



# Access to justice for children

## Country fact sheet: **Ukraine**<sup>1</sup>



### Overview

**Country size:** 603 628 km<sup>2</sup>

**General Population:** 41,98 million

**Number of Children:** N/A

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

27 February 1991

**Date of abolition of the death penalty:** April 2000

### Minimum ages

**Minimum age of criminal**

**responsibility ("MACR"):** There is more than one minimum age of criminal responsibility. As a rule, a person who has reached the age of 16 years may be subject to criminal liability. Children age 14 and above who commit serious crimes including intentional homicide, rape, robbery and intentional destruction or damage to property may be subject to criminal liability.

**Age of imprisonment:** 18 years, however children younger than 18 can be sentenced to imprisonment with certain conditions.

**Age until juvenile justice legislation is applied:** 18 years

### Type of legal system

The Ukraine legal system is based on a plural law system. It contains elements of civil law and common law.

### Specialisation of the system

Ukraine provides for several specialised institutions including:

- Child police units
- Child social work service
- Child probation service

Ukraine also provides for several specialised professionals including:

- Child police officers
- Child prosecutors
- Child judges
- Child social workers
- Child probation officers

### Child-specific legislation

- [Constitution of Ukraine](#) – contains provisions which state that parents are obligated to take care of their children, children are equal in their rights despite their origin and whether they were born in wedlock, violence and exploitation of a child is prosecuted, and that children have the right education.
- [Criminal Procedural Code of Ukraine](#) – provides for the minimum age of criminal responsibility and other procedural safeguards for children in conflict with the law.
- [Criminal Code of Ukraine](#) – outlines the elements of crimes and contains provisions regarding detention and alternatives thereto.
- [Law of Ukraine on Childhood Protection](#) – contains a provision on the equal treatment and non-discrimination of children and provides for free legal aid.
- Other relevant legislation includes the [Law of Ukraine On Free Legal Aid \(English version\)](#), [Law of Ukraine on Ensuring the Security of Persons Participating in Criminal Proceedings](#), [Criminal Executive Code](#), and the [Law of Ukraine on Principles of Preventing and Combating Discrimination in Ukraine](#).

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

<sup>1</sup> The information used to compile this fact sheet is based on the responses to the questionnaire received in July 2020.

# Child suspects or accused in criminal proceedings

## Implementation of EU Directive 2016/800

As Ukraine is not a Member of the European Union, transposition into Ukrainian law of **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings is not required.

## Cross-cutting safeguards

- While the minimum age of criminal responsibility (MACR) is 16 years old, it is possible for children below this age to be held criminally responsible. Children aged 14 and above may be subject to criminal responsibility if they commit serious offences including, intentional murder, rape, or robbery. Also, children 11 years and above who commit a socially dangerous act, can be subject to compulsory measures of an educational nature (this is not considered a criminal liability).
- If it cannot be established that a child is below the MACR, a forensic examination will be ordered to determine the child's age. See *Criminal Code, Article 242*.
- The participation of the defence counsel is obligatory for children under 18 years old who are suspected or accused of committing a criminal offence from the moment of verification of their underage status. See *Criminal Procedural Code, Article 52*.
- Children are entitled to free legal assistance with respect to representation of their interests in court, to receive legal information, receive advice and clarification on legal matters, and preparation of applications, petitions and other legal documents. See *Law of Ukraine On Free Legal Aid*.
- A judge may decide to conduct a closed hearing if the accused is a child. An amendment was drafted for the *Criminal Code* in early 2020 to make closed hearings mandatory for proceedings involving children. See *Criminal Procedural Code, Article 27*.
- Legal representatives, such as parents, guardians, or close relatives, may be present at all stages of legal proceedings. However, if the court determines that the actions and interests of the legal representative contradicts the interest

of the child, the legal representative may be replaced. See *Criminal Procedure Code, Article 44*.

