



**A CHILD-FRIENDLY
JUSTICE SYSTEM**
Report prepared using the
Council of Europe's
assessment tool

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Introduction

The aim of this report is to determine whether the justice system in Poland fully meets the needs of children, i.e. whether it is child-friendly. To this end, in accordance with the guidelines of the Council of Europe's assessment tool, the legal instruments binding on Poland – international, EU and national – relating to the situation of children within the justice system in the broadest sense were identified. The legal framework thus established served as the basis for determining whether the current legal situation

allows for a model of justice that meets children's needs in accordance with the Council of Europe Committee of Ministers' Guidelines on Child-Friendly Justice (hereinafter: CFJ).

The assessment of the compliance of the national justice system for children with the aforementioned guidelines was carried out on the basis of an analysis using the indicators set out in the subsequent sections of the tool. The examination of court case files and meetings with professionals were instrumental in its preparation.

A significant contribution to the report was made by experts from the authorities and services with whom the draft report was consulted, as well as experts from the Institute of Justice (IWS). These included Prof. Łukasz Pohl, Dr Marcin Wielec, Dr Piotr Rylski, Dr Paulina Banaszak-Grzechowiak, Dr Justyna Klimczak, Dr Marcin Galiński, Dr Jerzy Słyk, and, in the examination of court files, staff from the secretariat and the IWS records department. They demonstrated great commitment, and their realistic assessment of the problems surrounding the administration of justice, the letter of the law, and the practice of its application, enabled the formulation of recommendations.

In this field, the greatest challenge was diagnosing the existing problems, as it was precisely their correct identification that formed the basis for further exploration – not only research-based but also practical. The justice system faces systemic problems that are a source of concern not only for legal practitioners but also for staff working in the service of the legislature. However, the most important element, which constitutes a component with a significant systemic contribution, appears to be the general approach to the issue by those working directly with children. They must be aware of the immense responsibility resting upon them, not only towards the specific child whose welfare is the subject of the proceedings, but above all, that their actions have, or may have, a significant and extremely important social resonance.

Methodology

Given that Poland operates within a system of statutory law, the use of the assessment tool focused on collecting and analysing the legal provisions contained in the legislation in force within the Republic of Poland. Meetings were also organised with specialists, in particular with lawyers and the organisations representing them.

The contribution of the Institute of Justice and its analysis of the issues and conclusions presented in these documents was particularly significant for the work on the Report. An analysis was also carried out of court files relating to criminal, civil, family and juvenile cases. The analysis covered over 50 civil cases and around 20 criminal cases; although not all of them proved useful for the purposes of the study, they also served to identify other problems where a child was involved.

The analysis of the case files was qualitative rather than quantitative. Many courts responded to the request for access to court case files with a refusal, or with a response permitting access excluding psychological, psychiatric and other specialist reports.

The analysis of legal files began in July 2024, and work on obtaining access to the files commenced in late August and early September. In September and November 2024, a team from the Ministry of Justice took part in meetings with representatives of the Council of Europe and the European Commission. Meetings were organised with representatives of: the Supreme Bar Council, the National Chamber of Legal Advisers, and the courts (the District Court for Warsaw-Mokotów and the District Court for Warsaw-Żoliborz). The draft report was consulted with the Chancellery of the Prime Minister (Minister for Equality), the Ministry of Family, Labour and Social Policy, the National Police Headquarters, the Border Guard Headquarters, as well as the Ombudsman for Children and organisational units of the Ministry of Justice. During the work, information provided by the UNICEF Office for Refugee Response in Poland and the UNHCR was also utilised.

Finally, an analysis was carried out of the relevant literature and case law, which proved extremely helpful in identifying the fundamental problems encountered in the practical application of the law.

Milestones in establishing a child-friendly justice system

A. Child-friendly justice for all children in contact with the justice system

1. Child-friendly justice is enshrined in national law.

I. International legal framework

Poland is a party to the following international legal instruments:

1. **The United Nations Convention on the Rights of the Child**, adopted by the United Nations General Assembly on 20 November 1989.

The Convention entered into force for Poland on 7 July 1991 (Journal of Laws 1991, No. 120, item 526). Upon ratification, Poland made two declarations, which remain in force to this day, concerning Articles 12–16 and Article 24. They read as follows:

- The Republic of Poland considers that the exercise by a child of his or her rights as set out in the Convention, in particular the rights set out in Articles 12 to 16, shall be carried out with due regard for parental authority, in accordance with Polish customs and traditions regarding the child's place within and outside the family,
- with regard to Article 24(2)(f) of the Convention, the Republic of Poland considers that counselling for parents and education in the field of family planning should be in accordance with moral principles.

Poland has also ratified two Optional Protocols to the aforementioned Convention:

- the Optional Protocol on the sale of children, child prostitution and child pornography, adopted in New York on 25 May 2000, which entered into force in respect of Poland on 4 March 2005 (Journal of Laws of 2007, No. 76, item 494);
- The Optional Protocol on the involvement of children in armed conflict, adopted in New York on 25 May 2000, which entered into force in respect of Poland on 7 May 2005 (Journal of Laws of 2007, No. 91, item 608).

Poland is not a party to the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted by the United Nations General Assembly in New York, United States, on 19 December 2011.

2) **the Convention for the Protection of Human Rights and Fundamental Freedoms** (CETS No. 160).

The Convention entered into force in respect of Poland on 19 January 1993 (Journal of Laws of 1993, No. 61, item 284). Poland is a party to Protocols Nos. 1, 4, 6, 7 and 13 (supplementing the scope of rights and freedoms protected by the Convention), as well as Protocols Nos. 11 and 14 (reforming the complaints system).

Poland submitted to the Secretary General of the Council of Europe on 19 March 1993 declarations on the recognition of the competence of the European Commission of Human Rights and on the recognition of the jurisdiction of the European Court of Human Rights with effect from 1 May 1993.

3) **the European Convention on the Adoption of Children**, adopted in Strasbourg on 24 April 1967.

This Convention entered into force in respect of Poland on 22 September 1996 (Journal of Laws 1999, No. 99, item 1157). Poland is not a party to the Revised Convention (CETS No. 202).

4) **The European Convention on the Exercise of Children's Rights**, adopted in Strasbourg on 25 January 1996.

This Convention entered into force in respect of Poland on 1 July 2000 (Journal of Laws of 2000, No. 107, item 1128). Upon depositing the instrument of ratification, a declaration was made that Poland would apply the Convention in the following types of family matters:

- adoption,
- in matters of guardianship,
- concerning decisions on matters of importance to the child in the event of a lack of agreement between the parents.

5) **The Council of Europe Convention on Action against Trafficking in Human Beings**, adopted in Warsaw on 16 May 2005.

The Convention entered into force in relation to Poland on 1 March 2009 (Journal of Laws of 2009, No. 20, item 107).

6) **The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**, adopted in Lanzarote on 25 October 2007.

The Convention entered into force in respect of Poland on 1 June 2015.

7) **The Council of Europe Convention on preventing and combating violence against women and domestic violence**, adopted in Istanbul on 11 May 2011 (Journal of Laws of 2015, item 961).

The Convention entered into force in respect of Poland on 1 August 2015.

8) **The European Social Charter**, adopted in Turin on 18 October 1961.

The Charter entered into force in respect of Poland on 25 July 1997 (Journal of Laws of 1999, No. 8, item 67).

Poland is not a party to the revised European Social Charter.

9) **The Protocol relating to the Status of Refugees**, adopted in New York on 31 January 1967.

The Protocol entered into force in respect of Poland on 27 September 1991 (Journal of Laws of 1991, No. 119, item 517)

10) **The Convention relating to the Status of Refugees**, adopted in Geneva on 28 July 1951.

The Convention entered into force in respect of Poland on 26 December 1991 (Journal of Laws of 1991, No. 119, item 515)

II. National legal framework

1. The Constitution

Under national law, the principle of the protection of the rights of the child is enshrined in Article 72 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483).

Article 72

1. The Republic of Poland ensures the protection of the rights of the child. Everyone has the right to demand that public authorities protect children from violence, cruelty, exploitation and demoralisation.
2. A child deprived of parental care has the right to care and assistance from public authorities.
3. In determining the rights of the child, public authorities and persons responsible for the child are obliged to listen to and, as far as possible, take into account the child's views.
4. The Act defines the powers and the procedure for appointing the Ombudsman for Children's Rights.

2. The Act of 6 January 2000 on the Ombudsman for Children's Rights (Journal of Laws of 2017, item 922) – the legal basis for the activities of the Ombudsman for Children – the institutional guarantee for the protection of children's rights is primarily Article 1(2) and (3) of the aforementioned Act, according to which:

Article 1(2). The Ombudsman for Children shall safeguard the rights of the child as set out in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other legal provisions, whilst respecting the responsibilities, rights and obligations of parents

Paragraph 3. In exercising his or her powers, the Ombudsman is guided by the best interests of the child and takes into account that the family is the natural environment for the child's development.

3. The regulations concerning children in court and out-of-court proceedings are set out in the following legislation:

- 1) Act of 7 September 1991 on the education system (Journal of Laws of 2024, item 750)
- 2) Act of 9 June 2022 on the support and rehabilitation of minors (Journal of Laws of 2024, item 978)
- 3) Act of 13 June 2003 on Foreigners (Journal of Laws of 2024, item 769)

- 4) Act of 13 June 2003 on the granting of protection to foreign nationals within the territory of the Republic of Poland (Journal of Laws of 2023, item 1504).
- 5) Act of 23 April 1964 – Civil Code (Journal of Laws of 2024, item 1061)
- 6) Act of 25 February 1964 – Family and Guardianship Code (Journal of Laws of 2023, item 2809)
- 7) Act of 29 July 2005 on counteracting domestic violence (Journal of Laws of 2024, item 424)
- 8) Act of 6 June 1997 – Criminal Code (Journal of Laws of 2024, item 17)
- 9) Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2024, item 37)
- 10) Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws of 2024, item 1568)
- 11) Act of 9 June 2011 on family support and the foster care system (Journal of Laws of 2024, item 177).
- 12) Act of 12 March 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country (Journal of Laws of 2024, item 167).

III. European Union law

As a Member State of the European Union, Poland is bound by the following legal acts relating to - the protection of children in any situation requiring such protection:

1. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
2. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.
3. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA.
4. 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.

5. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in proceedings relating to a European arrest warrant, and on the right to have a third party informed of the deprivation of liberty and the right to communicate with third parties and consular authorities during deprivation of liberty.
6. Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.
7. Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for persons subject to a European arrest warrant.
8. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.
9. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).
10. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

Conclusions

The legal framework within which the justice system operates in Poland generally ensures that children's needs are respected and taken into account at every stage of proceedings. It should be borne in mind, however, that the existence of specific legal regulations, without proper implementation and application, does not in itself guarantee that the rights arising from them are actually realised. This is the situation in Poland.

It must be noted that the effective implementation of the UN Convention on the Rights of the Child, as well as the relevant instruments of the Council of Europe and the EU, remains a challenge for the State, institutions and public officials.

Issues to be addressed:

1. Failure to ratify the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted by the United Nations General Assembly in New York, USA, on 19 December 2011. It should be emphasised that the Ombudsman for Children and the largest organisations in Poland working to protect children's rights have for many years been calling for the ratification of this protocol as a tool that has the potential to strengthen respect for children's rights in Poland.
2. Delays in the implementation of European Union and United Nations legal instruments.
3. Low level of public awareness regarding child protection standards established in the case law of the European Court of Human Rights.

Future actions:

1. Ratification of the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted by the United Nations General Assembly in New York, USA, on 19 December 2011.
2. Timely implementation of European Union legislation in dialogue with the European Commission.
3. Conducting legislative work in accordance with the standards set out in the case law of the European Court of Human Rights.
4. Educational and awareness-raising activities for citizens on the standards for the protection of children's rights established in the case law of the European Court of Human Rights.

Assessment:

This indicator was rated 2 on a 3-point scale. The assessment took into account both the fact that not all EU legal acts have been implemented in procedures, and that this process is ongoing, a development undoubtedly influenced positively by EU monitoring tools.

2. During proceedings, children are provided with information in a language they can understand .

In Polish legislation and practice, we find no regulations or guidelines specifying in detail how verbal communication with a child should take place. General principles regarding this aspect exist in criminal proceedings and in the Act on the Granting of Protection to Foreigners on the Territory of the Republic of Poland (see below). However, these cannot be considered sufficient, particularly as no research has been found to have been conducted amongst professionals dedicated solely to determining how they convey information to children. The results of research into criminal case files conducted at the Institute of Justice suggest that communication with a child depends on the individual approach and competence of the person conducting the proceedings.

When conveying information to children in writing, differences can be observed in the applicable procedures (civil, criminal and administrative).

Civil procedure

Civil procedure provides that, where there is a justified need, the court may provide the parties and other participants in the proceedings who are appearing in the case without a solicitor, legal adviser, patent attorney or legal adviser to the General Prosecutor's Office of the Republic of Poland with the necessary guidance regarding procedural steps. Furthermore, where there is a justified need, the presiding judge may provide the parties with the necessary guidance and, depending on the circumstances, draw attention to the advisability of appointing a legal representative. These are, however, general principles applicable to all participants in civil proceedings and do not relate to the manner or language in which such guidance is provided.

Civil proceedings provide for a procedural step – the hearing of a child. The manner of preparing and conducting this step, as well as the conditions to be met by the premises designated for conducting hearings, are set out in the Regulation of the Minister of Justice¹ . It provides that the person who is to bring the child to the hearing, the court shall provide the child with information, drawn up in a manner comprehensible to them,

¹ Regulation of the Minister of Justice of 21 October 2024 on the procedure for preparing and conducting interviews with children and the conditions to be met by premises designated for such interviews (Journal of Laws of 2024, item 1579)

explaining the purpose, manner and venue of the hearing, and advising them that, upon arrival at the court and viewing the hearing venue, the child will be able to decide whether to participate in the proceedings. Recognising the need to adapt this information, the Ministry of Justice is preparing a template for a notice of hearing, with separate versions for children and teenagers.

The rules of civil procedure do not contain any other provisions regarding a specific form of notification for children who are witnesses or parties to proceedings.

Criminal procedure

In criminal proceedings, there is an obligation to inform participants of the proceedings of their duties and rights. If a participant in the proceedings is a person under the age of 18, the manner of providing information should be adapted to their age, state of health and mental development (Article 16 of the Code of Criminal Procedure).

From 15 August 2024, persons under the age of 18 (suspects, victims, witnesses) will receive written instructions drafted in plain language². The Regulation setting out the templates for these instructions implemented Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ EU L 142, 1 June 2012, p. 1), Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ EU L 315, 14 November 2012, p. 57), Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order (OJ EU L 338, 21.12.2011, p. 2) and Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ EU L 132, 21.05.2016, p. 1).

Furthermore, these persons may be provided with explanations regarding the scope of their rights and obligations, as well as the manner and conditions of the questioning.

² Regulation of the Minister of Justice of 7 November 2024 on the determination of standard forms for written instructions regarding the rights and obligations of suspects, victims and witnesses (Journal of Laws of 2024, item 1579)

These take the form of written and visual explanations. Templates for these explanations are also available on the Ministry of Justice's website³.

Persons under the age of 18 detained for the purpose of executing a European Arrest Warrant are entitled to the same rights. The Regulation laying down a template for written information on the rights of a person detained on the basis of a European Arrest Warrant and templates for written explanations regarding the scope of that person's rights implemented Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings (OJ EU L 142, 1 June 2012, p. 1) and Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ EU L 132, 21 May 2016, p. 1).

In addition, prior to the first interview, the suspect and the witness are provided with information on the course, manner and conditions of the interview. This information includes a descriptive or graphic representation of the course, manner and conditions of the interview. Such information is also provided to children interviewed under special procedures (so-called 'protective' or 'child-friendly' procedures).

Such provisions do not exist in the Act on the Support and Rehabilitation of Minors or in administrative proceedings.

The Act on Family Support and the Foster Care System

the Act on Family Support and the Foster Care System states that when applying the Act, due regard must be given to the agency of the child and the family, as well as the child's right, inter alia, to information and to express their views on matters affecting them, in accordance with their age and degree of maturity. The provisions of this Act also state that entities carrying out tasks arising from it, in particular when assessing the situation of a child placed in foster care and when qualifying a child for adoption, are obliged to hear the child, if their age and degree of maturity so permit, and to take their opinion into account as appropriate to the circumstances.

Act of 13 June 2003 on the granting of protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2023, item 1504, as amended)

³ Regulation of the Minister of Justice of 7 November 2024 on the determination of standard forms for written explanations to suspects, victims and witnesses regarding the scope of their rights and obligations and the manner and conditions of questioning (Journal of Laws of 2024, item 1659).

Article 65 of the aforementioned Act contains guidelines on how to interview an unaccompanied minor. Thus, the interview is to be conducted in a language the unaccompanied minor understands, in a manner appropriate to their age, level of maturity and mental development, taking into account the fact that they may have limited knowledge of the actual situation in their country of origin.

Comments:

In consultation with professionals, it has been established that there is a need to provide brochures/guides (including animated videos) in courts, government offices and on their websites for:

- parents and children involved in civil and family proceedings;
- children involved in asylum proceedings.

Foreign children should receive information and guidance on their rights and obligations, as well as on the course of the asylum procedure, formulated in a clear and understandable manner in the language they speak, so that they are informed in a way they can comprehend about the rules of the asylum procedure.

Children placed in foster care are not always informed that an assessment of their situation is being carried out. The child is not told that a meeting will be held regarding their case, what the purpose of the meeting is, who will be attending, or whether the child will be able to express their opinion. It is recognised that such measures could enable children to better understand their situation. These issues have been taken into account in the guide on implementing good practices for the protection of children in foster care, currently being prepared by the Team for the Protection of Minors.

Issues to be addressed:

Strengthening the skills of those involved in legal proceedings involving children: judges, prosecutors, police officers, solicitors and legal advisers in the area of communicating with children of different ages, including those with special needs (autism spectrum disorders, ADHD, disabilities) and those with refugee backgrounds.

Good practices:

The Ministry of Justice is developing templates for hearing notices for children. These will be posted on the website for all court officials to download.

Future actions

1. Introduction of standardised templates across all courts for instructions on the rights and obligations of children in civil and administrative proceedings, including migration procedures. The instructions should be written in plain language and may include visual elements. The instructions currently used in criminal proceedings could serve as a model.
2. Introduction of a requirement to provide the child with the necessary information, in a manner they can understand, prior to their examination by the Advisory Panel of Court Specialists, bearing in mind that this is sometimes the child's only contact with the care proceedings being conducted by the court.
3. The development of uniform guidelines for all proceedings regarding how to communicate with children, taking into account the specific needs of children with refugee backgrounds.
4. Organising training courses for judges and officials working with children in the field of child and adolescent developmental psychology, enabling effective communication that takes into account the developmental stage of children and young people.
5. Organising training on proceedings concerning foreign nationals: for family court judges, covering the issues of placement in foster care and child representation; and for criminal court judges, with particular emphasis on the issues of detention and alternatives to detention.

Assessment:

Assessment of criterion 1. Unfortunately, there is a lack of detailed regulations on how to convey information to children.

3. Protection of private and family life: Legislation protecting children's identity and establishing confidentiality rules is being enacted and implemented.

The Codes of Civil, Criminal and Administrative Procedure do not contain specific provisions concerning the protection of children's personal data. Such provisions exist in the Act on Family Support and the Foster Care System.

