated circumstances suggesting the contrary.

¹⁵ See DCI Italy, *Towards a child-friendly justice system: Securing the rights and procedural safeguards of children who are suspects or accused persons in Italy. Methodological orientations*, October 2022, available at <https://www.defenceforchildren.it/it/news-352/crew-orientamenti-metodologici-per-un-sistema>, p. 68.

- Foreign children or young persons should have the possibility of equal access to alternative measures to detention.
- Clear, accessible and effective complaint mechanisms should always be available for children or young persons deprived of liberty.
- A probation project should always be tailored on the personality and the needs of the child or the young person. At the end of probation, a hearing should take place in order for the child to be provided with the feedback and to review the development of awareness of the offence, maturation and (re)integration of the child.
- A map of probation solutions available at the national and local level should be prepared and updated in each legal system, with the scope of facilitating the creation of a probation project. Moreover, this map could be useful to share good practices and projects that might be applied in a different context from the one it has been envisaged.

Respecting the right to a due process

Children, like adults, must be guaranteed all the principles of due process, such as the principle of legality and proportionality, presumption of innocence, right to a fair trial, right to legal assistance, right of access to justice.

Normative references

UN Convention on the rights of the child, Article 40

Directive 2016/800/EU: Article 6 (Assistance by a lawyer) – Article 18 (Right to a legal aid) – Article 19 (Remedies)

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings: Article 3

Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

Directive 2016/343/EU on the presumption of innocence

The right to a due process encompasses the right of a person to be treated fairly, efficiently and effectively by the administration of justice. As well as the other rights and principles, when it comes to children, the respect of this right results particularly important not only because of the special rights that children shall enjoy in the light of their vulnerable position, but also because of the general interests in children building a relationship of trust with the institutions. Therefore, children involved in criminal proceedings shall enjoy at least all the rights and guarantees attributed to adults, with additional specifications deriving from their peculiar situation of vulnerability. The criminal proceedings for children and youth must adapt, both in its general conception and in its concrete application, to the juvenile's personality and educational needs.

Some aspects of the principles informing the right to a due process are examined in other sections of the present Guide (such as the [right to legal assistance and to legal aid](#), the [principle of deprivation of liberty as an *extrema ratio*](#) and the [right to be heard and to participate to the proceedings](#)).

The [principle of proportionality](#) requires that sanctions and probation measures be applied in light of the specific situation of the juvenile, with the aim of achieving effective educational action and enabling social reintegration as quickly as possible.

The [presumption of innocence](#) requires that the burden of proof of the charge is on the prosecution, regardless of the nature of the offence. The child has the benefit of the doubt and is guilty only if the charges have been proved beyond reasonable doubt.

Access to probation should not be assimilated by an admission of guilt, nor it should constitute a blackmail or bargaining tool to obtain a confession.

The lawyer of the child should refrain from suggesting the child to plead guilty, even if it is not true, in order to obtain access to probation or to secure a lighter punishment.

A child must never be compelled to give testimony or to confess or acknowledge guilt. Any coercion is impermissible: this also includes psychological pressures or discomforts caused by the particular conditions of the questioning or the hearings. The child, as the adult, has the right to stay in silence: at the same time,

he/her should be put in the position to talk and participate in the proceeding, having this path an educative purpose. This requires a delicate balance and attention by professionals.

The professionals working with children accused of a crime must always consider the age and maturity of the child concerned, as well as the possibility that they are easily influenced by the surrounding circumstances.

Children and youth must always be able to challenge the decision. **The right to appeal shall be respected and should be accessible to children and youth.**

◆ Good practices and recommendations ◆

- **The elements that comply with the right to a due process should be object of specific assessment and consideration when a child or a young person is involved in criminal proceedings, in the light of the principles of a child-friendly justice and of the educative function that characterize the juvenile justice system.**

Respecting the right to participate in and understand the proceedings

Children must be informed in a language they can understand about their rights and about all judgments and decisions that affect them. They must understand how the situation may or will evolve, what options they have and what the consequences will be. They have the right to be heard and to give their opinion in all matters that affect them.

Normative references

UN Convention on the rights of the child: Article 12 – Article 40

Directive 2016/800/EU: Article 4 (Right to information) – Article 5 (Right of the child to have the holder of parental responsibility informed) – Article 16 (Right of children to appear in person at, and participate in, their trial)

Directive 2012/13/EU on the right to information in criminal proceedings

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings: Articles 5 and 6

As concerns the [right of the child to receive adequate information](#) about his/her right and the proceedings, see *supra*, under “Accessibility.” Information is a necessary pre-condition for the child to participate effectively to the proceedings.

