



# Fair Trial for Children in Conflict with the Law in Europe and Central Asia



“Respecting the rights of girls/boys in conflict with the law and the legal guarantees during trial will ensure that girls/boys feel comfortable, supported and fairly treated by the court and other professionals involved in the process.”

## Table of contents

1.	<b>Guarantees for a fair trial in cases of children in conflict with the law</b>	<b>2</b>
2.	<b>References on fair trial</b>	<b>8</b>



© UNICEF/UN0632762/GILBERTSON VII PHOTO



## 1. Guarantees for a fair trial in cases of children in conflict with the law

Article 40(2) of the Convention on the Rights of the Child (1989) contains the **rights and guarantees aimed at ensuring that every child receives fair treatment and trial**.<sup>1</sup> The listed rights and guarantees are minimum standards and States Parties are encouraged to establish and observe higher standards.<sup>2</sup>

The Child Protection Law (2005) of **Türkiye** sets out the overall child protection system as well as the specific procedures for children in conflict with the law. Article 4 covers the fundamental principles to be applied in cases of children in conflict with the law. The best-interest principle is used as a basis for mainstreaming the social inquiry reports in Türkiye. All fair trial safeguards are stipulated in the Turkish Criminal Procedure Law (2005) and the Child Protection Law (2005). Moreover, legal aid is free and accessible to all children who are in contact with the criminal justice system in Türkiye.

- **No retroactive application of child justice:** No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed. Children in conflict with the law should not be punished with a heavier penalty than the one applicable at the time of the offence. For example, if governments expand their criminal law provisions to prevent and combat terrorism, they have to ensure that those changes do not result in the retroactive or unintended punishment of children. However, if there is a change of law after the offence that provides for a lighter penalty, the child should benefit.
- **Presumption of innocence:** Every child alleged to have or accused of having infringed the penal law is guaranteed “to be presumed innocent until proven guilty according to law. Children in conflict with the law have the benefit of the doubt and are guilty only if the charges have been proved beyond reasonable doubt. Suspicious behaviour on the part of girls/boys

1 See also: Article 14(2) of the International Covenant on Civil and Political Rights, 1966; Article 11 of the Universal Declaration of Human Rights, 1948. The fair trial rights discussed in this section apply to children in conflict with the law. However, respecting the rights of children in conflict with the law should never undermine or in another way negatively affect the rights of (child) victims involved in the case.

2 Beijing Rules, 1985; Convention on the Rights of the Child, 1989; Vienna Guidelines, 1997; Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, 2010; Model Law on Justice in Matters Involving Children in Conflict with the Law, 2013; Guidelines on Children in Contact with the Justice System, 2017; General Comment No.24, 2019.

Military Courts rarely have specialized child justice expertise and often fail to meet basic standards of due process. The Human Rights Committee has expressed concern regarding the jurisdiction of military courts over children, noting violations of fair trial guarantees and fundamental safeguards such as interrogation in the absence of a lawyer, torture and forced confessions, arbitrary sentences, and the limited right of appeal against military court decisions. The Committee on the Rights of the Child has also recommended that the use of military courts for criminal proceedings against children be avoided (paragraph 96 of General Comment No.24, 2019).



should not lead to assumptions of guilt because their behaviour may be due to a lack of understanding of the process, immaturity, fear or other reasons. The prosecution has the obligation of proving beyond reasonable doubt that the girl/boy has committed the offence. Should any reasonable doubt exist about her/his guilt, the child must be acquitted. Even in cases where the prosecution's evidence might be stronger than that of the defence, the child must be given the benefit of the doubt.

- **Right to be heard during trial:** Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact. Children in conflict with the law have the right to remain silent and no adverse inference should be drawn when they choose not to make statements.