Civil proceedings

In civil proceedings, there are two procedural steps: a hearing and an examination.

Hearing

A child is heard in a closed session, without the presence of parents or the public. An official record is drawn up of the hearing. It is not recorded using audio or audio-visual recording equipment.

Interrogation

There are no separate provisions for children, which means that the basic form will be an examination in open court, in the courtroom. Cases are heard in open court unless a specific provision provides otherwise. A child may be examined as a witness or a party in the courtroom⁴.

Article 259 of the Code of Civil Procedure sets out the general principle that persons unable to communicate their observations may not act as witnesses. The provision does not introduce an age limit as a criterion for the capacity to act as a witness. In every case, therefore, the possibility of hearing a child as a witness depends on their individual abilities and level of development, intelligence and communicative skills. Consequently, it is for the court to assess whether the minor's level of development enables them to perceive the facts correctly. In cases of doubt, the court may order the child to be examined in the presence of a medical or psychological expert. It is worth noting that children under the age of seventeen do not take an oath to tell the truth.

Notwithstanding the above, Article 430 of the Code of Civil Procedure, which constitutes an exception to the rule, stipulates that in matrimonial matters, i.e. divorce, separation or annulment of marriage, minors under the age of thirteen, and the descendants of the parties who have not reached the age of seventeen, may not be examined as witnesses. The provision is intended to protect minor children from the effects of examinations in matrimonial cases, in which facts that are often drastic and traumatic for them are revealed.

⁴Exceptionally: at their place of residence (if they are unable to attend when summoned due to illness, disability or another insurmountable obstacle), outside the courtroom as part of a remote hearing.

Criminal proceedings

In the case of witnesses (including victims), the record does not include details of their place of residence, telephone number or email address. These details are included in an annex to the record, which is kept in the address annex to the case file, for the information of the authority conducting the proceedings.

Interrogation of a suspect or accused person

In criminal proceedings, children (persons under the age of 18) who have the status of a suspect or defendant give evidence in the presence of the authority conducting the preliminary investigation, or before the court .

Standard procedure for questioning a witness

Children acting as witnesses give evidence in the presence of the authority conducting the preliminary investigation, or before the court – usually in the courtroom. However, a witness may be examined at their place of residence or using technical equipment enabling the examination to be conducted remotely with simultaneous live video and audio transmission.

During court proceedings, in exceptional cases where there is a concern that the defendant's presence might have a detrimental effect on the witness's testimony, the presiding judge may order that the defendant leave the courtroom for the duration of that person's examination.

In a case involving an offence punishable by imprisonment for a term of at least eight years, an intentional offence against life and health, against liberty, or an offence involving violence or unlawful threats, where there is a concern that the defendant's presence might have a chilling effect on the victim, particularly where this is justified by the defendant's conduct to date during the proceedings, the presiding judge shall, at the victim's request, order that the defendant leave the courtroom for the duration of the victim's examination, unless this is precluded by the need to establish the facts correctly.

Special procedure for examination:

This is provided for when the following are being examined:

- a) a victim who, at the time of the examination, is under 15 years of age, in cases involving offences committed with the use of violence or unlawful threats, or those

specified in the following chapters of the Criminal Code: XXIII (offences against liberty), XXV (offences against sexual freedom and public decency) and XXVI (offences against the family and guardianship) (Article 185a of the Code of Criminal Procedure). In exceptional cases, where there is a reasonable fear that questioning under other conditions could have a negative impact on the victim's mental state, a minor who has reached the age of 15 may be questioned in this manner (Article 185a of the Code of Criminal Procedure);

- b) a witness who has not reached the age of 15 at the time of the interview, in cases involving offences committed with the use of violence or unlawful threats or as specified in Chapters XXV and XXVI of the Criminal Code (Article 185b of the Code of Criminal Procedure);
- c) a victim who has reached the age of 15 in cases concerning offences specified in Articles 197–199⁵ of the Criminal Code (Article 185c of the Code of Criminal Procedure);
- d) a witness who suffers from mental or developmental disorders, or impairments in their ability to perceive or recall events, and where there is a reasonable fear that questioning under conditions other than those specified in this provision (under general rules) could adversely affect their mental or physical condition or would be significantly impeded (Article 185e of the Code of Criminal Procedure).

The hearing is conducted by the court and attended by a psychological expert. The prosecutor, the defence counsel and the victim's representative are entitled to attend the hearing. The hearing is recorded, and at the main hearing the video and audio recording of the hearing is played back and the minutes of the hearing are read out.

The manner of preparing and conducting interviews in accordance with the procedure set out in Articles 185a–185c and Article 185e of the Code of Criminal Procedure, and the conditions to be met by the premises designated for conducting such interviews, are laid down in the Regulation of the Minister of Justice of 22 September 2024 (Journal of Laws of 2024, item 1477).

⁵ Article 197 – rape and coercion into sexual acts;

Article 198 – causing another person to engage in sexual intercourse or to submit to another sexual act, or to perform such an act by taking advantage of that person's helplessness or of their inability, resulting from mental disability or mental illness, to recognise the significance of the act or to control their own conduct.

Article 199 – inducing another person to engage in sexual intercourse or to submit to another sexual act, or to perform such an act, by abusing a relationship of dependence or exploiting a critical situation;

Exclusion of the public nature of the hearing:

The court may exclude the public from the hearing in whole or in part, inter alia, if:

- 1) publicity could infringe an important private interest;
- 2) if at least one of the defendants is under 18 years of age or during the examination of a witness who is under 15 years of age.

However, if the prosecutor objects to the exclusion of the public, the hearing shall be held in public.

Prohibition on asking certain questions:

Questions put to a witness may not concern their sex life unless this is necessary for the resolution of the case.

Proceedings under the Act on the Support and Rehabilitation of Minors

The hearing and questioning of a minor shall be conducted in conditions ensuring their freedom of expression. Where possible, the hearing and questioning of a minor should be recorded using a video or audio recording device⁶.

In cases involving corruption of morals, where the offence consists of a minor committing an act prohibited by the aforementioned Act, the hearing of a victim under the age of 15 is conducted by the family court. A psychological expert also takes part in the hearing. The prosecutor, the defence counsel and the victim's representative are entitled to attend the hearing. The victim's legal representative, the person under whose permanent care the victim remains, or an adult designated by the victim is also entitled to be present at the hearing, provided this does not restrict the freedom of expression of the person being questioned. If a minor who has been notified of this procedure does not have a defence counsel of their own choosing, the family court shall appoint a defence counsel for them ex officio.

The hearing shall be recorded using an audio-visual recording device. The written record may be limited to a transcript of the most relevant statements made by those taking part in the hearing. The audio-visual recording shall be attached to the record. The family

⁶On the basis of a review of the case files, it was established that in practice, however, such situations do not occur, as the hearing is recorded exclusively in writing in the minutes.

court may, under such conditions, examine another person as a witness, including the victim, if the victim's welfare so requires, in particular where there is a reasonable fear that the direct presence of the minor at the examination could inhibit the witness's testimony or have a negative impact on their mental state.

If the case is referred to a hearing, it shall be held in open court if this is justified on educational grounds.

Unless there are special circumstances on the part of the witnesses, they are examined at the hearing.

Proceedings under the Act on Family Support and the Foster Care System

Entities and persons carrying out tasks relating to family support and the foster care system are obliged to keep confidential information about persons to whom the above-mentioned Act applies, and members of their families, including information about the assistance and benefits provided to those persons. The personal data of persons to whom the Act applies, and of their family members, to the extent necessary for the performance of tasks arising from the Act, are subject to safeguards preventing misuse or unlawful access or disclosure, consisting at least of:

- 1) allowing only persons holding written authorisation issued by the data controller to process personal data;
- 2) a written undertaking by persons authorised to process personal data to keep such data confidential.

Court-appointed guardians

District and regional courts employ court-appointed guardians (family guardians and guardians for adults), who carry out activities of an educational, rehabilitative and preventive nature, as well as other activities specified in specific regulations. The tasks assigned to probation officers are closely linked to the enforcement of court judgments in criminal, family and juvenile cases.

Given that the court probation service operates within the structures of the ordinary courts and carries out tasks on their behalf, it is subject to general regulations, like any court employee, including those concerning professional secrecy and the processing of data relating to persons involved in proceedings (including children's data).

The Act of 27 July 2001 on Probation Officers (Journal of Laws of 2023, item 1095, consolidated text, hereinafter referred to as: the Probation Officers Act) stipulates that probation officers are obliged to keep confidential all circumstances of which they have become aware in connection with the performance of their duties (Article 6(1) of the SGA and Article 85(1) of the SGA in conjunction with Article 6(1) of the SGA). The controller of data processed for the purpose of performing the tasks or duties of a court-appointed guardian is the president of the court in which the court-appointed guardian performs their official duties. (Section 9b of the Code of Civil Procedure).

Administrative proceedings

The Code of Administrative Procedure does not contain any provisions concerning minors.

The Act on Granting Protection to Foreigners on the Territory of the Republic of Poland contains provisions governing the questioning of unaccompanied minors. An unaccompanied minor is questioned in the presence of:

- 1) a guardian, who may ask questions or make comments;
- 2) an adult designated by the minor, provided this does not impede the proceedings;
- 3) a psychologist or educationalist who prepares an opinion on the minor's mental and physical condition.

The course of the interview may be recorded using a video or audio recording device.

These rules do not apply to minors travelling with their families (if they are being interviewed as parties or witnesses) or to minors being interviewed in relation to a return order.

Comments:

It is noted that information allowing for the identification of a child is frequently published in the media, particularly on social media.

Criminal proceedings⁷

Psychological assessment practice shows that the risks associated with disclosing or publishing information about a child being harmed through sexual abuse or other forms of violence (even when undertaken with the best of intentions by journalists) stem from the fact that, despite anonymisation and pixelation of faces (or other techniques to conceal identity), the community of victims usually recognises the victims and their relatives who speak out on television programmes, resulting in various forms of passive or direct aggression towards them (online abuse, shaming, ridicule, humiliation, social ostracism). They are deprived of privacy and suffer secondary victimisation. An additional consequence may be their withdrawal from giving evidence in the case, which the victims justify by stating that not only did they not expect such a reaction from their community, but that the “media hype” itself came as a surprise to them. They did not anticipate this when speaking to journalists and explicitly state that they wish to have nothing to do with the case. The victims’ withdrawal from giving evidence **may result in the investigation being dropped**, particularly if the evidence in the case consisted solely of the victims’ testimony (which is the case in the majority of instances of sexual abuse or psychological violence).

Furthermore, there is a risk that the victim, particularly a minor, may describe their experiences to a journalist. It should be noted that children are not immune to manipulation and pressure, which are often unconsciously applied by journalists to obtain information. This then creates a difficulty in assessing the statements made by the victims during the formal interview conducted as part of the proceedings. Such an interview, in accordance with the regulations, should be conducted only once, during the proceedings, and to minimise the risk of secondary victimisation, its child-friendly conditions should be maintained. Meanwhile, the content obtained during an ‘on-camera interview’ often differs from that provided during the questioning of a minor. This is sometimes raised by the defence lawyers of suspects/accused persons as a reason for an additional interview, i.e. undertaking an emotionally difficult procedure once again. From the perspective of the psychological assessment of testimony, there are also problems—sometimes impossible to resolve—related to the distortion of the account through repetition and succumbing to the suggestions and pressure of journalists.

⁷ Opinion of the court-appointed expert in psychology

Foster care

It is appropriate to promote good practices, both among those involved in care proceedings, foster carers, and organisations providing foster care, regarding enhanced protection of personal data, including the image of a child placed in foster care.

There is a noticeable trend of processing such images, for example, to find a foster family willing to take on care, to find an adoptive family, or to secure additional funds for the child's special needs (including treatment or therapy). Most instances of sharing a child's image are motivated by positive intentions to act in the child's best interests; however, at the same time, they constitute an intrusion into the child's private life and may affect the minor's future. This issue concerns both the youngest children (even infants) and older children. It seems particularly dangerous to share a child's image in conjunction with other data, as this enables the minor to be further identified. There is a risk of an increase in the scale of the phenomenon of sharing images of children in foster care in the search for available placements, as well as the need to recruit candidates to act as foster families or run family-style children's homes.

Summary

For ethical reasons, and in the interests of children's welfare and their right to privacy, it is necessary to strengthen measures aimed at limiting the sharing of children's images by the media (including social media).

The protection of children, including their image in digital media, is of particular concern in the case of minors (victims, those placed in foster care). A child's image and personal data should be protected in a special manner. In the case of children in foster care, this is linked to frequently difficult family relationships, situations involving the deprivation or restriction of parental authority, and the possible initiation of procedures to place the child for adoption. The protection of data and images is also of key importance in safeguarding children against harm and violence (including of a sexual nature).

Good practices:

The Children's Ombudsman has launched a nationwide campaign entitled 'More respect for young people's image' <https://brpd.gov.pl/wiecej-szacunku-dla-mlodego-wizerunku/>

The State Commission for the Prevention of Sexual Exploitation of Minors Under the Age of 15 and the Dajemy Dzieciom Siłę Foundation are organising a webinar for media representatives. The webinar will cover the following topics:

- The impact of the media on the mental health of minors who have experienced sexual abuse.
- The impact of the media on public perception of child sexual abuse.
- Minors who are perpetrators of sexual abuse.
- Language and messaging regarding the issue of child sexual abuse.
- How to strengthen child protection standards in newsrooms?

Issues to be addressed:

1. Lack of adequate training for those involved in proceedings concerning children on the protection of personal data and confidentiality rules (including in relation to the child's family), particularly regarding issues of family support, foster care and adoption.
2. Limiting the role of the prosecutor when considering a request to exclude the public from a hearing.
3. Insufficient awareness among media representatives of the need to respect the privacy of children involved in proceedings and the psychological impact on the child of disclosing circumstances that allow the child to be identified.

Actions to be taken:

1. Removal from the Code of Criminal Procedure of Article 360 § 2, which entitles the prosecutor to object to the exclusion of the public from the hearing. This provision was introduced by the amendment of 5 August 2016 (Journal of Laws of 2016, item 1070, as amended).
2. Conducting interdisciplinary training (with an expert in personal data protection and a psychologist) on the protection of children's personal data, children's right to privacy, and the consequences of breaching these principles from the perspective of child psychology.

3. Standardising the level of protection of children's privacy in all court proceedings: civil, criminal and administrative.
4. Development by a team of lawyers, ethicists and journalists of recommendations for the media on how to report on children involved in proceedings, the protection of the right to privacy of children participating in judicial and extrajudicial procedures, and the promotion of these recommendations.
5. Introduction of a uniform standard for the questioning of foreign minors, ensuring respect for their privacy and rights – regardless of the type of proceedings being conducted in their cases.

ASSESSMENT:

Assessment of criterion 1: There is a lack of detailed regulations regarding the protection of children's privacy and data.

4. Safety and training: All professionals working for and with children in proceedings are properly vetted and trained.

Police officers and prosecutors

There are no statutory provisions obliging prosecutors to undergo training in communicating with children, or in understanding and respecting children's rights.

As regards the Police, in accordance with Order No. 1041 of the Chief of the Police of 28 September 2007 on detailed rules for the organisation and scope of activities of police headquarters, police stations and other organisational units of the Police (i.e. Official Journal of the Chief of the Police of 2013, item 50), within the organisational structures of Police units there are specialised units responsible for handling cases involving minors, e.g. in the criminal investigation service dealing with juvenile crime; in the preventive service dealing with minors and social deviance; and the police child protection unit.

Order No. 48 of the Chief of the National Police of 15 September 2023 on the methods and forms of performing duties by police officers in the field of countering the demoralisation and criminality of minors and actions undertaken for the benefit of minors (Official Journal of the National Police Headquarters of 2023 item 85) stipulates that tasks relating to the prevention, combating and identification of circumstances indicating the demoralisation of minors and their commission of criminal offences are carried out, as part of their duties, by officers of the preventive and criminal investigation services of the relevant organisational units of the Police. The unit responsible for gathering information on a minor exhibiting signs of demoralisation or committing a criminal offence, as well as for cooperating in this regard with the family court with local jurisdiction over the minor, is the unit for minors and social pathology of the local police unit in the minor's place of residence, or, in the event of difficulty in determining this - their place of residence.

Every newly recruited police officer is required to attend a basic professional training course. The course follows a training programme based on the methodology of so-called 'professional skills modules', in which the duties of a police officer serve as both the selection criterion and the basis for organising the teaching and learning content. The training, delivered on the basis of the programme, prepares officers to perform eight

basic professional tasks, which correspond to the so-called ‘ ’ (basic professional modules) and two subject-specific modules, which have practical application value.

The module ‘Establishing the circumstances of incidents and securing the scene, history of the Police, human rights, anti-corruption and cooperation with the media’ covers, amongst other things, issues relating to the receipt of information about a crime and the questioning of witnesses. During the course, police officers acquire knowledge in areas such as: how to proceed when a report is made by a minor and the questioning of the reporting person as a witness; the legal status of a witness, their rights and obligations, the psychological aspects of witness interviews, the conduct of the interview with particular attention to preparation for the interview and the specific nature of interviewing victims, minors (children), with the participation of third parties, etc., tactical aspects of these interviews, paying particular attention to the specific nature of interviewing victims of specific offences (e.g. rape), methods of formulating questions; interpretation of regulations concerning the rights and obligations of the victim.

In the next module, entitled ‘Countering crime-inducing phenomena’, the following concepts are explained: ‘demoralisation’, ‘criminal offence’, ‘juvenile’, ‘minor’. Drawing on the students’ life experience, situations and facts are presented that pose a risk of demoralisation to minors, as well as behaviour by minors indicating their demoralisation. Emphasis is placed on the distinct nature of proceedings in juvenile cases compared to criminal proceedings

Furthermore, police officers specialising in juvenile affairs serving in organisational units dealing with juveniles and social pathology, juvenile crime and police child protection units, or who are scheduled to serve in these units, are sent on a specialist course on combating the demoralisation and criminality of minors and on measures taken on behalf of minors. The course covers topics including: ‘Proceedings concerning minors’, ‘Procedural, registration and statistical activities’, ‘Selected provisions of civil, family and guardianship law’, and ‘Interventions involving minors’.

Until 2019, a specialist course on the tactical aspects of conducting proceedings in cases involving children was delivered for police officers in the preventive and criminal investigation services who carry out activities involving minors. The course included, amongst other things, sessions entitled “Principles of proceedings in cases involving

minors”, “Police powers in proceedings with minors”, and “Selected procedural activities”.

The specialist course for neighbourhood police officers includes a module on “Proceedings involving minors and unaccompanied minors”.

In the specialist course for police officers conducting investigative and inquiry activities, in which officers conducting preparatory proceedings participate, thematic modules are covered, e.g. “Preliminary proceedings”, where issues such as receiving a report of a crime from a minor victim; dealing with minors questioned as witnesses; and questioning a suspect are discussed. In the module entitled “Investigation of selected offences”, issues relating to proceedings in cases of offences against sexual freedom and public decency are discussed, as well as the principles for dealing with victims of such offences, including the specific procedures for dealing with minors under the age of 15 who are victims or witnesses of these offences.

In the specialist course for police officers carrying out operational and investigative activities, a module entitled “Selected elements of the preparatory proceedings” is covered, where issues relating to the questioning of witnesses and suspects are discussed. In the module entitled ‘The investigation process for selected offences’, the topics covered include taking action in cases involving offences against sexual freedom and public decency, and the principles for dealing with victims of such offences, including specific procedures for dealing with minors under the age of 15 who are victims or witnesses of these offences.

