



International legal framework and challenges of individual assessment of children in conflict with the law

Preliminary results of the PRACTICE project (implemented in Czechia and Slovakia)

Karolína Babická, International Commission of Jurists

This project is co-funded by
the European Union's Rights,
Equality and Citizenship Programme (2014-2020)



This conference is co-funded by
the European Union's Rights,
Equality and Citizenship Programme (2014-2020)



PRACTICE project

- **Individual assessment** in Article 7 Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings
- Jan 2020 – Dec 2021
- Baseline study: research in Belgium, the Netherlands, Finland and England and Wales
- National trainings for **Czech and Slovak** social workers, lawyers and judges
- Recommendations on the main principles governing the individual assessment of children in conflict with the law

ECSR collective Complaint No. 148/2017

International Commission of Jurists (ICJ) v Czech Republic

- Decision published in March 2021
- Submitted with the support of Forum for Human Rights
- Concerns children in conflict with the law **below** the age of criminal responsibility
- ECSR found a violation of Article 17 European Social Charter for
 - Lack of access to legal assistance
 - Lack of access to diversions



What is individual assessment?

Right to Individual assessment

Article 7 of [Directive \(EU\) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#)

Art 7.1: Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.

Art 7.2: (...) The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have

Art 7.4: Individual assessment serves the **purpose** of determining whether

- any **specific measures** to the benefit of the child are to be taken;
- assessing the appropriateness and effectiveness of any **preliminary measures**; and
- assisting in **taking any decisions in criminal proceedings**, including **sentencing**. ()

Art 7.5: In a **timely manner**, at the earliest appropriate stage of the proceedings, upon arrest and before child appears in court

Individual assessment

- Not a new concept, for over a century in child-justice systems
 - Aim: to find the most suitable measure for the child to contribute to re-education
- Initially not connected with a “rights-based” approach
 - CRC GC No 13: **shift away from child protection approaches** in which children are perceived and treated as “objects” in need of assistance rather than as rights holders entitled to rights to protection.



Individual assessment

Individual assessment for children

- As they are in a situation of vulnerability,
- As they are entitled to procedural rights and safeguards,
- For the especially high impact of judicial proceedings on children's life

If used well, it can:

- Increase **effective participation** of children

Determine **best interests** and protect them against **discrimination**

ve access to their **procedural rights**



International legal framework

International legal framework

International Covenant on Civil and Political Rights (ICCPR), UN HRC General Comments

UN Convention on the Rights of the child (CRC), UN CRC General Comments

UN Rules

European Convention on Human Rights (ECHR), ECtHR's case-law

European Social Charter (ESC), Case-law of the European Committee on social rights (ECSR)

Council of Europe Recommendations

Every child is entitled to a set of rights

- Right to life
- Right to liberty and security

Right to private and family life

Right to education

UN Convention on the rights of the child (CRC)

- Best interests of the child principle **Article 3**
- Right to participate and to be heard **Article 12**
- Non-discrimination **Article 2**
- Right to life, survival and development

Article 40

Children in conflict with the law

Children below the age of criminal responsibility

- May be rather a precarious situation
- May be subjected to formal proceedings, with lower level of protection of their procedural rights and safeguards
- Measures imposed may amount to deprivation of the child's liberty in a closed facility (educational or psychiatric)

***Blokhin v. Russia*, European Court of Human Rights (Grand Chamber) of 23/3/2016, application no. 47152/06**

***International Commission of Jurists (ICJ) v. the Czech Republic*, European Committee of Social Rights of 20/10/2020, complaint no. 148/2017**

- Civil classification of the proceedings not decisive
- Children below the age of criminal responsibility should not have less or weaker legal procedural protection than adults

Procedural rights and guarantees

Elements of **access to justice** for children: right to **information, an effective remedy, a fair trial, right to be heard**, enjoy these rights **without discrimination**

UN High Commissioner for HR Report on Access to justice for children A/HRC/25/35

Child-friendly justice is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child (...)

CoE Guidelines on child-friendly justice

Proceedings should be conducted in a **language** the child fully understand or an interpreter is to be provided free of charge, proceedings should be adapted incl accommodation for **children with disabilities**.

UN CRC General Comment No. 24

Procedural rights and guarantees

- Access to legal assistance (*Art 6.1 ECHR*)
 - Access to legal aid (*UN Principles and Guidelines on Access to Legal Aid*)
 - Access to information (*Art 40.2.b.ii CRC*)
 - Right to interpretation (*Art 14.3.f ICCPR, Art 6.3.e ECHR, Art 40.2.b.vi CRC*)
-
- From the earliest contact with the justice system

Individual assessment in international human rights standards

UN Standard minimum rules for the administration of juvenile justice (the Beijing Rules)

„Consider the background and circumstances in which the child is living“

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (‘The Havana Rules’)

„the child needs to be **interviewed as soon as possible** after the admission to a place where he/she is detained, and a (...) report must be prepared identifying any **factors relevant to the specific type and level of care and programmes that are required.**“

UN Committee on the Rights of the Child, General Comment No. 24

“individual assessments of children (...) are encouraged.”

European Court for Human Rights

T. and V. v. the United Kingdom and SC. v. United Kingdom, ECtHR

- “It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings”
- **“Procedures for the individual assessment** are required steps to promote children’s **understanding and effective participation during their criminal trial”**

Blokhin v. Russia, ECtHR

- “Authorities must deal with full consideration of the age, level of maturity and intellectual and emotional capacities of the child from the first stage of his/her involvement in a criminal investigation”

EU law

[EU Directive 2016/800](#) on procedural safeguards for children who are suspects or accused persons in criminal proceedings

- Article 7: Individual assessment

[EU Directive 2016/680](#) on the protection of natural persons with regard to the **processing of personal data** by competent authorities **for the purposes of the prevention, investigation, detection or prosecution of criminal offences** or the execution of criminal penalties, and on the free movement of such data

- Article 4: personal data should be
 - a) processed lawfully and fairly;
 - b) collected for specified, explicit and legitimate purposes and not processed in a manner that is incompatible with those purposes;
 - c) adequate, relevant and not excessive in relation to the purposes for which they are processed; (...)
- Article 14 further provides for a right of the data subject to information whether information is collected about them and they have the **right to access the data**, unless specific limitations apply (Article 15).



The challenges



This conference is co-funded by
the European Union's Rights,
Equality and Citizenship Programme (2014-2020)



Individual assessment challenges

- Lack of **participation** of the child – child as object / source of information
 - **Holistic approach** - various professionals speak with each other, but the child is excluded
 - Uncritical **institutional trust**
- Unclear rules of **exchange of information** among professionals, sources not adequately cited
 - Leading to multiplication of information
 - Child not **given access to the report**, nor the opportunity to comment in most cases
- Stereotypization
 - **The more structural deficiencies** like social exclusion, poverty, inadequate housing, structural discrimination, including racial discrimination (in The Czech Republic and Slovakia mainly against Roma) the child and their family face, **the more intensive the forced reaction of the criminal justice system**

t the child

Final questions

How to ensure individual assessment is carried in a **non-biased** manner?

How to ensure the **participation** of the child in the individual assessment?

How to make sure **proceedings are adapted** for the child, following the individual assessment?



Thank you for your attention!