Children have the [right to be present at their trial and to participate effectively to it, expressing their views](#).

The probation project should be drafted with the participation of the child.

The participation of the child is effective if it respects four elements¹⁶:

- 1) **SPACE**: A safe and inclusive space is provided, where children are put in the condition to express themselves freely.
- 2) **VOICE**: The child is able to express his or her views: he or she is provided with the information needed to form a view, as well as with multiple options on how to express him/herself.
- 3) **AUDIENCE**: There is someone who has the responsibility to listen to the child and who has the power to make decisions.
- 4) **INFLUENCE**: The child’s views are considered and taken seriously by the persons who have the power to make decisions. The child is provided with feedback explaining the reasons for the decisions taken.

The right to participation requires special safeguards and measures in case of [children of foreign nationalities or migrant \(even unaccompanied\) children](#), as well as of [children with disabilities](#), who may experience further difficulties in communicating their views and needs. When the youth does not speak the local language, or has a hearing or speaking impairment, an [interpreter and a cultural mediator](#) must be provided.

¹⁶ L. Lundy, ‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child, in *British Educational Research Journal*, 2007, p. 927 ff. See also Ireland Department of Children and Youth Affairs, *National Strategy on Children and Young People’s Participation in Decision-Making 2015-2020*, 17 June 2015, p. 22 ff.

The **role of the lawyer** is pivotal in ensuring that the right to participation is effectively respected: oftentimes, the lawyer is the link between the child and the justice system and is the one who is in the best position to voice the child's concerns and help him or her channel their position.

At the same time, **all professionals and operators, at each stage of the criminal proceedings** (from police officers, to social services, to the public prosecutor, to the judge, etc.) must be aware of the importance of communicating directly with children in an appropriate manner. No justice system professional is exempt from the need to communicate directly with the child and is directly responsible for ensuring that participation rights are respected.

Questioning of children by police or other law enforcement authorities during the criminal proceedings is **audio-visually recorded** where it is proportionate to the circumstances of the case in the light of the child's best interests. The lawyer of the child/youth must always be present during any questioning. In the absence of audiovisual recording, questioning shall be recorded in another appropriate manner, such as by written minutes which are duly verified.

◆ **Good practices and recommendations** ◆

- **Children should always be granted, at every stage of the proceedings, adequate space to express themselves freely. This space should be organized and made available in courts, social services offices, police headquarters.**
- **Children should receive all the necessary information to form their own view. At every stage of the proceedings, a specific person should be appointed with the specific duty to listen to the child and to collect his or her opinion.**
- **The child's views should be considered and taken seriously by the persons who have the power to make decisions. The child is always provided with feedback explaining the reasons for the decisions taken.**
- **No formal or informal questioning of children by the police (or other law enforcement authorities) may happen without the presence of a lawyer. Audio-visual recording should be mandatory unless it is contrary to the child best interests: in the latter case, an adequate motivation should always be provided in the minutes of the questioning.**

Respecting the right to a private and family life

The private life and personal data of children who are or have been involved in any proceedings should be protected. No information, images or data that could directly or indirectly allow the identification of the child may be disclosed. The authorities should provide limited access to records or documents, and all proceedings involving minors should take place behind closed doors.

Normative references

UN Convention on the rights of the child: Article 9 – Article 16 – Article 40

Directive 2016/800/EU: Article 12 (Specific treatment in the case of deprivation of liberty) – Article 14 (Right to protection of privacy)

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings: Article 4

Right to family life

The child who is in contact with the justice system and is subject to measures of deprivation of liberty must always be ensured **regular contacts with his or her family** through correspondence, phone/video calls and visits, unless it is contrary to his or her best interests. However, any restriction to this right should be interpreted restrictively and should be carefully evaluated in the light of the circumstances of the particular case.

To facilitate visits, the child should be placed in a facility as close as possible to his or her family's place of residence.

The contact with family **members should not be treated as a concession, but facilitated as the exercise of a right**. Contacts with family and friends should not be restricted as punishment.

The **visits** must take place in an **adequate environment**, especially if there are children among the visiting family members.

Right to privacy

The respect of the privacy of the child is an essential element to guarantee his or her social reintegration after the end of the path in the justice system.

When a child is accused, suspected or charged of a crime, **no information, images or data that could directly or indirectly allow the identification of the child may be disclosed**. The authorities should provide **limited access to records or documents** (which must not nevertheless be shared with third parties). Case-law reports relating to children should be anonymous.

All hearings involving children should take place behind **closed doors**.

All professionals and operators **must not disclose any information about the ongoing criminal proceedings with the media**.