Judges

Pursuant to Article 12 of the Act of 27 July 2001 on the Organisation of Common Courts (Journal of Laws of 2024, item 334), a division may be established within a district court:

Civil Division – for cases relating to civil law, family and guardianship law, cases concerning the demoralisation of minors and criminal offences committed by minors, the

treatment of persons addicted to alcohol, narcotics and psychotropic substances, and cases falling within the jurisdiction of the guardianship court under separate legislation,

or a separate

Family and Juvenile Division – for cases relating to family and guardianship law, cases concerning the demoralisation and criminal offences of minors, the treatment of persons addicted to alcohol, narcotics and psychotropic substances, and cases falling within the jurisdiction of the guardianship court under separate legislation.

A civil division may be established within a district court to deal with civil, family and guardianship law matters falling within the jurisdiction of the guardianship court under separate legislation, as well as matters concerning the demoralisation and criminal offences of minors. In contrast, the court of appeal has a civil division – dealing, amongst other things, with family and guardianship law matters.

However, no specific regulations have been noted regarding the requirements for judges who are assigned to hear family and guardianship cases, as well as those concerning the demoralisation and criminal acts of minors – that is, cases involving communication with children.

Pursuant to Article 82a of the Act of 27 July 2001 on the Organisation of Common Courts (Journal of Laws of 2024, item 334), a judge adjudicating in cases concerning family and guardianship law, as well as cases relating to the demoralisation and criminal acts of minors, should participate, every four years, in professional training and development amounting to at least 10 hours, organised by the National School of the Judiciary and Public Prosecution or a body subordinate to or supervised by the Minister of Justice, with a view to supplementing specialist knowledge and professional skills in dealing with persons under the age of 18, recognising signs of child abuse and safeguarding the interests of the child in the event of a dispute between parents or guardians.

On the other hand, a judge adjudicating in criminal cases should, every four years, participate in training and professional development organised by the National School of the Judiciary and Public Prosecution, with a view to supplementing specialist knowledge and professional skills in the field of questioning persons under the age of 18, and persons referred to in Articles 185c and 185e of the Act of 6 June 1997 – Code of Criminal Procedure.

Solicitors and legal advisers

There is no specialisation or statutory training requirement for barristers and solicitors acting as defence counsel in criminal cases, or as representatives in criminal, civil and administrative cases.

The situation is slightly different for persons acting as a child's representative. For a child under parental authority whom neither parent can represent, the guardianship court appoints a representative. Their primary function is to represent the minor when performing a legal act (e.g. in a sales contract where the parties to the contract are the child and their parent). A representative may also be appointed for proceedings (e.g. where one parent is abusive, where the case concerns the division of an estate, and the interests of the parent and the child are in conflict).

A solicitor or legal adviser may be appointed as a representative. They must demonstrate particular knowledge of cases involving children, other similar cases where the representation of a minor is required, or have completed training on the principles of such representation, the rights or needs of the child.

Where the complexity of the case does not require this, in particular where the guardianship court specifies the details of the proceedings, another person with a higher legal education and demonstrating knowledge of the minor's needs may also be appointed as the child's representative. If special circumstances so warrant, a person without a higher legal education may also be appointed as a representative.

The Regulation of the Minister of Justice on the manner of ensuring the representation of a child sets out a training system.

The training programme designed to enable the acquisition or enhancement of the competences necessary for the proper performance of the role covers issues relating to the principles of representation, the rights or needs of the child, including:

- 1) the legal aspects of representing a child;
- 2) psychological aspects of representation, including needs arising from age and developmental capabilities;
- 3) communication with children, including those with disabilities or complex communication needs.

The training comprises a single session of no less than 8 hours. Upon completion of the training, participants should receive a certificate confirming completion.

The Regulation was issued on 29 July 2024; therefore, given its very short period of validity, it is difficult to assess its impact on the qualifications of barristers and solicitors to work with children.

Specialists

Experts

The Act of 5 August 2015 on court expert panels (consolidated text: Journal of Laws 2018, item 708) contains provisions concerning these panels, which operate in regional courts and whose task is to prepare, at the request of the court or the public prosecutor, expert opinions in family and guardianship cases and in juvenile cases. On the basis of psychological, educational or medical examinations, the panels conduct mediation at the court's request, carry out community interviews in juvenile cases and provide specialist counselling for minors, juveniles and their families. These panels may cooperate with institutions responsible for enforcing court rulings.

The team comprises specialists in psychology, pedagogy, paediatrics, family medicine, internal medicine, psychiatry and child and adolescent psychiatry.

Specialists in psychology, pedagogy, paediatrics, family medicine, internal medicine, psychiatry and child and adolescent psychiatry are selected through a competitive process. A person may thus be employed who: has full legal capacity; holds Polish citizenship, or citizenship of another Member State of the European Union, a Member State of the European Free Trade Association (EFTA) – a party to the Agreement on the European Economic Area or the Swiss Confederation, or a citizen of another country, provided that, under European Union law, they are entitled to take up employment or self-employment within the territory of the Republic of Poland in accordance with the rules laid down in those provisions; of good repute; who has not been convicted by a final judgment of an offence prosecuted by public indictment or a fiscal offence; against whom no proceedings are pending for an offence prosecuted by public indictment or a fiscal offence; whose state of health permits employment in the position of a specialist.

A person may be employed as a specialist in psychology if they have completed higher education in psychology in the Republic of Poland and obtained a master's degree, or have completed foreign studies in psychology recognised in the Republic of Poland, and who has at least 3years' work experience in family counselling or with socially maladjusted young people, or 3 years' clinical practice.

A person may be employed as a specialist in pedagogy if they have completed higher education in pedagogy in the Republic of Poland and obtained a Master's degree, or have completed foreign studies in pedagogy recognised in the Republic of Poland, and who has at least 3years' work experience in family counselling or with socially maladjusted young people, or 3 years' work experience in a school, nursery or educational and care institution.

A doctor holding a specialisation in paediatrics, family medicine, internal medicine, psychiatry or child and adolescent psychiatry may be employed as a specialist in paediatrics, family medicine, internal medicine, psychiatry or child and adolescent psychiatry.

Court-appointed guardians

The matter of probation officers is regulated by the Act of 27 July 2001 on Probation Officers (consolidated text: Journal of Laws of 2023, item 1095). A probation officer is an official who carries out educational and rehabilitation tasks, as well as monitoring and supervision (of the implementation of educational and penal measures, etc.). They perform their duties in care and educational institutions, prisons, and also at the place of residence of those under their care. A probation officer may be a professional or a volunteer.

Family assistant

The Act of 9 June 2011 on family support and the foster care system (Journal of Laws 2024, item 177) contains provisions concerning family assistants (For further details, see Annex 4)

Other activities:

On 17 October 2023, the Council of Ministers adopted a resolution on the National Plan to Combat Crimes Against Sexual Freedom and Public Decency to the Detriment of Minors for the years 2023–2026 (hereinafter the National Plan). It provides for the organisation of interdisciplinary, inter-institutional training for police officers, Border Guard officers, prosecutors, judges, and staff of NASK – PIB/Dyżurnet.pl²⁰, covering the psychosocial aspects of child sexual abuse, including in cyberspace, and the methodology for conducting proceedings in cases involving prohibited/criminal acts against sexual freedom and public decency to the detriment of minors, as well as communication with minors, including those with disabilities.

Within the Bar, as part of the legal training programme in Warsaw:

- a special and compulsory module on children's rights, including communication with children, has been introduced;
- specialist sections are being established within bar and legal advisor associations to improve lawyers' knowledge of representing children, e.g. the Children's Rights Section at the Warsaw Bar Association.

Comments:

It is essential to organise regular training for barristers and solicitors on representing children in legal proceedings.

It is worth considering cooperation with the Ministry of National Education on the regular production of leaflets and guides on mediation for children and teenagers, and the introduction in schools, starting with primary schools, of regular meetings with a mediator (similar to meetings with a police officer, a municipal guard, etc.).

Consideration was given to introducing detailed (statutorily defined, specifying the number of hours and the training programme) requirements for training, which would form a compulsory element of the educational programme for court-appointed and professional probation officers, prosecutors, barristers and solicitors, social workers and psychologists. The National School of Judiciary and Public Prosecution (KSSiP)

conducts training in this area. We believe that specifying particular training programmes will limit the KSSiP's flexibility and its ability to respond to emerging issues. It is proposed that training materials be compiled by the KSSiP and made available to training participants at all times for all interested parties.

Good practices:

Since 2023, the UNICEF Office for Refugee Response in Poland has been working with the Ministry of Justice, the National School of Judiciary and Public Prosecution and the Institute of Forensic Expertise to create a child-friendly justice system. The project's primary aim is to foster collaboration among professionals (judges, prosecutors, probation officers, legal advisers and barristers) to better identify the needs of children in contact with the justice system. As part of the project, over 5,000 people have so far been trained in handling cases involving children, including those who are victims of domestic or sexual violence, and the situation of foreign children within the justice system (including training on alternatives to detention for migration-related reasons). The Institute of Forensic Research has developed guidelines for questioning and hearing children in criminal and civil proceedings, as well as in proceedings concerning children in conflict with the law (in juvenile cases and criminal cases involving persons under the age of 18). In 2024, UNICEF delivered a 'Train the trainers' course on child-friendly legal aid, and the organisation's guidelines in this area were promoted.

Training participants reported a need for further professional development, including in juvenile proceedings involving foreign children, thematic training on foreign nationals (including foster care, integration and international issues), psychological issues (trauma, PTSD), cultural differences in the context of violence, and interdisciplinary cooperation in child protection.

The Office of the United Nations High Commissioner for Refugees (UNHCR), together with UNICEF and IOM, conducted two training sessions for judges in 2024 (approx. 70 participants), which addressed issues related to the protection of migrants and refugees in respect of whom an application had been made for placement in a secure centre for foreign nationals.

The training covered the most important provisions of international and Polish law, as well as case law on detention for migration-related reasons (including in relation to children and families). The methodology for handling court cases concerning the

placement of foreign nationals in administrative detention was also presented. A significant part of the training was the psychological section, which discussed the consequences of placement in a detention centre and the principles of intercultural communication.

UNHCR, IOM and UNICEF point out that the detention of children has a profound and negative impact on their health and well-being and may have a long-term negative impact on children's cognitive development.

The Warsaw Bar Council has a children's rights section which conducts training for this professional group in this area.

Issues to be addressed:

1. Establishing an organisational framework for cooperation between individual offices/institutions for the purpose of organising multidisciplinary training.
2. An analysis should be carried out to determine whether the current proposal and the number of training courses offered by the National School of the Judiciary and Public Prosecution allow judges to complete training in the field of developmental psychology of children and young people and interrogation methodology, in particular the interrogation of minors, and whether such training is provided every 4 years, as required by Article 82a § 3a of the Act of 27 July 2001 Law on the Organisation of Common Courts (Journal of Laws of 2024, item 334). Furthermore, it should be determined whether the current training programme (number of hours) allows for the practical and theoretical knowledge in the aforementioned areas to be effectively acquired.
3. There is a shortage of specialised staff whose training programme would focus on working with children in legal proceedings. Such training must constitute a separate and compulsory element of the curriculum. Training on this subject may be incorporated and presented alongside other topics (in such cases, the training is conducted by unqualified persons).

Actions to be taken:

1. It is necessary to introduce additional training, with a greater number of hours and a broader curriculum, for judges adjudicating in family courts, particularly in

matters of guardianship, the placement of minors in foster care, adoption, and cooperation with family support organisations and the foster care system.

2. It is necessary to launch and promote postgraduate courses on dealing with children, their rights and methods of protecting them. The course programmes should also include issues relating to working with children who have experienced trauma, are traumatised, or are in foster care.
3. In law degrees and training programmes for trainee legal professionals, an additional module on 'migration and refugee law' should be included.
4. Training for family support workers must include a programme that addresses circumstances such as working with children who have experienced trauma (methodological and practical issues);
5. The creation of a 'Child-Friendly Justice' tab within the knowledge base on the e-KSSiP training platform, and the inclusion there of legal acts and training materials on this subject, including multimedia training courses. The materials should cover criminal, civil and family proceedings. They should also address psychological aspects related to the stages of a child's development, as well as their perception and understanding of reality. The database should be systematically expanded. Such a tool will enable all interested participants in training courses organised by the KSSiP to access information at any time.
6. Inclusion in the training programme for judicial and prosecutorial trainees at the National School of Judiciary and Public Prosecution of a thematic module on the developmental psychology of children and young people and the methodology of interviewing minors, with a sufficient number of hours to allow for the effective acquisition of knowledge in this area.

ASSESSMENT:

Criterion score – 0. In this regard, there is a lack, above all, of a system for verifying the quality of training, the so-called National vetting process, and consequently, there is no way to verify the knowledge acquired or the up-to-date nature of the training programmes (as well as the study programmes and the topics covered therein).

5. National law provides for alternatives to judicial, administrative and other court proceedings, such as diversion and alternative dispute resolution methods .

Civil proceedings:

Mediation takes place before, during, or after court proceedings, on the basis of a mediation agreement or a court order referring the case to mediation. Mediation in civil proceedings is voluntary.

In civil matters, mediation is available in cases concerning payment, the dissolution of joint ownership, the division of an estate or joint property, claims arising from an employment relationship, decisions on significant family matters, the provision for the family's needs, maintenance, establishing contact with a child, and in divorce cases concerning the provision for the family's needs, the exercise of parental authority, contact with children, and property matters to be resolved in a judgment granting a divorce or separation.

Mediation proceedings may concern the child's place of residence, the manner of contact with the child, the form and schedule of such contact, the spouses' participation in deciding on significant matters concerning the child, the coverage of maintenance and upbringing costs, as well as the manner of upbringing.

Criminal proceedings:

The Code of Criminal Procedure provides for two methods of alternative dispute resolution: mediation and conciliation proceedings.

Conciliation proceedings

Conciliation proceedings do not apply to offenders under the age of 17 (juvenile offenders), as they are reserved for cases prosecuted by private prosecution. These, however, do not fall within the scope of Article 10 of the Criminal Code, which allows persons under the age of 17 to be held liable under the rules set out in the Criminal Code.

Where the offender has reached the age of 17 and the proceedings concern an offence prosecuted by private prosecution, the main hearing is preceded by a conciliation hearing. This may be conducted by a judge or a court clerk. Instead of a conciliation hearing, the court may set an appropriate date for mediation proceedings – at the request of or with the consent of the parties. The hearing begins with a call for the parties to reach a settlement, and the minutes must specifically record the parties' positions regarding the call and the outcome of the hearing. If a settlement is reached, the parties sign the minutes.

If the private prosecutor or their representative fails to appear at the conciliation hearing without justifying their absence, the proceedings are discontinued, and the absence is deemed a withdrawal of the charge. If the defendant fails to appear without justification, the case is referred for hearing at the main trial, with a date set immediately where possible.

However, if the parties reach a settlement, the proceedings are discontinued. At the same time as the settlement, the parties may enter into a settlement agreement, the subject of which may also include claims arising from the charge.

If no reconciliation is reached, the case is referred to the main hearing.

Mediation

The court or a court clerk, and in preparatory proceedings the prosecutor or another authority conducting those proceedings, may, on their own initiative or with the consent of the defendant and the victim, refer the case to mediation between the victim and the defendant, in which case they are advised of this, being informed of the aims and rules of the proceedings.

Mediation proceedings should not last longer than one month, and this period is not counted towards the duration of the preparatory proceedings. Participation in mediation by the defendant and the victim is voluntary. Consent to participate is obtained by the authority referring the case to mediation or by the mediator, after explaining the objectives and rules of the proceedings to the defendant and the victim and informing them of the possibility of withdrawing that consent until the mediation is concluded.

Following the mediation proceedings, the institution or person authorised to do so shall draw up a report on the results. If a settlement has been reached, it shall be attached to the report, signed by the defendant, the victim and the mediator.

Act on the Support and Rehabilitation of Minors

The Act applies to proceedings in cases of demoralisation (concerning persons who have reached the age of 10 but are not of full age) and proceedings in cases of criminal offences (against persons who committed such an offence after reaching the age of 13 but before reaching the age of 17), as well as the enforcement of educational measures, medical treatment or corrective measures (against persons in respect of whom such measures have been ordered, though in principle not beyond the age of 21). A criminal act, within the meaning of this Act, is an act prohibited by law as a criminal offence or a misdemeanour (including fiscal offences).

Article 57 of the Act provides for mediation proceedings to which the case is referred by the family court, which has jurisdiction over cases involving juvenile offenders. The purpose of mediation here is to instil in the minor a sense of responsibility for the consequences of the prohibited act they have committed, and to reach a settlement regarding compensation for the damage caused or redress for the harm suffered.

The family court may refer the case to mediation, either on its own initiative or with the consent of the victim and the minor. Participation in mediation is voluntary, and consent may be given by the victim or the minor before the family court and before the mediator, once the nature and principles of the mediation process have been explained. Each participant in the mediation has the right to withdraw their consent until the mediation is concluded. The mediation involves the victim, the minor (the perpetrator), the minor's parent or parents or guardian, as well as the victim's legal representative or the person under whose care the victim actually remains. If the minor undertakes to make good the damage caused or to provide compensation for the harm suffered, the conclusion of a settlement requires the consent of their legal representative; and if the minor's parents or guardian undertake such actions, they may also do so.

When ruling on a case involving a minor, the family court takes into account the results of the mediation and the settlement reached before the mediator.

Administrative proceedings

Mediation may be conducted during the proceedings if the nature of the case permits it. It is voluntary.

Its purpose is to clarify and consider the factual and legal circumstances of the case and to reach conclusions regarding its resolution within the limits of applicable law, including by issuing a decision or concluding a settlement. The participants in mediation may include the parties, the authority conducting the proceedings, and one or more parties to those proceedings. The parties must consent to mediation within 14 days of being served with a notice of the possibility of conducting mediation. Mediation proceedings may postpone the consideration of the case for a period of up to two months. Mediation is not public. If, as a result of the mediation, arrangements are made to resolve the matter within the limits of applicable law, the public administration body shall resolve the matter in accordance with those arrangements, as set out in the minutes of the mediation proceedings.

Comments:

Based on case file reviews conducted at the Institute of the Administration of Justice, it has been found that in care cases, mediation is often proposed to the parties in the interests of the child's welfare and position following an assessment by the Advisory Panel of Court Specialists.

Good practices:

In June 2024, the Ministry of Justice invited representatives of the mediation community to participate in an Open Dialogue on Mediation. This was the first initiative of its kind aimed at mediators, mediation centres and associations, foundations, non-governmental organisations and universities. The main aim was to familiarise the Ministry with the community's needs and proposals for changes in the field of mediation.

As part of the Open Dialogue on Mediation, meetings with the community took place in September 2024 – meetings were held with the community – on 12 September 2024, a meeting took place with judges coordinating mediation, and on 18–19 September 2024

with mediators and representatives of organisations who had submitted their proposals. The purpose of the meeting was to discuss the proposals submitted and the feasibility and appropriateness of their implementation, as well as to set the direction for the further development of mediation in Poland.

Although this is not good practice, it is worth noting that the Ministry of Justice recognises the need to undertake cross-cutting measures aimed at promoting mediation, the education, professionalisation and specialisation of mediators, and the creation of a legislative framework for the development of mediation, i.e. the institutionalisation of mediation proceedings within the Polish legal system and its role in the administration of justice – the result of which will be the Mediation Development Plan for 2025–2030.