---

Very recently, **Uzbekistan** amended the 'Law of Uzbekistan on the Guarantees of the Rights of the Child' with regard to the right to be heard (article 15). The right to be heard was already incorporated in national legislation but, through the amendment, the legislator reinforced the right by emphasizing that any child despite her/his age should be heard in any judicial or administrative proceedings. Article 15 states that *"[b]odies and officials authorized to make decisions should consider the child's opinion, regardless of his age, and make decisions based on the best interests of the child."*

---

- **Effective participation in trial proceedings:** A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice process. To effectively participate, children in conflict with the law need to be supported by all professionals to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. The proceedings need to be conducted in a language the child fully understands, or an interpreter is to be provided free of charge, and in an atmosphere of understanding to allow girls/boys to fully participate. Consideration should also be given to the fact that a child's attention span is likely to be less than that of an adult, and that as a result the child will need frequent breaks from proceedings. The same holds true for children who suffer from poor health.
- **Prompt and direct information of the charge(s):** Every child has the right to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians.



---

In some countries, it is explicitly stated in national law that children at/above the minimum age of criminal responsibility who have committed an offence together with an adult offender(s) should be tried by the Child Court and not be transferred to the Criminal Court. In **Kyrgyzstan**, for example, article 459 of the Criminal Procedure Code states that *“The case in relation to a child who participated in the commission of a crime together with an adult is separated into a separate proceeding in accordance with the procedure established by Article 142 of the Code.”* In **Kyrgyzstan**, the minimum age of criminal responsibility is 14 years. There are no Child Courts in the country, but all judges and all free legal aid lawyers have been trained in child-friendly procedures. Moreover, article 78(3) of the Criminal Procedure Code (28 Oct. 2021 #129 in edition of 18 Jan. 2022 #4) states that judges are obliged to place children in a special waiting room pending trial proceeding and to conduct their activities in relation to children in specially equipped rooms in accordance with the standard of the Kyrgyz Republic.

---

The Criminal Procedure Code (2009) of **Tajikistan** incorporates various rights for accused children. For example, article 47 states that accused children have the right to information and to be heard. Accused children have the right to testify or not to testify, and to be informed about this right before the investigative interview starts. They are also informed about what they are accused of and get a copy of the rulings, and that they have to testify on the charge(s) brought against them, to provide evidence, to make petitions, to testify in their native language or in a language they speak, to use the services of an interpreter for free, and to have a lawyer from the moment of arrest.

---

Prompt and direct information about the charge(s) is a basic requirement to enable children to prepare their defence. Promptly means as soon as possible after the first contact of the girl/boy with the justice system. Professionals should not neglect to notify the child’s parents/caregivers on the grounds of convenience or resources. Authorities should ensure that the child understands the charges, options and processes. Providing girls/boys with an official document is insufficient; an oral explanation is necessary. Although children in conflict with the law should be assisted in understanding any document by a parent/appropriate adult, professionals should not leave the explanation of the charges to them.

- **Legal or other appropriate assistance:** States should ensure that children in conflict with the law are guaranteed *“legal or other appropriate assistance* from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted. The Committee on the Rights of the Child requests governments to withdraw any reservation made in respect of providing girls/boys with legal or other appropriate assistance. Many children in conflict with the law face criminal charges and are deprived of liberty without having the benefit of legal representation. While international legislation allows children to defend themselves in person, girls/boys should be assigned legal assistance in any case where the interests of justice so require. It is recommended to provide effective legal representation to all girls/boys who are facing criminal charges, free of charge, and throughout



all stages of the proceedings. Child justice systems should not permit children to waive legal representation unless such a decision is made voluntarily and under impartial judicial supervision. In cases where there is, or could be, a conflict of interest between children and their parents/caregivers or any other party, girls/boys must have their own counsel and representation in their own name. There should be adequate time and facilities for the preparation of the defence. The confidentiality of communications between the child and her/his legal representative or other assistant has to be guaranteed. In particular, legal representatives and assistants should:

- Provide children with all necessary information
- Advise and guide children throughout the proceedings
- After consulting with the child, express her/his views to the court or other authorities
- Be present throughout the proceedings, including interviews by police/other law enforcement authority whenever applicable

Beyond this strictly legal role, legal assistants and representatives should be aware of the needs of children for general and psychological support throughout the proceedings and they should contribute to such support.<sup>3</sup>