Any **public registry** storing personal data of a child, or of a person who was a child at the time of the commission of the offence, **must not retain any record of an ongoing or completed criminal proceeding**. If this happens, anyone who works in public administration and has access to that data should treat it with the utmost confidentiality. In principle, to avoid ongoing stigmatization, there should be **lifelong protection from publication regarding crimes committed by children**.

◆ Good practices and recommendations ◆

- **Any infrastructure in which the child is deprived of liberty should be equipped with adequate rooms and technology to ensure regular contacts between the child and his or her family.**
- **National public registry should be structured in order not to retain any record of an ongoing criminal proceedings outside the justice system. Access to forms of data review and the possibility to formulate a request for deletion of records should always be guaranteed for children and young people.**

Respecting the right to integrity and dignity

Children must be protected from harm, including intimidation, reprisals and secondary victimisation. They must always be treated with care, sensitivity, fairness and respect, and with full respect for their physical and psychological integrity. Special protection and care must be provided for the children in special conditions vulnerability. If deprived of their liberty, they must be separated from adults. Children must not be subject to torture or inhuman and degrading treatment or punishment. This section also concerns the conditions of detention.

Normative references

UN Convention on the rights of the child: Article 6 – Article 19 – Articles 37 and 40

Directive 2016/800/EU: Article 12 (Specific treatment in the case of deprivation of liberty)

Children in contact with the justice system must be protected from any form of harm, intimidation, reprisals and secondary victimisation.

The professionals and operators working in direct contact with children must be aware of their duty to actively preserve their physical and psychological integrity.

The **arrest of a child** – which often is the very first contact with the justice system – must be conducted with respect for his or her rights and needs, in the light of their inherent vulnerable condition. Therefore, the arrest should be conducted with modalities that are very different from adult arrests. Police officers must abstain from any action that could cause harm or physical/psychological discomfort, and they should explain clearly to the child what is going on.

Children and youth should have access to a complaint mechanism in case they experience violence or intimidation by police officers.

Detention and other measures of deprivation of liberty

A child (or a young adult) deprived of liberty is in a particularly vulnerable situation. Not only must he or she be **protected from any form of harm, harassment or intimidation**, but should also benefit from **specific protection and care**.

Children and young adults deprived of their liberty must be held in **suitable premises**. They must be properly accommodated regarding their privacy, health and hygiene. They must receive **appropriate nutrition and medical care**. They must be **treated with humanity, respect, sensitivity, fairness and in accordance with their age**. Children and youth must have access to educational and training activities. In particular, they must have the possibility to continue their studies. In all these aspects, children and youth shall be followed by adequately trained and competent staff, who shall be present in the detention facilities and communities alongside police officers.

Any sanctions imposed while in detention should be for educational purposes and not by physical, violent, or cause psychological issues.

Separation between children and adults

Separation between children (or young adults) and adults shall always be granted¹⁷. According to the UN Committee on the Rights of the Child, there is abundant evidence that placing young persons in adult detention centres compromises their health and basic safety and their future ability to remain free of crime and to reintegrate¹⁸. This also applies to pre-trial detention and retainment in first reception centres.

This principle does not know any exception: in particular, **the transfer of a young person in an adult prison as a sanction for his or her behaviour should always be considered against the child's best interests.**

Children who reach the age of 18 should not be automatically transferred to adult detention centres. An evaluation based on their best interests should be made on a case-by-case basis, since there is a high probability that the transfer will undermine their social reintegration and the future ability of the young person to remain free of crime.

◆ Good practices and recommendations ◆

- **Justice professionals and operators should be prevented from working in contact with children until they have completed a specific training programme on child-friendly justice, children's rights and communication with children. In developing training programmes, a specific attention should be dedicated to police officers and personnel working in detention centres.**
- **Any form of violence, intimidation or harassment against a child or young person in contact with the justice system should always be persecuted with the utmost urgency and rigorosity.**
- **Without prejudice to the principle of deprivation of liberty as a last resort, regular and substantial checks and inspections by independent authorities should be provided for in juvenile detention centres and communities, as concerns the respect of the principle of dignity and integrity.**
- **Separation between children and adults in detention centres or communities should always be respected. The transfer of a young person in an adult prison as a sanction for his or her behaviour should always be considered against the child's best interests.**

¹⁷ The European Court of Human Rights has qualified imprisoning a child in an adult prison as an inhuman and degrading treatment (ECtHR, Güveç v. Turkey, No. 70337/01, 20 January 2009, paras. 91–98).

¹⁸ General comment No. 24 (2019) on children's rights in the child justice system, of 18 September 2019, cit., p. 15. The Committee also observes that "The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – 'unless it is considered in the child's best interests not to do so' – should be interpreted narrowly and the convenience of the States parties should not override best interests".