One of the strategic objectives of the Ministry of Justice, to be achieved through the implementation of the measures set out in this Plan, will be the professionalisation of the institution of court mediation, including through the implementation of the National Register of Mediators, the development of guidelines for a potential professional association of mediators, whilst maintaining open access to mediation in the sphere of private commercial relations. This will lead to increased public awareness, with citizens beginning to perceive mediation proceedings as an effective means of resolving disputes, whilst simultaneously raising the status of mediation proceedings and their quality.

Issues to be addressed:

1. In criminal cases, mediation has the potential to become an attractive solution for the parties and the investigating authority following significant amendments to the provisions of the Criminal Code and the Code of Criminal Procedure. It is necessary to introduce, through legislative amendments, measures to encourage mediation. In this context, consideration could be given to reinstating Article 59a of the Criminal Code, which allows for the discontinuation of proceedings in the event of reconciliation between the parties, subject to the conditions and in relation to specific offences listed in the aforementioned provision.
2. Lack of specific requirements regarding mediators and bodies authorised to certify mediators.

Actions to be taken:

1. Establishing requirements for mediators in terms of competence and experience, and developing procedures for obtaining mediator status in specific specialisations. Mediators conducting mediation in cases involving children should have psychological training.
2. Training mediators and interpreters to conduct cross-border mediation in child custody cases and cases brought under the Convention on the Civil Aspects of International Child Abduction (the so-called Hague Convention).
3. Promoting peer mediation as a method of resolving disputes/conflicts among children.

Assessment:

Assessment of criterion 2. Regulations on mediation in civil, administrative and criminal proceedings are – from a formal point of view – sufficient, but they do not provide any legal or psychological support for children.

B. A child-friendly justice system for children in conflict with the law

6. National law provides for specific measures concerning children in conflict with the law .

6a National law establishes standards for the juvenile justice system, including a minimum age of criminal responsibility in all cases, which meets European and international standards.

Under the rules set out in the Criminal Code, a person who commits a criminal offence after reaching the age of 17 is liable to prosecution. This is a general rule, from which there are, however, exceptions.

A person who, after reaching the age of 15 (a minor), commits a prohibited act listed in Article 10 § 2 of the Criminal Code (an attempt on the life of the President, murder in its basic form and aggravated forms involving the killing of a person with particular cruelty, in connection with the taking of a hostage, rape or robbery, as a result of a motive deserving of particular condemnation, using explosives, as well as murder involving the killing of more than one person in a single act or where the perpetrator has previously been convicted of murder, and the murder of a public official committed during or in connection with the performance of their official duties relating to the protection of human safety or the protection of public safety or order, as well as an offence involving the causing of grievous bodily harm where, as a result of that act, a person has died, an offence involving the bringing about of an event which endangers the life or health of many persons or property on a large scale, taking the form of: a fire, the collapse of a building, a flood or a landslide, rocks or snow, an explosion of explosive or flammable materials, or any other violent release of energy, the spread of poisonous, suffocating or corrosive substances, a violent release of nuclear energy or ionising radiation, as well as where the consequence of such an act is the death of a person or serious injury to the health of many people, an offence consisting of the seizure of a vessel, aircraft or public land transport, causing a disaster in land, water or air transport threatening the life or health of many people or property on a large scale, the offence of rape, the offence of active assault on a public official, the offence of taking a hostage, as well as robbery) may be prosecuted in accordance with the provisions of this Code if the circumstances of the case and the perpetrator's level of development, character and personal

circumstances so warrant, and in particular if previously applied educational or corrective measures have proved ineffective.

Furthermore, a person who, having reached the age of 14 but before reaching the age of 15, commits an offence specified in Article 148 § 2 or 3 of the Criminal Code, i.e. offences consisting of the killing of a person with particular cruelty, in connection with the taking of a hostage, rape or robbery, as a result of a motive deserving of particular condemnation, with the use of explosives, as well as murder involving the killing of more than one person in a single act, or where the offender has previously been convicted of murder, and the perpetrator of the murder of a public official committed during or in connection with the performance of his or her official duties relating to the protection of human safety or the protection of public safety or order may be prosecuted in accordance with the provisions of this Code, if the circumstances of the case and the perpetrator's level of development, character and personal circumstances so warrant, and there is a reasonable presumption that the application of educational or corrective measures is not capable of ensuring the rehabilitation of the minor.

In the cases specified above, the sentence imposed may not exceed two-thirds of the upper limit of the statutory penalty provided for the offence attributed to the offender, which is not punishable by life imprisonment (which may not be imposed on such an offender), and in such cases the court may apply an extraordinary reduction of the sentence. However, in relation to an offender who committed an offence after reaching the age of 17 but before reaching the age of 18, the court shall, instead of a penalty, apply educational, therapeutic or corrective measures provided for minors, if the circumstances of the case and the offender's level of development, character and personal circumstances so warrant.

The Polish legal system also includes the Act on the Support and Rehabilitation of Minors (of 9 June 2022, Journal of Laws 2022, item 1700). Family and juvenile divisions adjudicate on the basis of this Act. This Act applies in respect of:

- proceedings in cases of demoralisation (concerning persons who have reached the age of 10 but are not of full age);
- proceedings in cases of criminal offences (against persons who committed such an offence after reaching the age of 13 but before reaching the age of 17);

- the implementation of educational measures, medical treatment or corrective measures (in respect of persons against whom such measures have been ordered, though, as a rule, not beyond the age of 21);

The measures provided for in the Act on the Support and Rehabilitation of Minors are taken in cases where a minor shows signs of demoralisation or has committed a criminal offence.

A criminal offence, within the meaning of this Act, is an act prohibited by law as a criminal offence or a fiscal offence, or as a misdemeanour or a fiscal misdemeanour. Proceedings in juvenile cases under the Act on the Support and Rehabilitation of Minors are conducted by family courts, not criminal courts.

In cases involving a minor, the primary consideration must be the minor's best interests, with the aim of achieving positive changes in the minor's personality and behaviour and, where necessary, ensuring that the parents or guardian properly fulfil their duties towards the minor, whilst taking into account the public interest. In proceedings involving a minor, account is taken of the minor's personal characteristics and circumstances, in particular their age, state of health, level of mental and physical development, character traits and family situation of the minor, upbringing and nature of the environment, the causes and extent of demoralisation, including the nature of the prohibited act, as well as the manner and circumstances of its commission, and the nature of the criminal act, as well as the manner and circumstances of its commission. Where a minor shows signs of demoralisation or has committed a criminal offence on school premises or in connection with the performance of compulsory schooling or compulsory education, the headteacher of that school may, with the consent of the minor's parents or guardian and the minor, apply, if this is sufficient, an educational measure in the form of a reprimand, a verbal warning or a written warning, an apology to the victim, restoration of the previous state of affairs, or the performance of specific cleaning duties for the school . The application of an educational measure does not preclude the application of a penalty specified in the school's statutes. This provision shall not apply where the minor has committed a prohibited act constituting an offence prosecuted *ex officio* or a fiscal offence. Where the authority authorised to conduct an investigation under the provisions of the Act of 24 August 2001 – Code of Procedure in Misdemeanour Cases (Journal of Laws of 2022, item 1124 and of 2023, item 1963) finds that a minor has committed a punishable act constituting a minor offence, it may, if deemed sufficient, apply an

educational measure in the form of a caution, a reprimand, a warning, restoration of the previous state, or notification of the minor's parents or guardian or the school the minor attends. Educational measures, therapeutic measures and corrective measures may be applied to a minor. A penalty may be imposed on a minor only in the cases specified by law, if other measures are unable to ensure the minor's rehabilitation.

Educational measures include: a warning; an obligation to behave in a specific manner, in particular to make full or partial reparation for the damage caused, to provide compensation for the harm suffered, to carry out community service, to apologise to the victim, to take up education or employment, to participate in appropriate educational activities, therapeutic activities, in particular addiction therapy, psychotherapy, psychoeducation, or training; refraining from frequenting specific environments or places; refraining from contacting the victim or other persons in a specific manner; or ceasing the use of psychoactive substances; supervision by the parents or the minor's guardian; supervision by a social organisation, including a non-governmental organisation, whose statutory purpose is to work with minors in an educational, therapeutic or training capacity, to prevent the demoralisation of minors or to assist in the social rehabilitation of minors, by an employer or a trustworthy person providing a guarantee for the minor; supervision by a probation officer; referral to a probation centre, as well as to a social organisation, including a non-governmental organisation, or an institution engaged in educational, therapeutic or training work with minors, following prior consultation with that organisation or institution; a ban on driving any vehicles or vehicles of a specific type; forfeiture of items derived from a prohibited act, forfeiture of items which were used or intended for the commission of a prohibited act, forfeiture of the equivalent value of items derived from a prohibited act or items which were used or intended for the commission of a prohibited act, forfeiture of items whose manufacture, possession, distribution, transmission, transfer, transport or storage of which is prohibited, forfeiture of an undertaking or its equivalent, forfeiture of a motor vehicle or the equivalent of a vehicle, forfeiture of financial gain or its equivalent, or forfeiture of items relating to prohibited acts; placement with a specialist professional foster family which has completed training to provide care for a minor, hereinafter referred to as a "professional foster family"; placement in a youth educational centre; placement in a district educational centre.

A therapeutic measure is placement in a treatment facility where minors are provided with health services in the field of psychiatric care or addiction treatment.

The family court may order the placement of a minor who has committed a criminal offence in a district educational centre if this is justified by the degree of the minor's demoralisation and the nature of the criminal offence, the manner and circumstances of its commission, particularly where other educational measures have proved ineffective or offer no prospect of the minor's rehabilitation.

In particularly justified cases, the family court may order the placement of a minor who has committed a criminal offence in a district educational centre if this is justified by the degree of the minor's demoralisation and the nature of the criminal offence, the manner and circumstances of its commission, including in particular the hooligan nature of the criminal act, acting in a manner deserving of particular condemnation, acting under the influence of a psychoactive substance, or committing a criminal act to the detriment of a defenceless, disabled, sick or elderly person, especially where other educational measures have proved ineffective or offer no prospect of the minor's rehabilitation.

In particularly justified cases, the family court may order the placement in a district educational centre of a minor who evades the enforcement of an educational measure and who, at the time of the ruling, has reached the age of 13, if this is warranted by the degree of the minor's demoralisation, and other educational measures have proved ineffective or do not hold out prospects for the minor's rehabilitation.

A correctional measure is placement in a correctional facility.

The family court may order the placement in a reformatory of a minor who has committed a criminal offence referred to in Article 1(2)(2)(a), if this is justified by the high degree of the minor's demoralisation and the nature of the criminal offence, the manner and circumstances of its commission, particularly where educational measures have proved ineffective or offer no prospect of the minor's rehabilitation. The family court shall order the placement in a reformatory of a minor who has committed a criminal offence as defined in Article 10 of the Act of 6 June 1997 – the Criminal Code (Journal of Laws of 2024, item 17).

In respect of such a minor, the family court may order an educational measure if the manner and circumstances of the commission of the criminal offence, the minor's personal characteristics and circumstances, and their attitude and behaviour justify the assumption that the educational measure will prove effective or hold out prospects for the minor's rehabilitation. In particularly justified cases, where this is supported by a very high degree of the minor's demoralisation, the nature of the criminal act, the manner and circumstances of its commission, the minor's personal characteristics and circumstances, their attitude and behaviour, and the course of the rehabilitation process to date, when ordering the placement of the minor in a reformatory, the family court may: threaten to extend the enforcement of the correctional measure after the minor has reached the age of 21, but not beyond the minor reaching the age of 24; order that the correctional measure be enforced after the minor reaches the age of 21, until the minor reaches a specified age, but not beyond the minor's 24th birthday.

When ordering the placement of a minor in a reformatory, the family court may specify the type of reformatory in which the measure is to be carried out; when ordering the placement of a minor in a reformatory, the family court shall specify the type of reformatory in which the measure is to be carried out.

Placement of a minor in a reformatory may be conditionally suspended if the minor's personal characteristics and circumstances, as well as their family situation, upbringing and the nature of their environment, together with the nature of the criminal act, the manner and circumstances of its commission, justify the assumption that the educational objectives will be achieved even without the enforcement of the reformatory measure.

The family court may: oblige the parents or the minor's guardian to improve the minor's upbringing, living or health conditions, and to cooperate closely with the school the minor attends, with the psychological and educational counselling centre—including, where necessary, to ensure the minor undergoes an appropriate assessment—and with the healthcare provider; require the parents or guardian of the minor to cooperate with a youth sociotherapy centre regarding the minor's fulfilment of their compulsory education, their sociotherapy and psychological and educational support; require the parents or guardian of the minor to make full or partial reparation for the damage caused by the minor or to provide compensation for the harm suffered.

The family court may request the relevant state or local government institution, or social organisation, including a non-governmental organisation, to provide the necessary assistance to improve the minor's upbringing, living conditions or health.

The Act on Family Support and the Foster Care System stipulates that where the parent raising the child is a minor leaving a youth educational centre, a youth sociotherapy centre, a district educational centre, a shelter for minors or a reformatory, a social worker from a social welfare centre or a social services centre shall conduct a home visit with that parent in accordance with the provisions of the Act of 12 March 2004 on Social Welfare, and subsequently the manager of the social welfare centre or the director of the social services centre shall assign a family assistant to that parent.

In addition, the Act on Family Support and the Foster Care System regulates the operation of specialist professional foster families, in which, amongst other things, children are placed in particular on the basis of the Act of 9 June 2022 on the support and rehabilitation of minors. In a professional specialist foster family, children holding a disability certificate or a certificate of significant or moderate disability cannot be placed at the same time as children under the Act of 9 June 2022 on the support and rehabilitation of minors.

The Minister responsible for family affairs shall, by way of a regulation, specify the number of training hours and the curriculum for training candidates to serve as professional foster families, non-professional foster families or to run a family-type children's home, as well as for candidates for the post of director of a family-type care of the family type, taking into account the possibility of placing children pursuant to the Act of 9 June 2022 on the support and rehabilitation of minors or those holding a disability certificate or a certificate of significant or moderate disability, as well as the specific nature of care and educational tasks for specific forms of family foster care, as well as bearing in mind the need to ensure an appropriate standard of foster care. The number of hours and the curriculum for training candidates to serve as professional foster families, non-professional foster families or to run a family-based children's home, as well as for the director of a family-based care-type care facility are regulated by the Regulation of the Minister of Family and Social Policy of 6 November 2023 on training for candidates for foster care (Journal of Laws 2023, item 2452).

A professional foster family is entitled to a monthly allowance to cover the increased living costs of a child placed with them under the Act of 9 June 2022 on the support and rehabilitation of minors is entitled to a monthly allowance to cover the increased costs of maintaining that child.

In accordance with the Act on Family Support and the Foster Care System, assistance for continuing education, becoming independent and settling in is granted to a person becoming independent who has been in foster care for a period of at least:

- 1) 3 years – in the case of a person leaving a kinship foster family;
- 2) one year – in the case of a person leaving non-professional foster care, professional foster care, a family-type children's home, a care and educational facility, or a regional care and therapeutic facility.

The periods of stay in foster care referred to above also include, amongst others, periods of stay in a district educational centre, a reformatory, a shelter for minors, a special school, a special educational centre, a youth sociotherapy centre providing 24-hour care, and a youth educational centre, provided that the court order for placement in foster care has not been revoked.

Notes:

Under the amendment that came into force in 2023, the age of criminal responsibility for minors has been lowered to 15 for certain offences.

Issues to be resolved:

1. The lack of an interdisciplinary approach in cases involving juvenile offenders – in particular, the full involvement of specialists in psychology, education and social rehabilitation.
2. The process of ordering placement in a District Educational Centre whilst awaiting placement in a treatment facility (following a ruling on a treatment measure) often takes several months.
3. Failure to take into account the conclusions of the Expert Court Panels regarding the necessity of applying a treatment measure to the juvenile and, in such cases, ordering the educational measure of placement in a District Educational Centre (which results in the inability to carry out adequate and effective rehabilitation

measures not only towards the minor, but also towards the educational group in which the minor is placed.

4. Failure to take into account, when formulating the decision concluding the proceedings, information from institutions implementing interim measures (Youth Educational Centres, District Educational Centres, Juvenile Shelters) regarding changes in the minor's behaviour – e.g. a significant improvement in conduct, engagement with education, but also the opposite – persistent resistance to corrective measures and recommendations to adopt more radical measures.

Actions to be taken:

1. Raising the lower age limit for criminal responsibility.
2. Introduce, as a standard practice, an interdisciplinary assessment of the profile of a child who has committed a criminal act or offence, as well as of a child found to be demoralised (involving specialists in psychology, pedagogy and social rehabilitation in the preparation of such an assessment).

ASSESSMENT:

Sub-criterion I: rating – 1. The juvenile justice system is (to a limited extent, but nonetheless) based on a psychosocial approach; however, children are held liable for breaches of criminal law.

Sub-criterion II: rating – 3. A child under the age of 14 cannot be held criminally liable under the provisions of the Criminal Code.

Sub-criterion III: rating – 3.

6b. National law, policy or regulations include guidelines for law enforcement authorities on the use of force and coercive measures against children to avoid unlawful or excessive coercive measures

Act of 24 May 2013 on direct coercive measures and firearms

In accordance with Article 6 of the Act, direct coercive measures shall be used or employed in a manner necessary to achieve the objectives of such use or employment, proportionate to the degree of threat, selecting the measure causing the least possible distress.

Firearms shall be used or employed only if the use or application of direct coercive measures:

- 1) has proved insufficient to achieve the objectives of such use or application, or
- 2) is not possible due to the circumstances of the incident.

Means of direct coercion or firearms shall be used in a manner causing the least possible harm. Their use shall be discontinued once the objective of their use has been achieved.

Means of direct coercion shall be used with particular caution, taking into account their properties, which may pose a threat to the life or health of the authorised person or another person.

However, when deciding to use or employ firearms, one must proceed with particular caution and treat their use as a last resort.

Against a person whose appearance indicates they are under 13 years of age, and against persons with a visible disability, only physical force in the form of restraint techniques may be used. Where it is necessary to repel a direct, unlawful attack on the life or health of an officer or another person, and the use of physical force against a person who appears to be under 13 years of age is insufficient or impossible, the authorised person may use other means of direct coercion or a firearm. However, this must be done taking into account the characteristics and condition of the person against whom the coercive measures are to be used.

In the case of a minor brought to a police children's detention centre, where the aim is to:

- 1) enforcing behaviour required by law in accordance with an order issued by the authorised officer;
- 2) repel a direct, unlawful attack on the life, health or liberty of the authorised person or another person;
- 3) countering actions directly aimed at an attack on the life, health or liberty of the authorised person or another person;
- 4) countering the destruction of property;
- 5) apprehending a person, preventing their escape or pursuing that person;
- 6) detaining a person, preventing their escape or pursuing that person;
- 7) to overcome passive resistance;
- 8) overcoming active resistance;
- 9) preventing acts of self-harm.

Police officers may use direct coercive measures in the form of:

- 1) physical force as techniques:
 - a) transport,
 - b) defence,
 - c) attack,
 - d) restraint;
- 2) handcuffs:
 - a) worn on the wrists,
 - b) worn on the legs,
- 3) straightjackets;
- 4) restraint belts;
- 6) safety helmet;
- 7) service baton;
- 3) chemical incapacitating agents in the form of:
 - a) hand-held incapacitating substance launchers,
- 4) devices designed to incapacitate persons by means of electricity.