The Law on Child Rights Guarantees (2015) of **Turkmenistan** aligns to a large extent with the Convention on the Rights of the Child (CRC) and is inclusive of children in conflict with the law. The general rights of children in conflict with the law are regulated by the Criminal Procedure Code (Chapter 49) (2009) and the Criminal Code (Chapter 13) (adopted in 2022) as well as the Supreme Court Resolution No 7 (2020) which is entirely devoted to children in conflict with the law. The Criminal Procedure Code sets strict time limits. The investigators must inform the prosecutor of an arrest within 24 hours, and he/she must decide within 48 hours whether or not to detain a minor. A charge should be brought within 10 days; detention is limited to 2 months; extension (by the prosecutor) is possible, but for children is limited to 6 months. In practice, pre-trial detention is very rarely prolonged for more than 2 months. The procedural rights as listed in article 40 of the CRC are widely granted in criminal proceedings, including mandatory and free legal assistance. Additionally, parents/legal representatives should participate in interviews and hearings, unless against the interests of the child or the investigation, and in their absence, representatives of guardianship authority should be involved.

---

3 The Convention on the Rights of the Child requires that children in conflict with the law are provided with assistance, which is not necessarily under all circumstances legal, but it must be appropriate. It is left to the discretion of States Parties to determine how this assistance is provided, but it should be free of charge. The Committee recommends the States Parties provide adequately trained legal assistance, such as expert lawyers or paralegal professionals, wherever possible. Other appropriate assistance is possible, for example by social workers, but that person must have sufficient knowledge and understanding of the various legal aspects of the child justice process and must be trained to work with children in conflict with the law. In any case, children should not be deprived of the right to have legal assistance simply because other assistance is available.



The Constitution of **Ukraine** and the Law of Ukraine on Free Legal Aid, adopted in 2011 (with changes as of 2022), state that all children are eligible to free legal aid, both first and secondary legal aid. Any child suspected of having committed a criminal offence automatically receives legal aid. Children that fall under other categories have to request aid either through the legal representative or themselves (from 14 years of age).

- **Free assistance of an interpreter:** Children have the right to the free assistance of an interpreter if the child cannot understand or speak the language used. Interpreters should be trained to work with children in conflict with the law. Also, children who experience any other communication barriers need to be provided with adequate and effective assistance by well-trained professionals.<sup>4</sup>
- **Decisions without delay:** Allegations or charges against children should be determined without delay. The Committee on the Rights of the Child recommends setting and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to institute charges, and the final decision by the court or other judicial body. These time limits should be shorter than those set for adults, but should still allow legal safeguards to be fully respected. Similar time limits should apply to diversion measures. There is no standard definition of what constitutes ‘delay’, but it is generally accepted that ‘reasonable delay’ when applied to a child in conflict with the law is a shorter time than that which is reasonable for an adult in conflict with the law.<sup>5</sup>
- **Decisions with the involvement of parents or guardians:** Proceedings for children should take place in the presence of their parents or legal guardians. The judge or competent authority may decide to limit, restrict or exclude the presence of parents/caregivers in the proceedings at the request of the child or of her/his legal or other appropriate assistant or because it is not in the child’s best interests. The Committee on the Rights of the Child recommends to explicitly legislate for the maximum possible involvement of parents/caregivers in the proceedings because they can provide general psychological and emotional assistance to the child and contribute to effective outcomes. The Committee also recognizes that many children are informally living with relatives who are neither parents nor legal guardians, and that laws should be adapted to allow genuine caregivers to assist children in proceedings if parents are unavailable.

