



Access to justice for children

Country fact sheet: Poland¹



Overview

Country size: 312 679 km²

General Population: 37,97 million

Number of Children: 7 million (under 18, 2013)

Date of ratification of the Convention on the Rights of the Child:

2 September 1990

Date of abolition of the death

penalty: The 1997 Penal Code abolishing the death penalty passed into law on 1 September 1998.

Minimum ages

Minimum age of criminal

responsibility ("MACR"): There is more than one MACR. As a rule, a person who has reached the age of 17 years may be subject to criminal liability. Children aged 15 and above who commit certain crimes including rape, robbery and grave bodily injury may be subject to criminal liability.

Age of imprisonment: There is more than one minimum age of imprisonment. As a rule, a child who has reached the age of 17 years may be subject to detention on the same basis as adults. In exceptional circumstances, a child who is 15 may be imprisoned.

Age until juvenile justice legislation is applied: 17 years

Type of legal system

The Polish legal system is based on a civil law system.

Specialisation of the system

Poland provides for several specialised institutions and professionals including:

- Child police units / child police
- Child prosecution office / child prosecutors
- Child court / child judges
- Child legal aid / child lawyers and paralegals
- Child social work service / child social workers
- The Ombudsman for Children

Child-specific legislation

- [The Constitution of the Republic of Poland](#) – provides rights for children including the rights to non-discrimination, care, education, and that children's views should be given priority. The Constitution also provides rights for detained persons, including the right to be informed in a manner which is comprehensible to him or her. [English version](#).
- [Polish Criminal Code](#) – addresses the criminal responsibility of children. English version not available.
- [Law of 26 October 1982 on Proceedings in Juvenile Cases](#) – provides for a special type of protective-educational proceedings for children. English version not available.
- Other child specific legislation includes the [Act of 6 January 2000 on the Ombudsman for Children](#), the [Act of 11 February 2016 on State aid in bringing up children](#), the [Act of 9 June 2011 on family support and foster care system](#), the [Act of 12 March 2004 on social assistance](#), and the [Regulation of the Minister of the Interior and Administration of 31 March 2011](#).

The [Convention on the Rights of the Child](#) is directly applicable in Poland's justice system.

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in January 2020.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

According to information provided by the Ministry of Justice, the transposition of **EU Directive 2016/800** is not necessary, as existing Polish legislation includes the content indicated in the Directive. The Polish Ombudsman holds a different opinion, and the Ombudsman indicates that some of the existing procedures are insufficient to comply with **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings.

Cross-cutting safeguards

- While the minimum age of criminal responsibility is 17 years old, it is possible for children below this age to have criminal responsibility. Children above the age of 15 may be subject to the criminal responsibility on the same basis as adults if they commit certain offences, including a crime against life, rape, robbery, a crime against public safety, or deliberately inflicting grave bodily injury or grave damage to health. See the *Law of 6 June 1997, Code of Criminal Procedure, Article 10*.
- A child who has not attained 18 years of age must be represented by a defence counsel. A child accused of a crime can request that a defence counsel be appointed *ex officio* if he or she can show that they cannot bear the costs of representation. See the *Law of the 6 June 1997, Code of Criminal Procedure, Articles 78 and 79*.
- In proceedings involving children, parents or legal guardians are parties to the proceedings (along with the child and public prosecutor). See the *Law of 26 October 1982, Law on the Proceedings in Juvenile Cases, Article 3*.
- The child has the right to participate during the proceedings although the presiding judge may determine if the accused's presence at trial is necessary. Presence of a legal representative or a *de facto* guardian is required unless it is contrary to the interest of the proceedings. See the *Law of the 6 June 1997, Code of Criminal Procedure, Articles 171 and 374*.
- The court may exclude the public from the whole or part of the trial if at least one of the accused is a child. The court may also exclude the public for the duration of the examination of a witness who is below 15. See the *Law of the 6 June 1997, Code of Criminal Procedure, Article 360*.

- Equal treatment and the protection from discrimination is guaranteed by the Polish Constitution.

Specific procedural measures

- The court or judge carries out a study of the personality of the child, in particular by means of a social inquiry, medical, psychological and psychiatric examinations, behavioural observation and a vocational guidance examination.
- The final decision maker in proceedings involving children is the judge. However, several parties are involved in the proceedings including lawyers, social workers or psychologists, interdisciplinary committees, community representatives, and the Ombudsman for Children.

Diversion and alternatives to detention

- As a rule, a person who has reached the age of 17 years may be subject to detention on the same basis as an adult. However, a court may order educational or reformatory measures against a person who has committed an offence after reaching the age of 17 years but before the age of 18 years. In exceptional circumstances, a child who is 15 may be imprisoned.
- The detention of a child should be used as a measure of last resort and for the shortest appropriate period of time. If a child is detained, the child must be informed of his or her rights and police shall immediately notify their parents or guardian as well as the competent family court. See the *Law of 26 October 1982, Law on the Proceedings in Juvenile Cases, Article 32g*.
- During sentencing, the court will primarily aim to rehabilitate the child. No child under the age of 18 at the time of the offence will be sentenced to life imprisonment. See the *Law of 6 June 1997, Criminal Code, Article 54*.
- Diversion may be initiated at the court level. Educational correctional or educational-medical measures may be taken. The National Criminal Register collects data on children who have gone through diversion. See the *Law of 26 October 1982 Law on the Proceedings in Juvenile Cases, Articles 13 and Article 94*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May, 2020, Poland had not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and, the European Commission had ongoing infringement proceedings against Poland for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- A child victim or witness has the right to avoid contact with the offender. If there is a justified concern that the direct presence of the accused might hinder the witness's

testimony or have a negative impact on his or her mental state, the testimony may be carried out through the use of technical devices allowing the testimony to take place remotely, with a simultaneous transmission of sound and vision to the court.

- The right not to be submitted to revictimization is not guaranteed by Polish law.
- The *Regulation of the Minister of the Interior and Administration of 31 March 2011* provides a procedure for taking a child away from the family in the event of a direct threat to the life or health of a child in connection with domestic violence.

Focus on status offences

Polish law categorizes behaviour which is typically deemed a status offence as **social maladjustment**. It describes thirteen symptoms which include: 1) unsystematic attendance at school, 2) truancy or other neglect of education, 3) inappropriate behaviour in and out of school, 4) being away from home for a long time without control, 5) wandering around in the company of demoralised colleagues and joining in gangs, 6) aggressive behaviour, 7) vandalism, 8) running away from home, 9) smoking tobacco, 10) drinking alcohol, 11) the use of drugs, 12) premature sexual intercourse, and 13) offences committed by a person under the age of 13 or which are not punishable by criminal law.

If a child exhibits two or three different symptoms on a repetitive basis, the child may be referred to the family court. For example, a child who is a truant, while being away from home for a long time and committing vandalism, may be referred to the family court.

Other relevant information

The **Children's Rights Ombudsman** is an institution dealing with issues related to the problems of children and young people up to the age of 18. The Children's Rights Ombudsman guards children's rights as set forth in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other provisions of law, while respecting the responsibility, rights and duties of parents. The Ombudsman may request explanations on the case from the institution, court or prosecutor.

Measures are being taken under national and local policies and legislation regarding hate crimes, children on the move and/or affected by migration, and children with disabilities. Such measures are managed by the Children's Rights Ombudsman. There are also many non-governmental organisations working for children.