## Specific procedural measures

- Ukrainian legislation contains certain measures to ensure the safety of persons involved in criminal proceedings. As such, children may be temporarily placed in pre-school educational institutions under the written consent of parents or guardians. See *Law of Ukraine on Ensuring the Security of Persons Participating in Criminal Proceedings, Article 7*.
- A probation officer should make a social inquiry report during preparatory proceedings and should make recommendations for corrective measures. See *Criminal Procedural Code, Article 314-1*.

## Diversion and alternatives to detention

- Children may be detained as a precautionary measure only if they are suspected of committing a serious or a particularly serious crime and if other precautionary measures would not eliminate the following risks: escape; illegal influence on the victim, another suspect or accused person, an expert, or a specialist in the particular criminal proceedings; destruction of evidence; or the commission of another crime. See *Criminal Procedural Code, Article 492*.
- Alternatives to pretrial detention include personal recognisance, personal suretyship, security deposit, home arrest, and placing under supervision of parents or child-care facilities. See *Criminal Procedure Code, Articles 176 and 493*.
- Alternatives to post-trial detention include fines, community service, and corrective work. See *Criminal Code*.
- Restorative justice options include reconciliation and dropping by the victim of a prosecution in private criminal prosecution proceedings. See *Criminal Code, Articles 469 and 471*.
- Children shall be detained in separate locations from adults. See *Criminal Executive Code, Articles 51, 88 and 92*.

# Child victims and witnesses in criminal proceedings

## Implementation of EU Directive 2012/29

As Ukraine is not a Member of the European Union, transposition into Ukrainian Law of **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime is not required.

## Cross-cutting safeguards

- The victim has the right to legal assistance during all phases of criminal proceedings. The witness has the right to legal

assistance while testifying and participating in other procedural actions. See *Criminal Procedural Code, Articles 56 and 66*.

- Ukrainian law imposes certain restrictions on victims' and witnesses' contact with offenders during questioning. Moreover, in the interests of the child victim/witness of a crime related to domestic violence, it is possible to restrict the offender's communication with the child for a period of two months with the possibility of further extension. See *Criminal Procedure Code, Articles 194 and 224*.

## Focus on status offences

For offences such as running away from home and possession of alcohol and tobacco, a child will be dealt with in the criminal justice system. The measures taken may depend on the age of the child. For example, children between the ages of 14 and 16 are the responsibility of the parents, while children aged 16-18 may be reprimanded or asked to make a public apology. In addition, parents may be fined for such offences. Parents may also be fined for a child's persistent truancy.

Behaviour such as begging, roaming the streets, and being beyond parental control are addressed through the social welfare system.

## Other relevant information

*"Recovery Programme for Minors Suspected of Committing a Crime"* - Ukraine launched this pilot project on 5 February 2019. Under the programme, the prosecutor will be able to offer children the ability to involve a lawyer-mediator from regional centres of free legal aid. The programme is for children who have committed a minor crime or crime of medium gravity for the first time. The child must admit that he or she committed the crime and the consent of both the child suspect or accused and the victim is required to participate in the programme. For additional information on the recovery programme, please refer to <https://zakon.rada.gov.ua/laws/show/z0087-19#n20> (Ukrainian; not available in English at this time).

*National Strategy for Reforming the Justice System for Children until 2023* – The strategy includes the introduction of uniform standards for the training of lawyers who provide legal aid to a child suspect or accused. However, as of today, no uniform standards have been adopted.

*Child's Advocate project* – a joint working group of lawyers has been established to develop recommendations for legislation in the field of child representation in courts, as well as training courses on improving skills for being a child-friendly lawyer.

*Non-Discrimination* – Article 24 of the Ukraine Constitution provides that there may be no privileges or restrictions on the grounds of race, colour, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other characteristics. In addition, The Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" prohibits any form of discrimination. Furthermore, the Law of Ukraine on "Childhood Protection" states that all children in Ukraine, regardless of race, colour, sex, language, religion, political or other beliefs, national, ethnic or social origin, and other statuses or circumstances, have equal rights and freedoms.