4 UNICEF EAPRO, *Framework and implementation on the right of children to participate in justice proceedings through the usage of a language they understand*, Bangkok, 2022. (draft)

5 Hamilton, C., *Guidance for Legislative Reform on Juvenile Justice*, UNICEF & Children’s Legal Centre, 2011.



- **Freedom from compulsory self-incrimination:** Children in conflict with the law have the right not to be compelled to give testimony or to confess guilt. The term ‘compelled’ should be interpreted broadly and not be limited to physical force. The commission of acts of torture or cruel, inhuman or degrading treatment in order to extract an admission or confession constitutes a grave violation of the child’s rights. Any admission or confession in such circumstances is inadmissible as evidence. The risk of false confession is increased by the child’s young age and development, lack of understanding, and fear of unknown consequences, including a suggested possibility of imprisonment, as well as by the length and circumstances of the questioning. Police officers and other investigating authorities should be well trained to avoid questioning techniques and practices that result in coerced or unreliable confessions or testimonies. Audio-visual techniques should be used where possible. The court, when considering the voluntary nature and reliability of an admission or confession by a child, should take all these factors into account, including the child’s age and maturity, the length of questioning or custody and the presence of legal or other independent assistance and of the parent(s), guardian or appropriate adult.
- **Presence and examination of witnesses:** Children in conflict with the law have the right to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on their behalf under conditions of equality. Evidence presented in criminal trials relies to a very large extent on the contribution of witnesses who are called by the parties and may be examined and challenged by opposing parties. Fair proceedings require that this right to be granted equally to all parties, including girls/boys in conflict with the law.

---

Professionals have a role and responsibility to provide protection and support to children in the justice system, both to children in conflict with the law and child victims/witnesses of crime. UNICEF **North Macedonia**, in collaboration with the Ministry of Justice, the Ministry of Labour and Social Policy, the Ministry of Internal Affairs, the Academy for Judges and Prosecutors and the Police Training Centre, has introduced the trauma-informed approach to all professionals working with children in the (child) justice system. The training curriculum covers key issues such as understanding trauma from neurobiology to attachment trauma and vicarious trauma and burnout. The trained judges, prosecutors, police officers and social workers are working on embedding the training in their regular work in order to ensure that they understand and take into account the trauma that children have encountered. At the same time, the trauma-informed approach focuses on the professionals and their vicarious trauma, thus aiming to strengthen their mental health.

---



- **Right of review or appeal:** Children considered to have infringed the penal law have the right to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law. All children deprived of their liberty have the right to challenge the legality of the measure before a court or other authority, and to a prompt decision on any such action. The right of appeal applies just as much to pre-trial detention as it does to a custodial sentence. The right of review is not limited to the most serious offences. The Committee on the Rights of the Child recommends withdrawing any reservation made in respect of the right of review or appeal and to consider introducing automatic measures of review, particularly in cases that result in criminal records or deprivation of liberty.

## 2. References on fair trial

### International legal instruments:

- United Nations Universal Declaration of Human Rights (1948).
- United Nations International Covenant on Civil and Political Rights (1966).
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules).
- United Nations Convention on the Rights of the Child, 1989.
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules/JDLs).
- Guidelines for Action on Children in the Criminal Justice System, ECOSOC Resolution 1997/30 (Vienna Guidelines), 1997.
- Committee on the Rights of the Child, General Comment No.12, The right of the child to be heard, 2009.
- Committee on the Rights of the Child, General Comment No.14, The right of the child to have his or her best interests taken as a primary consideration (art.3 para1), 2013.
- Committee on the Rights of the Child, General Comment No.24, Children's Rights in Child Justice System, 2019.

### Other references:

- Hamilton, C., Guidance for Legislative Reform on Juvenile Justice, UNICEF & Children's Legal Centre, 2011.
  - International Working Group of the International Association of Youth and Family Judges and Magistrates (IAYFJM), Guidelines on Children in Contact with the Justice System, London, 2017.
  - UNICEF, Lost in the Justice System – Children in conflict with the law in Eastern Europe and Central Asia, UNICEF Regional Office for CEE/CIS & UNICEF Innocenti Research Centre, 2008.
  - UNICEF EAPRO, Framework and implementation on the right of children to participate in justice proceedings through the usage of a language they understand, Bangkok, 2022 (draft).
  - UNODC, Model Law on Justice in Matters Involving Children in Conflict with the Law, 2013.
- Preventing Youth Violence: An Overview of the Evidence, Geneva, 2015.