The Act sets out the conditions for the use of the above-mentioned means of coercion.

The Act on the Support and Rehabilitation of Minors

In urgent cases, where there is a suspicion that a minor is exhibiting signs of demoralisation or has committed a criminal offence, the Police or Border Guard may, if necessary, detain the minor.

The detained minor shall be informed immediately of the reason for the detention and advised of their rights, including, amongst other things, the right to make a statement for the detention record, to receive a copy of the detention record, to contact a parent or guardian or a defence lawyer, and to access necessary medical assistance.

The police shall, regarding the fact and reason for the detention of a minor, as well as their placement in a police children's detention facility:

- 1) shall immediately notify the competent family court, providing a copy of the report of the minor's detention, and
- 2) shall immediately notify the parents or the parent under whose permanent care the minor actually remains, or the minor's guardian, by delivering a copy of the report of the minor's detention without delay.

The minor shall, upon request, be allowed without delay to contact a parent or guardian or a defence lawyer in an accessible form, and to speak to them directly. The minor also has the right to contact a defence lawyer without the presence of third parties. The minor must also be interviewed without delay.

A detained minor must be released immediately and handed over to a parent or guardian if:

- 1) the grounds for detention have ceased to exist;
- 2) the family court has ordered it;
- 3) within 24 hours of the minor's detention, the police have not forwarded to the family court all the evidence gathered to support the suspicion that the minor has committed a criminal offence.

The Code of Civil Procedure also regulates the procedure for the compulsory removal by a guardian of a person subject to parental authority or under guardianship.

The Act of 6 April 1990 on the Police (Journal of Laws of 2024, item 145)

Article 14(3). In the course of their official duties, police officers are obliged to respect human dignity and to observe and protect human rights.

Order No. 805 of the Chief Commander of the Police of 31 December 2003 on the ‘Principles of Professional Ethics for Police Officers’

Bearing in mind the importance of ethical considerations in the performance of police duties and the police’s role in serving society, as well as the need to strengthen and supplement the duties and rights of police officers arising from democratically enacted law, the “Principles of Professional Ethics for Police Officers” are hereby introduced.

The Principles of Professional Ethics for Police Officers are derived from general moral values and standards that take into account the specific nature of this profession.

It is the duty of a police officer to observe the principles of professional ethics.

In situations not covered by law or not included in these principles of professional ethics, a police officer should be guided by the principles of social coexistence.

Comments:

It must be noted that it is necessary to continuously monitor the manner in which persons under the age of 18 are detained and the use of direct coercive measures against them. There are also grounds for concluding that officers lack sufficient knowledge of the standards established on the basis of the case law of the European Court of Human Rights regarding Article 3 of the European Convention on Human Rights.

Good practices:

At the central level of the Police, there is a Representative of the Chief of Police for Human Rights Protection, who also heads the Human Rights Protection Team within the Office of the Chief of Police. In the field, however, tasks are carried out by so-called field representatives based at Provincial Police Headquarters/the Warsaw Police Headquarters, the Central Investigation Bureau of the Police, the Police Internal Affairs Bureau, the Central Counter-Terrorism Sub-Unit of the Police – BOA, the Central Bureau for Combating Cybercrime, the Central Police Forensic Laboratory, and in police academies.

The main task of the Ombudsmen is to promote human rights and ensure compliance with standards for their protection within police units, as well as to monitor police officers' activities on an ongoing basis to ensure respect for human dignity and human rights in their actions, and to propose solutions aimed at maintaining high standards in this regard.

Issues to be addressed:

It is necessary to develop uniform standards regarding the compulsory removal of minors subject to parental authority or in the care of , including cooperation between the relevant bodies, the manner in which the removal procedure is conducted, ensuring the child's welfare and safety during such actions, the creation of guidelines in this regard, and taking into account the specific nature of the compulsory removal of minors subject to parental authority or in care in cross-border proceedings. Particular attention should also be paid to the situation of minors forcibly removed from foster care and placed in foster care.

It is also essential to raise awareness among officers regarding standards for the treatment of detainees and the use of coercive measures, as set out in the case law of the European Court of Human Rights.

Actions to be taken:

1. Development of guidelines on the forced removal of minors subject to parental authority or in care, taking into account the psychological perspective.
2. Mandatory training for police and border guard officers on the case law of the European Court of Human Rights relating to Article 3 of the European Convention on Human Rights.

ASSESSMENT:

Assessment of criterion – 2.

6c. National law and the legal system recognise and regulate all forms of deprivation of liberty of children

Children may be deprived of their liberty under two regimes: criminal liability and the Act on the Support and Rehabilitation of Minors.

Criminal Code

In the area of criminal liability, the legislator, in Article 54 of the Criminal Code, refers to two circumstances:

- when imposing a sentence on a minor or a young person (an offender under the age of 21), the court is guided primarily by the need to have an educational impact on the offender,
- a life sentence shall not be imposed on an offender who was under 18 at the time of committing the offence.

The legislature has thus established the principle of giving priority to non-custodial measures of criminal law influence in relation to minors (offenders aged 15 to 17) and young offenders (up to 21 years of age).

In view of the criminal liability of minors under the Criminal Code, deprivation of liberty is also possible as a preventive measure involving isolation in the form of pre-trial detention (Articles 249 et seq. of the Code of Criminal Procedure). The objectives of the enforcement of custodial sentences can be achieved through the appropriate differentiation of prisons and correctional facilities. This is because there are various types of prisons and systems for the enforcement of custodial sentences.

Section 69 of the Code of Criminal Procedure establishes a specific type of prison for juveniles. A juvenile is an offender who was under 21 years of age at the time of committing the offence and under 24 years of age at the time of the first-instance judgment. Juvenile offenders (i.e. persons who were under 17 years of age at the time of committing the offence) will also serve their prison sentences in these institutions.

Prisons may be organised as: closed, semi-open or open. This classification is based in particular on the level of security, the degree of isolation of prisoners, and the resulting restrictions and privileges regarding their movement within and outside the prison. Prison sentences are served under one of three systems: the programme-based system, the therapeutic system, or the standard system.

Young offenders (i.e. persons under the age of 21) serve their prison sentences under the programme-based system. In a prison for young offenders, a wider range of cultural, educational, sporting and physical education activities are provided, and meetings with families are organised. More severe disciplinary measures are not applied to juveniles.

A juvenile who has at least six months remaining before becoming eligible to apply for parole, or who presents behavioural difficulties, is subject to psychological assessment.

Women serve their prison sentences separately from men.

Article 91 of the Penal Enforcement Code in a semi-open prison:

- 1) prisoners' living quarters remain open during the day, but may be locked at night;
- 2) prisoners may be employed outside the prison premises under a reduced escort system or without an escort, including in individual work stations;
- 3) prisoners may be permitted to participate in education, training and therapeutic activities organised outside the prison premises;
- 4) prisoners may be permitted to take part in group cultural, educational or sporting activities organised by the prison administration outside the prison premises in the presence of a prison officer or staff member; the total number of times a prisoner leaves the prison to take part in such activities may not exceed 28 per year;
- 5) prisoners may move about within the prison premises at times and in places specified in the internal regulations;
- 6) prisoners may wear their own clothing, underwear and footwear;
- 7) prisoners may be granted leave from the prison, no more than once every two months, for a total period not exceeding 14 days per year;
- 8) prisoners may have three visits per month, which may be combined with the consent of the prison governor;
- 9) visits to prisoners are subject to supervision by the prison administration; conversations between prisoners during visits may be monitored by the prison administration;
- 10) prisoners' correspondence may be subject to censorship by the prison administration;
- 11) prisoners' telephone calls or conversations conducted by other means of communication may be monitored by the prison administration.

Article 91a. In closed and semi-open prisons for juveniles, prisoners are also entitled to one additional visit per month.

Article 92. In open prisons:

- 1) prisoners' living quarters remain open 24 hours a day;
- 2) prisoners are primarily employed outside the prison premises, without an escort, in individual work stations;
- 3) prisoners may be permitted to participate in education, training and therapeutic activities organised outside the prison grounds;
- 4) prisoners may be permitted to take part in cultural, educational or sporting activities organised by the prison administration outside the prison premises, as well as other such activities and events organised outside the prison premises; the total number of times a prisoner may leave the prison to take part in such activities and events shall not exceed 56 per year; the manner of participation in such activities and events shall be determined by the prison governor;
- 5) (repealed)
- 6) prisoners may move about within the prison premises at times and in places specified in the internal regulations;
- 7) prisoners may wear their own clothing, underwear and footwear;
- 8) prisoners may withdraw funds from the prison's deposit account for their own use;
- 9) prisoners may be granted leave from the prison, no more than once a month, for a total period not exceeding 28 days per year;
- 10) a prisoner may have an unlimited number of visits;
- 11) visits to prisoners may be subject to supervision by the prison administration; conversations between prisoners during visits may be monitored by the prison administration;
- 12) where possible, prisoners shall be provided with the means to prepare additional meals for themselves;

13) prisoners' correspondence may be subject to censorship by the prison administration;

14) telephone calls made by prisoners or conversations conducted by prisoners using other means of communication may be subject to monitoring by the prison administration.

The Act on the Support and Rehabilitation of Minors

As already indicated, a juvenile offender may commit a criminal offence or exhibit signs of demoralisation, and the measures provided for in the Act are taken exclusively in such cases.

In matters concerning a juvenile, the juvenile's best interests must be the primary consideration, with the aim of bringing about positive changes in the juvenile's personality and behaviour and, where necessary, ensuring that the parents or guardian properly fulfil their duties towards the juvenile, whilst taking into account the public interest. In proceedings concerning a minor, account shall be taken of the minor's personal characteristics and circumstances, in particular their age, state of health, level of mental and physical development, character traits and family situation of the minor, upbringing and nature of the environment, causes and degree of demoralisation, including the type of prohibited act, as well as the manner and circumstances of its commission, and the type of criminal act, as well as the manner and circumstances of its commission.

Educational measures, therapeutic measures and corrective measures may be applied to a minor. A penalty may be imposed on a minor only in the cases specified by law, if other measures are unable to ensure the minor's rehabilitation.

Enforcement of a correctional measure

A correctional measure is a measure involving actual deprivation of liberty. A correctional measure consists of placement in a correctional facility.

When ordering the placement of a minor in a reformatory, the family court may specify the type of reformatory in which the measure is to be enforced. The order may be made in a closed hearing.

The family court may, for a specified period, defer or suspend the enforcement of the corrective measure in the event of the minor's illness or for other important reasons. The family court may revoke the postponement or suspension of the enforcement of the correctional measure if the reason for which it was granted ceases to exist, or if the minor does not use the postponement or suspension for the purpose for which it was granted, or grossly violates the law.

If, following the issuance of a ruling placing the minor in a correctional facility, and prior to their placement in such a facility or following the expiry of the period of postponement or suspension of the correctional measure, there has been a significant improvement in the minor's behaviour, the family court may conditionally refrain from enforcing the ruling.

Conditional suspension of the order is granted for a probationary period of up to 3 years. However, the probationary period may not extend beyond the minor's 21st birthday. During the probationary period, the family court applies educational measures to the minor. If, during the probationary period, the minor commits a criminal offence or their behaviour indicates further demoralisation, or they evade the enforcement of the educational measure, the family court may revoke the conditional suspension of the enforcement of the judgment and order the placement of the minor in a reformatory.

Where a minor commits a criminal offence as defined in Article 134, Article 148(1), (2) or (3), Article 156(1) or (3), Article 163(1) or (3), Article 166, Article 173(1) or (3), Article 197(1), (3), 4 or 5, Article 223 § 2, Article 252 § 1 or 2, or Article 280 of the Criminal Code, and where there are no grounds for the case to be heard by the court having jurisdiction under the provisions of the Code of Criminal Procedure, the family court shall revoke the conditional suspension of the enforcement of the judgment and order the placement of the minor in a reformatory. If, during the probationary period and within a further three months, the conditional suspension of the enforcement of the order has not been revoked, the order for placement in a reformatory shall, by operation of law, be deemed to have lapsed.

If, in the course of the enforcement of the correctional measure, it transpires that a therapeutic measure should be applied to the minor, the family court may suspend the enforcement of the correctional measure.

The family court may conditionally release the minor from the reformatory if progress in his or her upbringing suggests that, upon release from the institution, the minor will observe the law and the rules of social coexistence. Conditional release from a reformatory may not take place earlier than six months after the date of the minor's placement in the reformatory. The court may count the period of the minor's stay in a youth shelter towards this period.

Conditional release from a reformatory is granted for a probationary period of up to three years. However, the probationary period may not extend beyond the minor's 21st birthday, and in certain cases, beyond the minor's 24th birthday. During the probationary period, the family court applies educational measures to the minor.

If, during the probationary period, the minor commits a criminal offence or their behaviour indicates further demoralisation, or they evade the enforcement of an educational measure, the family court may revoke the conditional release and order the minor to be placed in a reformatory.

A renewed application for conditional release from a reformatory, submitted by the minor, his or her parents, or the parent under whose permanent care the minor actually remains, or the minor's guardian, within six months of the date of the decision refusing conditional release, shall be left unexamined by the family court. The decision may be issued in camera.

In the case of a minor who has committed an offence specified in the Criminal Code, has been held liable for it and has reached the age of 21 (but has not yet reached the age of 24), the family court shall rule on:

- the enforcement of a corrective measure after the minor has reached the age of 21, until the minor reaches a specified age, but not longer than until the minor reaches the age of 24, if the results of the rehabilitation process to date have not yielded the expected outcome and the minor still requires rehabilitation measures; or

- the application of an educational measure to a minor released from a reformatory after reaching the age of 21, until the minor reaches a specified age, but not longer than until the minor reaches the age of 24, if the results of the rehabilitation process to date indicate a need to support the minor in further acquiring and consolidating socially desirable attitudes.

The family court shall issue a ruling on the above matter following a hearing. The family court shall schedule the hearing no later than 6 months before the minor reaches the age of 21.

The family court:

- 1) requests a psychological and educational report to be drawn up,
- 2) in order to establish details regarding the minor's family environment and their prospects for employment or education upon leaving the reformatory, instructs the probation officer to conduct a community assessment,
- 3) where necessary, obtains an opinion on the minor's mental health,
- 4) where necessary, obtains an expert opinion from one or more experts in other specialisms.

The correctional measure is carried out in a correctional facility: open, semi-open, closed, or with enhanced educational supervision, for minors who have reached the age of 21.

The organisational unit of the Ministry of Justice responsible for carrying out the Minister of Justice's pedagogical supervision of correctional institutions refers the minor to the appropriate correctional institution on the basis of a decision to place the minor in a correctional institution and a comprehensive assessment of the minor's personality, taking into account their psychophysical capabilities and individual developmental and educational needs, and in the case of a minor holding a decision on the need for special education – also taking into account the recommendations contained in that decision.

In juvenile correctional institutions, the following educational systems are implemented: rehabilitation, rehabilitation and re-education, and rehabilitation and therapy.

An open reformatory is intended for minors who:

- 1) express a willingness to participate in the rehabilitation process and whose attitude and behaviour in the juvenile shelter support this;
- 2) whose attitude and behaviour to date, following the imposition of a correctional measure, indicate a high likelihood that they will submit to the rehabilitation process;
- 3) are placed in another correctional facility, but whose attitude, behaviour or the recommendations of the diagnostic and correctional team suggest that they should be placed in an open correctional facility.

A semi-open correctional facility is intended for juveniles who:

- 1) due to the criminal acts they have committed and adverse changes in behaviour, do not meet the criteria for placement in an open correctional facility;
- 2) are placed in an open correctional facility, but whose attitude and behaviour do not justify their continued stay in that facility;
- 3) are placed in a closed reformatory or in a reformatory with enhanced educational supervision, and whose attitude, behaviour or the recommendations of the diagnostic and correctional team indicate that they should be placed in a semi-open reformatory.

A closed reformatory is intended for juveniles who:

- 1) due to the criminal acts they have committed and adverse changes in their behaviour, do not meet the criteria for placement in an open reformatory or a semi-open reformatory;
- 2) by their attitude or behaviour whilst in a juvenile shelter or another type of correctional facility, provide grounds for their placement in a closed correctional facility, or have escaped at least twice from a juvenile shelter or another type of correctional facility.

A correctional facility with enhanced educational supervision is intended for juveniles who:

- 1) have reached the age of 16, or in exceptional cases the age of 15, and require enhanced educational or therapeutic intervention, or

2) have committed a criminal offence specified in Article 134, Article 148(1), (2) or (3), Article 156(1) or (3), Article 163(1) or (3), Article 166, Article 173(1) or (3), Article 197(1), (3), 4 or 5, Article 223 § 2, Article 252 § 1 or 2, or Article 280 of the Criminal Code.

The placement of a minor in a reformatory with enhanced educational supervision shall be based on a court ruling.

A minor who has been held in remand centres or prisons shall be placed in a semi-open reformatory, a closed reformatory or a reformatory with enhanced educational supervision, unless specific rehabilitation considerations, the minor's attitude or behaviour, or the recommendations of the diagnostic and correctional team the findings of a diagnostic and correctional team or an advisory panel of court-appointed experts, suggest that the minor should be placed in an open reformatory.

A minor who has committed a criminal offence specified in Article 134, Article 148(1), (2) or (3), Article 156(1) or (3), Article 163(1) or (3), Article 166, Article 173(1) or (3), Article 197(1), (3), 4 or 5, Article 223 § 2, Article 252 § 1 or 2, or Article 280 of the Criminal Code, shall be placed in a reformatory with enhanced educational supervision, unless specific rehabilitation considerations, the attitude or behaviour of the minor, or the recommendations of the diagnostic and correctional team the diagnostic and correctional team or the advisory panel of court-appointed experts, suggest that the minor should be placed in a closed reformatory, a semi-open reformatory or an open reformatory.

Upon admission to a correctional facility, the minor shall immediately:

- 1) shall be informed of their rights and obligations and the rules of residence in the institution, and shall be advised of the deadline and procedure for lodging a complaint,
- 2) undergo a personal search;
- 3) undergo a test for the presence of psychoactive substances in their body;
- 4) shall be placed in an adaptation room.

A juvenile admitted to a reformatory shall deposit documents confirming their identity, cash, valuables and items which they are not permitted to possess within the facility.

A minor placed in a reformatory may temporarily leave the facility in the event of:

- 1) the granting of a reward,
- 2) the granting of a special leave pass,
- 3) the director of the institution giving their consent.

In exceptional circumstances, the director of the institution may grant a minor a special leave pass for a period of up to 3 days. In justified cases, the director of the institution may decide that the minor may use the special leave pass under the supervision of an institution staff member. Temporary leave from the institution in cases where proceedings are pending against the minor in connection with the commission of a prohibited act requires the consent of the authority conducting the proceedings.

A minor placed in a reformatory receives pocket money for personal expenses, paid from funds allocated for the maintenance of the institution.

A minor may be transferred to another reformatory for educational or organisational reasons at the request of a family court judge, the director of the reformatory, the minor, the minor's parents or the parent under whose permanent care the minor actually remains, or the minor's guardian.

At the request of the family court, the reformatory shall draw up a psychological and educational report on the minor placed in the institution, including an assessment of the minor's rehabilitation process and recommendations setting out the direction of further educational, rehabilitative or therapeutic measures.

In particularly justified cases, upon a written request from a minor being released from the reformatory, the director of the institution may consent to the minor remaining in the institution for a specified period, not exceeding one year.

If a minor being released from a reformatory has no money of their own and cannot obtain the necessary assistance from their parents or guardian or from other sources, the director of the institution shall provide them with financial or material assistance up to the base amount for professional court-appointed guardians, the amount of which is determined in accordance with separate rules laid down in the Budget Act.

A minor placed in a reformatory shall undergo practical vocational training in the form of practical classes organised in school workshops run by the school operating within the reformatory.

A minor placed in a reformatory shall undertake work preparation classes in the form of training to perform specific work, organised at the school operating within the reformatory.

Continuing education may be organised in reform schools.

In order to provide minors with work that facilitates the acquisition of vocational qualifications, associations, foundations, social cooperatives or other entities whose statutory purpose is the vocational activation or social rehabilitation of minors may operate in conjunction with reform schools.

A minor placed in a correctional facility may be employed outside the facility, with the consent of the facility director, in accordance with the provisions of labour law. The facility director shall notify the family court of the minor's employment outside the correctional facility.

The minor's remuneration for work shall be determined in accordance with the rules governing the remuneration of employees for the type of work performed by the minor.

A minor shall not be entitled to remuneration for cleaning work carried out for the reformatory for up to 30 hours per month. The minor may be awarded prizes for the unpaid work referred to above.

Activities related to maintaining cleanliness and order in the premises where the minor resides, work carried out as part of practical vocational training, work preparation classes and continuing education shall not be considered as cleaning work for the institution.

The director of the correctional facility may place a minor outside the correctional facility for a specified period if this is justified by:

- 1) educational considerations, in particular the opportunity to obtain an education, a trade, and the necessary qualifications or licences,
- 2) the opportunity to take up employment,
- 3) the need for specialist medical treatment,
- 4) special family circumstances

- and an assessment of the minor's behaviour indicates that it will be possible to exercise effective supervision over them.

Before placing a minor outside the institution, the director of the institution applies to the family court for an order to carry out a social inquiry. In the application, the director of the institution may request that the social inquiry be carried out by educational staff at youth educational centres, district educational centres, reform schools or shelters for minors.

Interim measures and detention

In order to prevent the further demoralisation of the minor or the commission of a criminal offence by the minor during the proceedings, or to ensure the proper conduct of the proceedings, the family court may apply a provisional measure. A provisional measure must be revoked or amended without delay if the grounds justifying its continued application cease to exist or if grounds arise justifying its revocation or amendment.

Interim measures are:

- 1) temporary supervision by a social organisation, including a non-governmental organisation, whose statutory purpose is to work with minors in an educational, therapeutic or training capacity, to prevent the demoralisation of minors or to assist in the social rehabilitation of minors, by an employer or a trustworthy person;
- 2) temporary supervision by a probation officer;
- 3) temporary referral to a probation service centre, as well as to a social organisation, including a non-governmental organisation, or an institution engaged in educational, therapeutic or training work with minors, following prior consultation with that organisation or institution;
- 4) temporary placement with a professional foster family;
- 5) temporary placement in a youth educational centre;
- 6) temporary placement in a district educational centre;
- 7) temporary placement in a medical facility;
- 8) placement in a shelter for minors;

9) a temporary obligation on the parents or guardian of the minor to improve the minor's upbringing, living conditions or health, as well as to cooperate closely with the school the minor attends, with a psychological-pedagogical counselling centre, including, where necessary, the performance of an appropriate assessment of the minor, and with the healthcare provider, as well as to cooperate with the youth sociotherapy centre regarding the fulfilment of the minor's compulsory education, their sociotherapy and psychological and pedagogical support.

The provisional measures set out in points 4–7 may be applied to the minor, if the application of the provisional measures referred to in points 1–3 would be insufficient and, at the same time, circumstances are revealed which warrant the placement of the minor in a professional foster family, a youth educational centre, a district educational centre or a medical facility.

A minor may be placed in a shelter for minors if circumstances are revealed which warrant placing them in a reformatory and, at the same time, there is a reasonable fear of obstruction of the proceedings, including in particular escape, the minor going into hiding or covering up the traces of a criminal offence, or if the minor's identity cannot be established.

A minor may also, exceptionally, be placed in a juvenile shelter where circumstances are revealed which warrant placement in a reformatory, and the minor is alleged to have committed a criminal offence specified in Article 134, Article 148(1), (2) or (3), Article 156(1) or (3), Article 163(1) or (3), Article 166, Article 173(1) or (3), Article 189, Article 189a, Article 197(1), (3), 4 or 5, Article 198, Article 200, Article 202 § 3, 4, 4a, 4b or 4c, Article 204 § 3, Article 223 § 2, Article 252 § 1 or 2, or Article 280 of the Criminal Code.

In the order applying the interim measure referred to in points 4–8, the family court shall specify a period of stay not exceeding 3 months. This period shall be counted from the moment of the minor's detention. Where possible, the date of detention shall be specified in this order.

If, due to the specific circumstances of the case, it is necessary to extend the minor's stay in a professional foster family, centre, medical facility or shelter for minors referred

to in points 4–8, such stay may be extended for a specified period, in each instance not exceeding three months. The extension shall be granted by the court before which the proceedings are pending, unless the Act provides otherwise.

The total duration of a minor's stay in a professional foster family, centre, medical facility or shelter for minors, as referred to in points 4–8, until the final conclusion of the proceedings, may not exceed one year. This period shall not include any unjustified absence of the minor from the professional foster family, centre, medical facility or shelter for minors lasting longer than 3 days.

In particularly justified cases, the district court in whose district the proceedings are taking place may extend the stay referred to above for a specified period, not exceeding 3 months in each instance.

The police may detain and subsequently place in a police cell a minor in respect of whom there is reasonable suspicion that they have committed a criminal offence constituting either a criminal offence or a fiscal offence, and where there is a reasonable fear of flight, that the minor may abscond or conceal themselves, or that they may destroy evidence of the criminal act, or where the minor's identity cannot be established.

The powers of the police to detain a minor are also vested in the Border Guard, within the scope of its remit. If necessary, the Border Guard may place the detained minor in a police children's detention centre.

The detained minor is immediately informed of the reason for the detention and advised of their rights, including the right to make a statement for the detention record, to receive a copy of the detention record, to contact a parent or guardian or a defence lawyer, and to access necessary medical assistance.

A record shall be drawn up of the detention of the minor, a copy of which shall be provided to the detained minor. The record shall contain:

- 1) the first name, surname and position of the person carrying out this procedure;
- 2) the first name(s) and surname of the minor, and where it is not possible to establish their identity – a physical description;

- 3) the minor's PESEL number, and where no information on the PESEL number is available – the date and place of birth, the first names of the parents and the minor's maiden name, as well as the mother's maiden name;
- 4) the minor's address of residence or place of stay;
- 5) the type and identifying features of the document or the type of information on the basis of which the minor's identity was established;
- 6) a description of any visible injuries to the minor or information that there are none;
- 7) the telephone number of the parents or of the parent under whose permanent care the minor actually remains, or of the minor's guardian;
- 8) the date, time, place and reason for the detention;
- 9) statements made by the minor;
- 10) information regarding the instructions given to the minor;
- 11) information regarding the notifications referred to in paragraph 5.

Regarding the fact and reason for the minor's detention, as well as their placement in a police children's detention centre, the Police shall:

- 1) shall immediately notify the competent family court, serving a copy of the report on the minor's detention, and
- 2) shall immediately notify the parents or the parent under whose permanent care the minor actually remains, or the minor's guardian, by delivering a copy of the report on the minor's detention without delay.

The minor shall, upon request, be allowed without delay to contact a parent or guardian or a defence counsel in an accessible form, and to speak to them directly.

The minor has the right to contact a defence lawyer without the presence of third parties. The minor must be interviewed without delay. A detained minor must be released immediately and handed over to a parent or guardian if:

- 1) the grounds for detention have ceased to exist;
- 2) the family court has ordered this;
- 3) within 24 hours of the minor's detention, the police have not provided the family court with all the evidence gathered to support the suspicion that the minor has committed a criminal offence or a fiscal offence;
- 4) within 24 hours of the Police forwarding to the family court all the evidence gathered justifying the suspicion that the minor has committed a criminal offence or a fiscal offence, no decision has been issued regarding the application of a provisional measure consisting of: temporary placement in a professional foster family, temporary placement in a youth educational centre, temporary placement in a district educational centre, temporary placement in a medical facility, or placement in a shelter for minors. A minor in respect of whom a decision has been made to apply the interim measure referred to herein may remain in a police child holding cell for the time necessary to transfer them to the appropriate professional foster family, appropriate youth educational centre, district educational centre, medical facility or shelter for minors, but for no longer than a further 5 days from the date of the decision.

A minor may be placed in a police children's detention centre:

- 1) for the duration of a justified break in the escort or during transport, but for no longer than 24 hours;
- 2) if the minor is apprehended whilst unlawfully absent from a youth educational centre, a district educational centre, a reformatory or a shelter for minors, for the time necessary to transfer the minor to the appropriate centre, institution or shelter, but for no longer than 5 days.

If necessary to carry out a specific procedural action, the family court may instruct the Police or the Border Guard, within the scope of their jurisdiction, to detain and place the minor in a police children's detention centre for a period not exceeding 48 hours.

Note:

Excessive use of the most severe preventive measure in the form of pre-trial detention.

There are instances of children being placed in secure centres for foreign nationals run by the Border Guard for the purposes of proceedings concerning the granting of international protection and the obligation to return.

Good practices:

Training organised by UNHCR on alternatives to detention.

Issues to be addressed:

Limiting the use of pre-trial detention for children and limiting the use of immigration detention for minors.

Actions to be taken:

1. Introducing mechanisms to limit the use of pre-trial detention for children, in favour of non-custodial preventive measures.
2. Conducting intensive training for criminal court judges, taking into account the existing case law of the European Court of Human Rights and the positions of UN agencies, in order to raise their awareness in this area and thereby minimise the use of immigration detention for minors .

ASSESSMENT

Assessment of criterion 1. There is no adequate supervision or control over the use of interim measures and detention of minors.

Establishment of a child-friendly justice system

1. The existence and use of specialised law enforcement units, specially trained officers and safeguards

The provisions of the laws governing the functioning and structure of the Police, the Border Guard and the Public Prosecutor's Office do not oblige them to establish specialised units tasked with conducting proceedings involving children.

As regards the Police, in accordance with Order No. 1041 of the Chief of the Police of 28 September 2007 on the detailed rules for the organisation and scope of activities of police headquarters, police stations and other organisational units of the Police (i.e. Official Journal of the National Police Headquarters, 2013, item 50), the organisational structures of Police units include the following units:

- in the criminal investigation service dealing with juvenile crime;
- in the preventive service dealing with juveniles and social deviance, and the police child protection unit.

Order No. 48 of the Chief of the Police of 15 September 2023 on the methods and forms of carrying out tasks by police officers in the field of combating juvenile delinquency and crime, and measures taken on behalf of minors (Official Journal of the Chief of the Police of 2023 item 85) stipulates that tasks relating to the prevention, combating and identification of circumstances indicating the demoralisation of minors and their commission of criminal offences are carried out, as part of their duties, by police officers of the preventive and criminal investigation services of the relevant organisational units of the Police. However, the unit responsible for gathering information on a minor exhibiting signs of demoralisation or committing a criminal offence, as well as for cooperating in this regard with the family court with local jurisdiction over the minor, is the unit for minors and social pathology of the Police organisational unit within whose area of operation the minor's place of residence is located, and, if this is difficult to determine, their place of residence.

It is worth noting that on 17 October 2023, the Council of Ministers adopted a resolution on the National Plan to Combat Crimes Against Sexual Freedom and Public Morals to the Detriment of Minors for the years 2023–2026. One of the measures planned for implementation in 2024–2026 is the specialisation of officers – the designation, within City Police Headquarters, District Police Headquarters and Provincial Police Headquarters, of officers to conduct preliminary investigations into offences against sexual freedom and public decency to the detriment of minors.

Notes:

In accordance with the Decision of the Chief of Police, a team was appointed in 2024 to draft amendments to selected central professional development programmes, delivered in the form of specialist courses, i.e. for police officers in the field of combating juvenile delinquency and crime, and actions undertaken on behalf of minors; for police officers carrying out investigative and detection activities; for police officers carrying out operational and reconnaissance activities regarding changes to the standards for performing the taught activities, i.e. a police officer's briefing on the rights and obligations of a witness, victims and suspects, as well as a qualitatively new procedure, i.e. a police officer explaining to witnesses and victims under the age of 18, and to witnesses and victims who are unable to cope due to their age or state of health, the scope of their rights and obligations, and the manner and conditions of questioning, effective from 15 August 2024 \

Issues to be addressed:

Officers within the Police, Border Guard and Public Prosecutor's Office should be trained and receive further training in dealing with children following traumatic events, children without parental care, foreign children, and children with special needs (including those with disabilities), removing children from their biological families and placing them in foster care (particularly in cases of compulsory removal), recognising particularly dangerous situations involving minors, and interventions concerning children living in their biological family environment in situations threatening the life or health of the minor, or concerning children placed in foster care.

Actions to be taken:

1. Regular training for police and border guard officers and prosecutors on communicating with children.
2. Specialist training for police officers who are assigned to assist in the removal of a child, e.g. in the execution of a care court order.
3. Specialist training for selected police officers, Border Guard officers and prosecutors to work with children with special needs.

ASSESSMENT

Assessment of criterion 1: Officers working with children are not specialised; their assignment to units dealing with juvenile delinquency and demoralisation is not linked to specialised training or education.

2. The existence and use of specialised juvenile courts and specially trained judges and court officials.

Family and Juvenile Divisions

As already explained in this report, pursuant to Article 12 of the Act on the Organisation of Common Courts, a district court may establish a division:

a civil division – for cases concerning civil law, family and guardianship law, cases relating to the demoralisation and criminal acts of minors, the treatment of persons addicted to alcohol, narcotics and psychotropic substances, and cases falling within the jurisdiction of the guardianship court under separate Acts,

or a separate family and juvenile division – for cases concerning family and guardianship law, cases relating to the demoralisation and criminal acts of minors, the treatment of persons addicted to alcohol, narcotic drugs and psychotropic substances, and cases falling within the jurisdiction of the guardianship court pursuant to separate acts.

A civil division may be established within the district court to deal with matters relating to civil law, family and guardianship law, matters falling within the jurisdiction of the guardianship court under separate legislation, and cases concerning the demoralisation and criminal acts of minors. In contrast, the Court of Appeal has a civil division – dealing, amongst other things, with matters relating to family and guardianship law.

As a rule, family and juvenile divisions are established in courts. They hear, amongst other things, cases:

- under the Act on the Support and Rehabilitation of Minors (of 9 June 2022, Journal of Laws 2022, item 1700);
- guardianship cases (concerning parental authority and contact with the child);
- maintenance cases.

Since 2023, there has been a requirement for judges hearing family and juvenile cases to undergo training on dealing with persons under the age of 18, recognising signs of child abuse, and safeguarding the child's interests in the event of a dispute between parents or carers.

Criminal Divisions

They hear criminal cases.

Under Article 10 of the Criminal Code, a person who commits a prohibited act after reaching the age of 17 is liable in accordance with the rules set out in that Code. Under the rules set out in the Criminal Code, a minor who, having reached the age of 15 or 14, commits offences specified in the Criminal Code and meets the conditions set out therein regarding minors may also be held liable.

These cases are heard by criminal divisions, the same ones that hear cases involving adults. These divisions do not have judges specialising in hearing cases involving children.

From 2023, there is a requirement for judges hearing criminal cases to undergo training on conducting proceedings involving persons under the age of 18.

Probation officers

Court rulings in criminal, family and juvenile cases may be enforced with the involvement of probation officers. Probation officers are public officials. Professional probation officers, in order to be properly prepared for the profession, undergo a one-year training period and sit the probation officer examination.

Notes:

Training is required in the psychology of child and adolescent development, and in interview techniques, with particular emphasis on minors, ranging from training at the National School of the Judiciary and Public Prosecution to regular training for judges sitting in criminal divisions.

Issues to be addressed:

Increasing the number of training courses for family court judges (in particular on communicating with minors, including those with disabilities, and on cyberspace, sharenting and oversharenting). Such training should be delivered by psychologists and educators who work with children on a daily basis. The sessions should be conducted in a workshop format.

The need for specialisation and training of judges adjudicating in family and guardianship cases in the following areas:

- placing children in foster care,
- decisions made in adoption cases,
- the impact of rulings and the duration of proceedings on the situation of the child and the family,
- adjudicating in proceedings concerning children, in particular those affected by trauma, difficult experiences, illness, disability, or deprived of the care of their biological family,
- cooperation between family courts and the local community, foster carers, and organisations providing support for families and the foster care system.

Actions to be taken:

Efforts should be made to establish standards for expert opinions provided by clinical psychologists and psychiatrists. Such standards should be developed by a special interdisciplinary team comprising experts with recognised academic and clinical achievements. It does not seem advisable to commission this type of work to non-governmental organisations. A better solution would be to rely on state research centres, which will be able to guarantee the creation of tools with empirically proven effectiveness in obtaining reliable data and confirmed safety. The tasks of the aforementioned interdisciplinary team should include not only the creation of uniform tools and procedures for conducting interviews with minors, but also the development of training standards and the delivery of training courses to certify court experts in the field of psychology. It is worth noting that work is currently underway at the Ministry of Justice on a draft bill concerning court experts and expert assessment bodies. The draft provides for the establishment of certification councils/committees and standardisation teams. It therefore addresses the above comments to some extent.

ASSESSMENT:

Assessment of the criterion – 2, although – most notably – there is a lack of specialised courts in relation to administrative court proceedings.

3. There are mechanisms and spaces for children's participation enabling them to exercise their right of access to justice

3a. Children exercise their right of access to justice and information

Civil proceedings

Pursuant to Article 65 § 1 of the Code of Civil Procedure, capacity to take part in proceedings (litigant capacity) is held by persons with full legal capacity (which is attained in Poland upon reaching the age of 18), whereas persons with limited legal capacity have capacity to act in proceedings only in matters arising from legal acts which they may perform independently (Article 65 §2 of the Code of Civil Procedure). In administrative proceedings, there are no regulations governing the participation of persons under the age of 18, whereas in criminal cases, actions on behalf of a minor will be carried out by the child's representative or legal guardian.

Children do not automatically receive free legal aid – except in cases where a representative of the child is appointed (whose role is limited to specific matters, not all those in which the child is involved, or where the subject of the proceedings is the child's welfare).

The line of case law that has developed on the basis of Supreme Court rulings has significantly restricted the child's participation – as a party to the proceedings – in proceedings concerning the child. Current practice clearly fails to meet the need to ensure that a child has the right to participate in matters that directly concern them, on the same footing as a party to the proceedings (cf. the Supreme Court's resolution of 26 January 1973 in case III CZP 101/71, the grounds for the Supreme Court's resolution of 3 May 1979 in case III CZP 14/79, the Supreme Court's order of 16 December 1997 in case III CZP 63/97).

At the same time, it should be noted that, pursuant to Article 576 § 2 of the Code of Civil Procedure, in cases concerning a child's person or property, the court is obliged to hear the child, provided that their mental development, state of health and degree of maturity so permit, and to take their reasonable wishes into account as far as possible. The Supreme Court has also ruled on this matter (order of 15 December 1998 (ICKN 1122/98, OSNC 1999, No. 6, item 119), stating that "it must be assumed that it is the court's duty, in every case concerning a child's , to hear the child whose psychophysical development permits it".

Nor do children receive written information, tailored to their age and development, regarding their rights and obligations.

In view of the above, it must be recognised that legislative intervention is necessary to ensure that, in every case concerning a child's person or property, the child has the status of a party to the proceedings (a necessary party).

In the Act on Family Support and the Foster Care System

This Act states that, in applying it, due regard must be given to the agency of the child and the family, as well as the child's right, inter alia, to information and to express their views on matters affecting them, in accordance with their age and degree of maturity. The provisions of this Act also state that entities carrying out tasks under this Act, in particular when assessing the situation of a child placed in foster care and when assessing a child's eligibility for adoption, are obliged to listen to the child, if their age and level of maturity so permit, and to take their views into account as appropriate to the circumstances.

Comments:

In the course of civil, criminal and administrative proceedings, decisions affecting children (as parties to the proceedings) are not explained to them in a way they can understand. There is no statutory requirement, nor is it common practice, to provide written justifications in language appropriate to the child's development and age. Often, the purpose of the actions carried out with their participation is not explained to children either.

Issues to be addressed:

Lack of leaflets and guides available in court, as well as online on each court's website.

Actions to be taken:

1. It is worth considering preparing and publishing on each court's website, in a form accessible and understandable to children of different ages, a leaflet or video describing the various steps taken during court proceedings (e.g. preparing the child for the hearing / a prior visit to the court to help the child become familiar with the premises , the child's presence in court /meeting the judge outside the hearing room, discussing the hearing itself, the opportunity for the child to ask questions and have them answered in a friendly

atmosphere). Such materials would give the child a sense of security. The child and parent can learn how to behave after leaving the hearing, how to help the child relax and ensure their comfort and sense of security.

2. The principle of drafting the grounds for rulings/decisions in language that the child can understand should be introduced into all proceedings involving children.

ASSESSMENT:

Assessment of criterion – 0. There are no specific regulations requiring the child to be informed — apart from during a hearing or interview — about the status of the case, the necessity or lack thereof for their participation in the proceedings, and the possible outcomes that may arise.

3b. Children are heard in a child-friendly environment.

Victims and witnesses in criminal proceedings

In the case of victims and witnesses, the Code of Criminal Procedure provides for two types of questioning: ordinary and special (so-called 'protective')

Ordinary procedure

A witness (including one who is also a victim) is examined where this is possible (taking into account age and health) and justified (e.g. in a case concerning non-payment of maintenance, there is generally no need to examine the child victim).

If the victim is under 18 years of age, proceedings involving them should, as far as possible, be conducted in the presence of a legal representative, a de facto carer or an adult designated by the person being interviewed, unless the interests of the proceedings preclude this or the person being interviewed objects.

The regulations allow the venue and method of the interview to be adapted to the victim's or witness's circumstances. It may take place at their place of residence or via videoconference.

Special procedure

A victim or witness is examined only if their testimony may be of material significance to the resolution of the case and only once, unless material circumstances come to light which require a re-examination, or if a motion for evidence is granted by the defendant who did not have a defence counsel at the time of the victim's first examination.

In criminal proceedings, it is possible to examine victims and witnesses in a supportive environment. This procedure is regulated by Article 185a of the Code of Criminal Procedure (a victim under the age of 15, or in exceptional cases 18: applies to selected offences), Article 185b of the Code of Criminal Procedure (a witness under the age of 18), Article 185c of the Code of Criminal Procedure (a victim of selected sexual offences who is over 15 years of age), and Article 185e of the Code of Criminal Procedure (a victim or witness who suffers from mental or developmental disorders, or impairments in their ability to perceive or recall events, and where there is a reasonable fear that

questioning under conditions other than those specified in this provision could adversely affect their mental state or would be significantly impeded).

The manner in which interviews are prepared and conducted in accordance with the procedure laid down in Articles 185a–185c and Article 185e of the Code of Criminal Procedure, as well as the conditions to be met by the premises designated for conducting such interviews, are specified in a regulation of the Minister of Justice.

Suspect/accused

During the investigation or inquiry, the suspect may be accompanied (optionally) by a legal representative (parent, guardian) or a person under whose care they remain, or an adult of their choosing. At the request of the suspect/accused, a legal representative (parent, guardian) or a person under whose care they are may be present during a court hearing or trial. If the suspect/defendant has no such person, or if the presence of such a person may infringe upon their rights or interests, is not in their best interests, prevents the hearing or trial from taking place, or significantly hinders it, the suspect/defendant may designate another adult. If they do not designate such a person, or if they do but the person's presence may infringe upon their rights or interests, is not in their best interests, prevents the hearing or trial from taking place, or significantly impedes it, the presiding judge shall appoint a family assistant for the suspect/defendant.

Civil proceedings

Friendly conditions are provided for the hearing of minors by judges. These conditions are set out in the Regulation of the Minister of Justice of 21 October 2024 on the manner of preparing and conducting a child's hearing and the conditions to be met by the premises designated for such hearings (Journal of Laws of 2024, item 1579).

The venue for the hearing is determined taking into account the child's needs. Children with mental or developmental disorders and children under the age of 13 are heard in suitably adapted rooms on the court premises or off-site. These rooms must meet the following conditions:

- 1) the walls of the room are painted in light, muted colours;
- 2) the floor in the room is covered with soft carpeting;
- 3) the room contains furniture suitable for a child;
- 4) the colours of the furniture and carpet are kept light and muted;
- 5) the lighting is quiet and adjustable;
- 6) the size and layout of the room allow the child to move about freely.

If the room in which the hearing takes place is also used for hearings under Articles 185a–185c and 185e of the Code of Criminal Procedure, the child should be informed that the installed cameras and microphone will not be switched on and that the hearing will not be recorded.

Children aged 13 or over may be interviewed, in addition to the above-mentioned rooms, in a suitably adapted judge's chambers or in another room on the court premises or off-site. These rooms must have constant access to natural light and be equipped with a small table and a child-sized chair. The size of the office or other room must allow the child to move around. It must be tidy, and the child must be able to concentrate and speak freely.

If the hearing takes place in a judge's chambers or another room within the court premises, files relating to other proceedings must be kept out of the child's sight. For the duration of the hearing, the venue where it is held must be excluded from other activities.

Such arrangements are not provided for in administrative proceedings.

Comments:

Children – whether victims or witnesses – are interviewed in the presence of a qualified psychologist. However, no specific requirements have been established for the qualified

psychologist, particularly regarding experience and training in working with children, including those appearing as witnesses or victims.

Not all courts have interview rooms. Furthermore, the interview rooms located in courts do not always meet the requirements set out in the Regulation of the Minister of Justice.

Good practices:

The non-governmental organisation Fundacja Dajemy Dzieciom Siłę has developed guidelines for interviewing children in criminal proceedings <https://wspd.fdds.pl/materialy-edukacyjne/>

Courts that do not have interview rooms often make use of interview rooms located at the premises of non-governmental organisations.

An important activity is the education of children and young people through regular meetings with lawyers, including judges, at the court premises, and workshop sessions in the courtroom.

Interrogation rooms located in courts can be viewed on the website under the ‘friendly interrogation room’ tab, e.g.:

<https://warszawa.sr.gov.pl/przyjazny-pokoj-przesluchan,m,mg,211,376>

<https://radom.sr.gov.pl/przyjazny-pokoj-przesluchan,m,mg,363>

Issues to be resolved:

Adapting all existing court interview rooms to the requirements of the regulation.

Ensuring that hearings can take place in child-friendly interview rooms, including in courts that do not have such facilities.

Ensuring child-friendly conditions for hearings, including in administrative proceedings involving children (particularly refugee children).

Actions to be taken:

1. Ensuring practical access to court-appointed experts in the field of psychology.
2. Ensuring that minors are interviewed by persons of the same sex, particularly in cases involving offences under Chapter XXV – Offences against sexual freedom and public decency.

3. Establishing mechanisms to coordinate criminal and civil proceedings involving minors, to avoid the need for repeated questioning of the child, particularly in cases of domestic violence and sexual offences.
4. Ensuring that every court has suitably equipped rooms designated for interviewing children in criminal, administrative and civil proceedings, or for hearing children's evidence.
5. Creating a child-friendly space for the purposes of procedures conducted by:
 - the Head of the Office for Foreigners;
 - the Refugee Council;
 - the Border Guard (at least one body per province);
 - Provincial Governors.

ASSESSMENT

Assessment of criterion 1. As a rule, children's needs are not taken into account in administrative procedures.

4. There is an independent institution dealing with children's rights, which is protected by law.

The Ombudsman for Children, an independent institution vested with powers of supervision, warning and initiative, stands guard over children's rights, supporting efforts aimed at maximising the protection of children's rights.

The Ombudsman takes action to ensure the child's full and harmonious development, with respect for their dignity and autonomy (Article 3 of the Act on the Ombudsman for Children's Rights). Fulfilling these tasks requires the protection of children from all forms of violence, cruelty and exploitation, as well as from demoralisation, neglect and other forms of mistreatment.

The Ombudsman is concerned with the welfare of all children; he pays particular attention to children with disabilities.

In exercising his powers, the Ombudsman is guided by the principles set out in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and the Act on the Ombudsman for Children's Rights, in particular:

- the principle of the best interests of the child,
- the principle that all actions are taken in the best interests of the child,
- the principle of equality,
- the concern for the protection of every child's rights,
- the principle of respect for the responsibilities, rights and duties of both parents regarding the child's development and upbringing.

The Ombudsman takes the actions provided for in the Act on his own initiative, taking into account information received indicating a violation of the rights or welfare of a child. He deals with individual cases if they have not previously been resolved in an appropriate manner, despite the use of available legal remedies. The Ombudsman does not replace specialised services, institutions and associations dealing with child protection, but intervenes in situations where existing procedures have proved ineffective or have been neglected.

The Ombudsman's activities are directed at all public authorities (including the Sejm, the President of the Republic of Poland, the Council of Ministers and the courts), local authorities, government institutions and non-governmental organisations, to which the Ombudsman may request:

- provide explanations and necessary information, as well as grant access to files and documents, including those containing personal data,
- taking action on behalf of the child, in accordance with their remit, by presenting assessments and recommendations aimed at ensuring the effective protection of the child's rights and welfare,
- to introduce legislative initiatives or to issue or amend other legal acts.

The Ombudsman is obliged to present information on their activities and observations on the state of compliance with children's rights in Poland to the Sejm and Senate annually. Given that this information is made public, it provides an excellent opportunity to initiate a nationwide discussion on the state of compliance with children's rights in Poland.

Comments:

The Ombudsman for Children has no real powers to assist children in criminal proceedings. He cannot act as a party in criminal proceedings involving children, but may only monitor such cases. Although he is the most important constitutional body in Poland responsible for safeguarding children's rights, he has fewer powers than, for example, the State Commission for the Investigation of Offences against the Sexual Freedom and Morality of Minors under the Age of 15 in Criminal Cases. Furthermore, the Ombudsman for Children cannot independently propose legislative changes, has no legislative initiative, nor the right to lodge a constitutional complaint. The Ombudsman for Children is also unable to appeal against criminal court judgments where the sentence is disproportionate to the gravity of the offence committed against a child.

Good practices:

The Children's Helpline, operating 24 hours a day, 7 days a week, which provides support and assistance to children.

Issues to be addressed:

Citizens and children have insufficient or incorrect knowledge of the role and responsibilities of the Children's Ombudsman.

The Children's Ombudsman has too limited legal powers.

Actions to be taken:

1. Public awareness campaigns to raise awareness of the institution of the Children's Ombudsman, particularly among children themselves but also among adult citizens.
2. Introducing legislative changes aimed at expanding the powers of the Children's Ombudsman – granting them the tools to take all necessary actions to protect children's rights.

ASSESSMENT:

Criterion rating – 3.

5. Child-friendly complaint procedures have been introduced, along with child-friendly remedies.

In Poland, children have the opportunity to lodge a complaint with the Ombudsman for Children.

On 15 February 2024, provisions on mandatory standards for the protection of minors came into force.

The obligation to introduce standards for the protection of minors, hereinafter referred to as 'the standards', applies to:

- 1) the governing body of an educational institution referred to in Article 2(1)-(8) of the Act of 14 December 2016 – Education Law (Journal of Laws of 2023, items 900, 1672, 1718 and 2005), and any other educational, care, upbringing, rehabilitation, religious, artistic, medical, recreational, sporting or interest-development establishment attended by, or in which minors are or may be present;
- 2) an organiser of educational, care, upbringing, rehabilitation, religious, artistic, medical, recreational, sporting or interest-development activities for minors.

The standards shall specify, in particular, in a manner appropriate to the nature and type of the establishment or activity:

- 1) rules ensuring safe relationships between minors and the staff of the facility or the organiser, and in particular conduct that is prohibited towards minors;
- 2) rules and procedures for intervening in situations where harm to a minor is suspected or information regarding such harm is available;
- 3) procedures and persons responsible for reporting suspected offences against minors, notifying the guardianship court and, in the case of institutions with such powers, persons responsible for initiating the 'Blue Card' procedure;
- 4) persons responsible for receiving reports of incidents posing a threat to a minor and providing support to the minor.

The Team for the Protection of Minors, operating under the Ministry of Justice, has drawn up guidelines for the preparation of standards for the protection of minors. These guidelines recommend identifying the persons who receive reports so that the child can

approach that person. If the child chooses another person to confide in, that person should notify the person responsible for reporting.

All entities required to have standards for the protection of minors must have procedures in place for taking action.

It should not be overlooked that everyone – including the child – has the right to notify the family court of events justifying the initiation of proceedings ex officio, and the court is obliged to assess whether there are circumstances justifying such a decision.

Comments:

In statutory judicial and extrajudicial proceedings, there are no specific procedures for reporting harm or the commission of a crime against children, including children with disabilities.

Good practices:

The Team for the Protection of Minors has prepared guidelines on standards for the protection of minors. These have been published on the Team's website <https://www.gov.pl/web/sprawiedliwosc/standardy-ochrony-maloletnich---wytoczne>

Issues to be addressed:

Implementing standards for the protection of minors and treating them as a 'living tool' rather than yet another redundant document. Raising awareness of the importance and value of standards for the protection of minors. **Actions to be taken:**

1. A public awareness campaign to promote standards for the protection of minors, their educational function, and their importance in preventing harm,
2. Conducting inspections to improve the implementation of standards for the protection of minors.

ASSESSMENT

Assessment of criterion 2.

There is a lack of effective and practical complaints mechanisms in schools, as well as in immigration procedures.

Establishing a child-friendly justice system in practice

A. A child-friendly approach for all children, in all proceedings and at all times

1. Children have access to legal support and legal aid

A system of free legal aid, free civic advice and legal education.

In Poland, there is a system of free legal aid (NPP). This is a public initiative aimed at ensuring equal access to justice for all residents of Poland. It is therefore aimed at people whose circumstances do not allow them to use the services of a lawyer on a fee-paying basis. Access to the scheme is conditional upon submitting a declaration stating that you are unable to bear the costs of paid legal assistance.

The free legal aid system consists of:

- free civic advice;
- free legal aid;
- free mediation.

Free legal aid covers:

- 1) informing a natural person of the current legal situation and their rights or obligations, including in connection with pending preparatory, administrative, judicial or administrative court proceedings; or
- 2) advising the eligible person on how to resolve their legal problem, or
- 3) drafting a letter in the matters referred to in points 1 and 2, excluding pleadings in pending preparatory or court proceedings and letters in pending administrative court proceedings, or
- 4) free mediation, or
- 5) drafting a letter requesting exemption from court costs or the appointment of a court-appointed representative in court proceedings, or the appointment of a solicitor, legal adviser, tax adviser or patent attorney in administrative court proceedings, and providing information on the costs of the proceedings and the financial risks associated with taking the matter to court.

Free civic advice comprises activities tailored to the individual circumstances of a natural person, aimed at raising that person's awareness of their rights or obligations and supporting them in resolving the problem independently, including, where necessary, drawing up an action plan together with that person and assisting in its implementation. Free civic advice includes, in particular, advice for people in debt and advice on housing and social security matters. Free civic advice also includes free mediation.

The system is open to persons under the age of 18. However, the situation varies in the case of persons lacking legal capacity, and therefore, inter alia, minors under the age of 13 and other persons with limited legal capacity.

A problematic issue regarding the use of the free legal aid system is the submission of a declaration stating that one is unable to bear the costs of paid legal assistance. It must be recognised that such a declaration constitutes a legal act. Under Polish law, persons under the age of 13 cannot validly submit the aforementioned declaration, as they have no legal capacity whatsoever. For this reason, if such persons wish to avail themselves of assistance under the free legal aid system, they must attend the consultation in the presence of a parent, guardian, legal representative or other representative, who will submit such a declaration.

Conversely, persons over the age of 13 may avail themselves of free legal aid – provided that the assistance provided under the scheme relates to matters in which they have legal capacity. Persons aged 13–18 may therefore independently access the system's support in matters of daily life. The service provider should inform such a person of the rules for using the system and explain the purpose of the declaration regarding the inability to bear the costs of paid legal aid. On the basis of this information, the minor should decide whether or not to make the declaration. In more serious cases, the involvement of the person's legal guardian will be necessary.

From 2022, specialist consultation hours have been introduced at selected Free Legal Aid and Free Citizens' Advice centres. Specialisation involves identifying a specific area of law or issue to which the advice relates, or a specific group of people entitled to receive assistance.

Consultation hours specifically aimed at minors include:

- Support for victims of violence, particularly women and children;
- Support for parents raising children with disabilities;
- Family law;
- Support for victims of crime;
- Assistance for young people, particularly minors.

Rok	Liczba porad NPP i NPO	W tym NPP	W tym ilość porad udzielonych osobom poniżej 18 roku życia	Procent porad dla małoletnich
2022	459 779	369 443	389	0,10%
2023	509 165	416 200	393	0,09%
2024 (3 kwartały)	382 149	313 379	296	0,09%

Civil proceedings

Minors may be a party to litigation (e.g. for payment) or a participant in non-contentious proceedings (e.g. regarding the division of an estate). However, minors are not participants in guardianship cases, e.g. concerning the restriction of parental authority or contact arrangements, even though the outcome of the case affects their rights.

The rules of civil procedure do not provide for specific arrangements regarding legal representatives for persons under the age of 18. There is no statutory obligation to appoint a legal representative ex officio for minors who are parties to proceedings.

In civil proceedings, there are two types of legal representatives: appointed by the party and appointed by the court.

A party exempted by the court from court costs in whole or in part may request the appointment of a solicitor or legal adviser. This right also applies to a party not exempt from court costs if they can demonstrate that bearing the costs of legal assistance would result in a loss of the necessary means of support for themselves and their family. This

declaration (the same as that submitted with an application for exemption from court costs) is drawn up in accordance with a set template.

If a child is a party to legal proceedings or a participant in non-contentious proceedings and neither parent is able to represent them, the court will appoint a representative for the child.

In civil cases, the child's representative may be:

- a barrister or solicitor who demonstrates particular expertise in cases concerning children, of the same type or of a similar nature to the case in which the child's representation is required, or who has completed training on the principles of child representation, children's rights or children's needs.
- another person with a higher legal education who demonstrates knowledge of the child's needs, provided that the complexity of the case does not require otherwise, in particular where the guardianship court specifies the details of the proceedings;
- a person without a higher legal education, if specific circumstances so warrant.

If the child's mental development, state of health and level of maturity so permit, the child's representative is obliged to establish contact with the child and inform them, in a manner that is understandable and appropriate to their level of development, of the actions being taken, the course of the proceedings and how they will be concluded, as well as the consequences of the actions taken for their legal situation.

The child's representative is appointed from a list of child representatives. This matter is regulated by the Regulation of the Minister of Justice of 29 July 2024 on the manner of ensuring the representation of a child by a child representative. Lists of child representatives are drawn up on the basis of lists submitted by district bar councils and district chambers of legal advisers, which, when determining whether a solicitor or legal adviser demonstrates knowledge of the rights or needs of the child, take into account in particular the following, as declared by the solicitor or legal adviser:

- 1) completion of studies in the field of children's rights and the principles of child representation;

- 2) having completed training in children's rights and the principles of representing children organised by bar councils, chambers of legal advisers, the Ombudsman for Children and the Ministry of Justice;
- 3) holding an academic degree based on a thesis on children's rights in family law (personal or property matters) or in other areas of law;
- 4) having published academic works, commentaries or popular works on the subject of children's rights in family law (personal or property matters) or in other areas of law;
- 5) teaching at a higher education institution, delivering lectures to trainee solicitors, and conducting training courses organised by bar or solicitors' associations on children's rights in family law (personal and property law) or other areas of law;
- 6) experience in work related to childcare, upbringing or the protection of children.

It is difficult to assess the impact of these provisions on the provision of legal support by children's representatives due to the short period during which they have been in force.

Criminal proceedings

Children who are victims of crime

A minor cannot take action independently in criminal proceedings. As a rule, a legal representative (a parent or guardian) acts on their behalf.

A victim has the right, but not the obligation, to have a legal representative – a solicitor or barrister. The legal representative may participate in the case, or may be appointed for a specific action, such as attending an inspection.

The Code of Criminal Procedure provides for:

- a representative appointed by choice – in the case of a minor, the representative is appointed by a parent or guardian, or
- a court-appointed representative – appointed by the court at the request of the victim (in the case of a minor, at the request of their parent or guardian). The right to a court-appointed representative does not mean that one will always be appointed by the court. The court will appoint such a representative if the victim duly demonstrates that they are unable to bear the costs of legal representation without compromising their own and their family's essential livelihood.

A court-appointed representative is selected from a list drawn up by the president of the court. The regulations do not set out any specific requirements regarding representatives for children (persons under the age of 18).

If neither parent is able to represent a child under their parental authority (e.g. the parent in question is a suspect, or the other parent is a suspect), the guardianship court appoints a representative for that child. In criminal cases, this can only be a barrister or a solicitor. It is a requirement that they demonstrate specific knowledge of cases concerning children, of the same type or of a similar nature to the case in which the child's representation is required, or that they have completed training on the principles of representing children, or on children's rights or needs.

If the child's mental development, state of health and level of maturity permit, the child's representative is obliged to establish contact with the child and inform them, in a manner that is understandable and appropriate to their level of development, about the actions being taken, the course of the proceedings and how they will be concluded, as well as the consequences of the actions taken for their legal situation.

Children suspected of or accused of committing a crime

In criminal proceedings, if the suspect or accused is under 18, they must have a defence lawyer.

This may be a defence lawyer chosen by the suspect/accused (in the case of a minor, by their parent or guardian) or a court-appointed defence lawyer. If a suspect/accused under the age of 18 does not have a chosen representative, a court-appointed defence lawyer must be appointed for them. The suspect's or defendant's financial situation is irrelevant in this regard. A court-appointed defence lawyer is selected from a list drawn up by the president of the court. The regulations do not impose any specific requirements regarding defence lawyers for persons under the age of 18.

Proceedings under the Act on the Support and Rehabilitation of Minors

Children charged with demoralisation

In proceedings under the Act on the Support and Rehabilitation of Minors, a minor has the right to be assisted by a defence counsel. This may be a defence counsel of their

own choosing or a court-appointed defence counsel. However, it is not mandatory for a minor to have a professional legal representative in all cases.

If the interests of the minor and those of their parents or guardian conflict, and the minor does not have a defence counsel, the family court appoints a court-appointed defence counsel for them.

The family court appoints a court-appointed lawyer for the minor if the minor does not have a lawyer and, at the same time:

- 1) is deaf, mute or blind, or
- 2) there is reasonable doubt as to whether his or her mental health permits participation in the proceedings or the conduct of a defence in an independent and reasonable manner, or
- 3) a temporary measure has been applied to the minor:
 - temporary placement in a professional foster family;
 - temporary placement in a youth care centre;
 - temporary placement in a district educational centre;
 - temporary placement in a medical facility;
 - placement in a shelter for minors;
- 4) there is reasonable suspicion that the minor has committed an offence constituting a crime or a punishable act as defined in Article 163(1) or (3), Article 166(1), Article 173(1) or (3), Article 197(1), Article 223(2) or Article 280(1) of the Criminal Code, or
- 5) there are other circumstances which the family court considers to hinder the minor's defence.

The minor or his or her parents or guardian may apply for the appointment of a court-appointed defence counsel for the minor. The family court shall grant the application if it considers the participation of a defence counsel in the case to be necessary, and:

- 1) the minor or his or her parents or guardian are unable to bear the costs of the chosen defence counsel without compromising their own or their family's essential living expenses, or
- 2) there are other special circumstances.

4. If, in the cases referred to in paragraphs 1 and 2, the minor has appointed a defence counsel and the defence counsel or the minor terminates the defence relationship, the family court shall appoint a defence counsel for the minor ex officio, provided that the minor has not appointed a defence counsel.

Administrative proceedings

The Code of Administrative Procedure does not contain specific provisions concerning representatives for persons under the age of 18.

In such proceedings, a party may be represented by a representative, unless the nature of the proceedings requires the party to act in person. A party's representative may be a natural person with legal capacity (this may be a solicitor, a legal adviser, or an adult natural person who is not a solicitor or legal adviser).

The public administration body before which the proceedings are taking place shall apply to the court for the appointment of a representative for a child – a party to the proceedings who lacks legal capacity due to being a minor – if the child has no representative.

Provisions relating to foreign minors are contained in the Act on the Granting of Protection to Foreigners on the Territory of the Republic of Poland . Pursuant to Article 61 thereof, where an unaccompanied minor has declared to the Border Guard that they intend to apply for international protection, that authority shall take the following steps:

a) it shall immediately apply to the guardianship court for the appointment of a guardian for that minor to represent him or her in proceedings concerning the granting of international protection, transfer to another Member State pursuant to Regulation 604/2013, the provision of social assistance and assistance with voluntary return to the country of origin, and to represent him or her in proceedings before the administrative court in these matters,

(b) placing him in foster care.

Comments:

With regard to the Free Legal Aid system, the Children's Ombudsman has raised objections, arguing that the provisions defining who is eligible for FLA are not precise.

The Ombudsman proposes that it be explicitly stipulated that free legal aid and free civic advice should be available to an eligible person with at least limited legal capacity who is unable to bear the costs of paid legal aid, including a natural person running a sole proprietorship who has not employed others during the past year.
<https://brpd.gov.pl/2024/10/24/dziecko-tez-moze-potrzebowac-pomocy-prawnej/>

Infringement proceedings are currently underway concerning the incorrect transposition of Directive 2016/800, and the Ministry of Justice has prepared an impact assessment of the judgment of the Court of Justice of the European Union in Case C-603/22. In connection with the proceedings concerning the incorrect transposition of Directive 2016/800, legislative amendments in this regard are planned.

The legislative changes necessary for the full implementation of Directive 2016/800 and the CJEU judgment are already part of the draft act amending the Criminal Code, the Code of Criminal Procedure and certain other acts (UD153), which was drawn up in cooperation with experts from the Ministry of Justice and the Commission for the Codification of Criminal Law (). The draft is currently at the consultation stage.
<https://legislacja.gov.pl/projekt/12390959/katalog/13091027#13091027>

The provisions of the draft include, respectively, an amendment to the wording of Article 79 of the Code of Criminal Procedure and the addition of § 3a, which provides for the participation of a defence counsel appointed for a suspect under the age of 18 until the proceedings are finally concluded, unless the court rules that the participation of a defence counsel is not mandatory once the accused has reached the age of 21. The draft also includes an amendment to the wording of Article 301 of the Code of Criminal Procedure and the addition of Article 301a of the Code of Criminal Procedure. The drafters' intention is to appoint a defence counsel for a suspect under the age of 18 and to make the participation of a defence counsel mandatory from the very first interrogation. The draft also includes an obligation to provide information on the rights and obligations to the suspect's legal representative or the person under whose care the suspect remains (amendment to Article 300(1) of the Code of Criminal Procedure).

Issues to be resolved:

Lack of consistent legislative solutions regarding the representation of children in civil, criminal and administrative proceedings.

With regard to the guardian appointed under the Act on the Granting of Protection to Foreigners within the Territory of the Republic of Poland, shortcomings include the narrow scope of representation, the failure to specify any requirements for candidates for the role of guardian, and the lack of guidelines for the guardianship court regarding the supervision of the performance of this function.

Actions to be taken:

1. Full implementation of Directive 2016/800.
2. Drafting provisions such that where proceedings concern the welfare of a child (or may affect their interests), the child is granted a status entitling the authority to appoint a professional representative for them (with specialist knowledge of children's affairs).
3. Introduction of legislative measures concerning the representation of children in civil, criminal and administrative proceedings, ensuring a uniform standard of respect for their rights (this refers to both the representation of the child as a legal representative and as a guardian ad litem).

Assessment of criterion: 1. Legal aid, representation and support are not provided to the child in all types of proceedings (in fact, only to a limited extent in criminal and civil proceedings – in matters relating to family and guardianship law, as already mentioned when discussing the institution of the child's representative).

2. Children are assessed using an integrated multidisciplinary approach

In accordance with Article 72 of the Constitution, the Republic of Poland ensures the protection of children's rights. Everyone has the right to demand that public authorities protect children from violence, cruelty, exploitation and demoralisation. In determining the rights of the child, public authorities and those responsible for the child are obliged to listen to and, as far as possible, take into account the child's views.

Civil proceedings

In cases conducted under civil procedure (cases concerning divorce, in which the court rules on child custody; cases concerning the deprivation of parental authority; and cases concerning the restriction of parental authority), this principle is reflected in Article 216¹ and Section 576(2) of the Code of Civil Procedure. In accordance with these provisions, the court shall hear the child if their mental development, state of health and degree of

maturity so permit. Furthermore, the court shall, having regard to the circumstances, the child's mental development, state of health and degree of maturity, take into account their views and reasonable wishes.

The overriding principle in the above-mentioned cases is the principle of the child's best interests; however, this is not defined, and in each case the court determines what is in the child's best interests in that specific case. The court always has the option of seeking the opinion of an expert (e.g. a psychologist) in order to assess the child's situation and needs.

Criminal proceedings

In criminal proceedings, the court takes into account the interests of persons under the age of 18. The provision under Article 54(1) of the Criminal Code states that when imposing a sentence on a minor or a young person, the court is guided primarily by educational considerations. Furthermore, a life sentence shall not be imposed on an offender who was under 18 at the time of committing the offence.

The provisions also expressly provide for the possibility of deviating from the penalties prescribed in the Criminal Code and applying measures under the Act on the Support and Rehabilitation of Minors.

A person who commits a prohibited act after reaching the age of 17 is liable under the rules set out in this Code. In the case of an offender who committed an offence after reaching the age of 17 but before reaching the age of 18, the court shall, instead of a sentence, apply educational, therapeutic or corrective measures provided for minors, if the circumstances of the case and the offender's level of development, character and personal circumstances so warrant.

Persons under the age of 17 – 14, 15 and 16-year-olds – may be held liable under the rules set out in the Criminal Code in specific cases.

In both of the above cases, the court may apply extraordinary mitigation of the sentence. The court may also apply extraordinary mitigation of the sentence in respect of a juvenile if the grounds set out in Article 54 § 1 of the Criminal Code (educational considerations) so warrant.

Extraordinary mitigation of punishment consists of imposing a sentence below the lower limit of the statutory penalty, a less severe type of punishment, or refraining from

imposing a sentence and instead ordering a penal measure, a compensatory measure or forfeiture.

Actions to be taken:

The introduction into criminal procedure regulations of an obligation to provide substantive grounds for procedural decisions (which strengthens the procedural guarantees of the parties to the proceedings, in particular the juvenile victim, and the possibility of appealing against the judgment), in particular procedural decisions where the court makes use of the institution of extraordinary mitigation of the penalty on the grounds that the lowest possible penalty would be disproportionately severe. This leads to a situation where excessively lenient sentences are imposed, which the court – in substance – often fails to justify at all, thereby preventing the juvenile victim from appealing against the ruling in this respect.

Assessment:

Criterion rating – 1, there is a lack of an interdisciplinary approach, as there is no requirement to seek interdisciplinary opinions regarding the child in the proceedings, particularly at the stage of proceedings concerning demoralisation.

3. Effective and meaningful (in terms of the proceedings) participation of children throughout the proceedings.

Civil proceedings

In civil proceedings, a child who is a party to the proceedings or a participant in non-contentious proceedings may be heard, in accordance with general principles (if, after all means of evidence have been exhausted or in the absence thereof, facts relevant to the resolution of the case remain unexplained, the court may admit evidence from the hearing of the parties to clarify those facts).

The Code of Civil Procedure also provides for a hearing in:

- 1) Article 216¹ - According to this provision, in cases concerning a minor child, the court shall hear the child if their mental development, state of health and degree of maturity so permit. This provision applies in proceedings (in cases concerning divorce, separation, the establishment or denial of a child's parentage, the annulment of the recognition of a child or the dissolution of an adoption).
- 2) Article 576 § 2 - According to its provisions, in cases concerning a child's person or property, the court shall hear the child if their mental development, state of health and degree of maturity so permit. This provision applies in family and guardianship matters conducted in non-contentious proceedings.

From 15 August 2023, if the court has decided not to hear the child, it is obliged, at the latest before the conclusion of the proceedings, to state in the minutes of the hearing or session the reasons why this procedure was not carried out. This provision was introduced in response to calls from, amongst others, non-governmental organisations, which highlighted the omission of this procedure and, consequently, the child's views during proceedings. Currently, in every case, the court must assess whether the child should be heard; it can no longer fail to carry out this procedure without providing any justification.

The manner of preparing and conducting a child's hearing, as well as the conditions to be met by the premises designated for such hearings, are set out in the Regulation of the Minister of Justice of 21 October 2024. It is case-specific and is therefore regarded as having educational value. It sets out what needs to be established before a decision is made regarding the hearing of a child (including the manner in which the child

communicates with their surroundings and how the child functions in areas relevant to establishing contact with them and conducting the hearing, including the time of optimal cognitive activity), how to schedule the hearing and how to ask questions. The Regulation takes into account the child's needs arising from their age and those related to mental or developmental disorders.

Criminal proceedings:

Victim and witness

In the case of victims and witnesses, the Code of Criminal Procedure provides for two modes of questioning: ordinary and special (so-called 'protective')

Ordinary procedure

A witness (including one who is also a victim) is examined where this is possible (taking into account age and state of health) and justified (e.g. in a case concerning non-payment of maintenance, there is generally no need to examine the child victim). If the victim is under 18 years of age, proceedings involving them should, as far as possible, be conducted in the presence of a legal representative, actual carer or an adult designated by the person being interviewed, unless the interests of the proceedings preclude this or the person being interviewed objects.

The regulations allow the venue and method of the interview to be adapted to the victim's or witness's circumstances. It may take place at their place of residence or via videoconference.

Special procedure

A victim or witness is examined only if their testimony may be of material significance to the resolution of the case and only once, unless material circumstances come to light which require a re-examination, or if a motion for evidence is granted by the defendant who did not have a defence counsel at the time of the victim's first examination.

The manner of preparing and conducting interviews under this procedure, as well as the conditions to be met by the premises designated for conducting such interviews, are laid down in a regulation of the Minister of Justice. It precisely regulates the role of the psychologist and takes into account the needs of children with developmental disorders.

Suspect/accused

During the investigation or inquiry, the suspect may be accompanied by a legal representative (parent, guardian) or a person under whose care they remain, or an adult of their choice. At the request of the suspect/accused, a legal representative (parent, guardian) or a person under whose care they remain may be present during a court hearing or trial. If the suspect/defendant has no such person, or if the presence of such a person may infringe upon their rights or interests, is not in their best interests, prevents the hearing or trial from taking place, or significantly hinders it, the suspect/defendant may designate another adult. If they do not designate such a person, or if they do but the person's presence may infringe upon their rights or interests, is not in their best interests, prevents the hearing or trial from taking place, or significantly impedes it, the presiding judge shall appoint a family assistant for the suspect/defendant.

Issues to be addressed:

The marginal involvement of children in family proceedings.

Actions to be taken:

Raising judges' awareness to strengthen the weight given to the child's reasonable wishes and expressed views in the judgment; increasing the child's participation and opportunities for representation and access to legal and psychological support during the proceedings, at all stages (cf. assessment of criteria above).

ASSESSMENT

Assessment of criterion - 2.

4. Measures are taken to avoid unnecessary delays in proceedings involving children

In accordance with the Regulation of the Minister of Justice of 18 June 2019 on the Rules of Procedure of the Ordinary Courts, urgent cases include:

- offences under Chapter XXV of the Criminal Code, i.e. against sexual freedom and public decency;
- the examination of a witness by the court pursuant to Articles 185a–185c and 185e of the Code of Criminal Procedure;
- cases concerning the removal of a person subject to parental authority or under guardianship, requiring an order to be issued under Article 569 § 2 of the Code of Civil Procedure; cases concerning the placement of a minor in a juvenile detention centre, cases in which a minor has been placed in a juvenile detention centre, and cases concerning the placement of a foreign minor in a care, as well as enforcement proceedings in the aforementioned cases, and cases concerning the examination of applications for the appointment of a guardian to represent the interests of minors in proceedings before a court or other authority.

Urgent cases are assigned to judges immediately; furthermore, they are scheduled for hearings or sittings out of turn (as a general rule, cases should be heard in the order in which they are received by the relevant division).

Notes:

1. The examination of a minor witness/victim within the 14-day period specified in Article 185a-c and e of the Code of Criminal Procedure is, in many courts, impossible due to the limited availability of court-appointed experts in the field of psychology is impossible to carry out.
2. It should be ascertained whether statistics exist in this regard to determine the scale of the phenomenon.
3. Work is currently underway at the Ministry of Justice on a bill concerning court experts and expert assessment bodies.

Issues to be resolved:

1. Introducing legislation on the institution of court experts as soon as possible.
2. Changes to the jurisdiction of the courts – the Family Law Codification Commission is working on amendments in this area, including enabling court assessors and court clerks to adjudicate in family and guardianship cases (the latter group already supports Family Divisions in some courts within the scope of their existing powers), supporting judges with an adequate number of assistants.
3. Consideration should be given to the possibility of classifying as urgent cases those concerning the placement of minors in any form of foster care, rulings on the most important matters concerning minors in foster care (e.g. regarding decisions to extend a foster carer's powers to decide on treatment, therapy and rehabilitation of the child in their care) and cases concerning adoptions.

Actions to be taken:

Access to specialist court experts in the field of psychology should be improved.

ASSESSMENT

Assessment of criterion - 2. This is due to the fact that some cases are of an urgent nature. Nevertheless, this does not always translate into a swift conclusion of the case.

In other respects, it is necessary to implement the changes proposed above.