

 JUST CLOSER 

EXECUTIVE SUMMARY

NATIONAL REPORT ON THE YOUTH JUSTICE
SYSTEM - GREECE



Annex VI

National report Greece (D5.8)

Executive Summary

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Introduction

The need to enact special provisions concerning both minor perpetrators of crimes and minor victims of crimes by the Greek legal order comes from the general and guiding principles provided for in the provisions of the Constitution (in particular article 21 which provides, among other things, that childhood is under the protection of the State and that the State takes care of the protection of youth and article 96 par.3 which includes special provisions for juvenile courts), of the International Conventions that Greece has signed and ratified by internal law, as well as EU law.

At the level of national legislation, the "special provisions for minors", which includes the eighth chapter of the Greek Criminal Code (articles 121 – 133), indicate a different treatment for minor offenders, as well as the taking of appropriate measures corresponding to their age. In general, the treatment of minors is clearly more lenient than that of adults and the sanctions provided do not include the element of punishment, but must be governed by the "principle of education instead of punishment", as a basic principle of the criminal law of minors .

According to the Greek Criminal Code, the criminal act committed by a minor of twelve to fifteen years is not attributable to him/her. The court can impose reformatory or curative measures on him/her. Reformatory or therapeutic measures are also imposed on a minor who has committed a criminal act and has reached the age of fifteen, unless it is deemed necessary to impose a restriction in a special youth detention center .

At a procedural level, the rights of minors, provided for in the Greek Code of Criminal Procedure, were significantly strengthened by Law 4689/2020 which incorporated Directive (EU) 2016/800, on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

Regarding the transposition into national law of Directive (EU) 2016/800, the European Commission sent Greece a first letter of formal notice on 23.7.2019 [no. Ref. C(2020) 1378] and a supplementary letter on 16.11.2023 [ref no. C(203) 7243], which concerns transposition measures of Article 12 paragraph 5, third and fourth subparagraphs, regarding situations of deprivation of liberty other than detention. It should be noted that these measures fall under the competence of the Ministry of Citizen Protection.

<i>Greek Law</i>	<i>Title</i>	<i>Government Gazette</i>
4689/2020	Incorporation into Greek legislation of Directives (EU) 2016/800, 2017/1371, 2017/541, 2016/1919, 2014/57/EU, ratification of the Memorandum of Administrative Cooperation between the Ministry of Justice of the Hellenic Republic and the Ministry of Justice and Public Order of the Republic of Cyprus, amendments to Law 3663/2008 (A 99) to implement Regulation (EU) 2018/1727 and other provisions.	A' 103/27.5.2020
4620/2019	(Ratification of the) Code of Criminal Procedure	A' 96/11.06.2019
4619/2019	(Ratification of the) Criminal Code	A' 95/11.06.2019
2102/1992	Ratification of the International Convention on rights of the child	A' 192/2.12.1992

Accessibility

According to Law 4689/2020, which incorporated Directive 2016/800, when the minor is informed that he/she is a suspect or accused, he/she is immediately informed, orally or in writing, of: 1. the right to inform the person exercising parental care, 2. The right lawyer assistance, 3. The right to protection of his /her private life, 4. The right to be accompanied by his/her guardian or another minor at all stages of the criminal proceedings, 5. The right to be granted legal assistance, 6. The right to effective remedies. As a rule, the above information takes place at the time of the arrest by the police, however in some police stations it may not take place. In any case, before his plea, the accused is informed in written of his rights.

According to the Code of Criminal Procedure, at any stage of the criminal procedure, when a suspect, accused, civilly liable or witness who does not speak or understand the Greek language is to be examined, he/she is provided without delay with interpretation. Suspects or accused persons who do not understand the language of the criminal proceedings shall be provided within a reasonable time with a written translation of all documents or parts of documents of the proceedings. In practice, when a child does not speak the Greek language, no documents are translated, but interpretation is always available. Only when requested in writing, relevant documents are translated. However, some difficulties are sometimes observed in immediately finding a suitable interpreter either because there is reluctance on the part of interpreters due to rigid and time-consuming procedures for reimbursement or because there are many different dialects and difficulties are found in securing an interpreter who speaks the particular language dialect, with resulting in a delay in the procedures. In any case, the procedure does not proceed if the presence of an interpreter is not ensured. It is a necessary condition for the trial of the case.

The statutory reference persons to whom children can turn with questions about criminal proceedings and their rights are lawyers. In addition to lawyers, in practice children can direct questions to judges, prosecutors, investigators, juvenile probation officers and the police. Law 4689/2020 provides that from the moment of arrest minors have the right to legal assistance and specifically provides that in order to ensure that minors effectively exercise their rights of defense, they are entitled to receive the assistance of a lawyer, without undue delay, as soon as they are informed by the competent authorities, by official notification or otherwise, at any stage of the criminal proceedings, that they have acquired the status of a suspect or accused for the commission of a criminal act. In any case, minors are entitled to receive the assistance of a lawyer in whichever of the following events occurs earlier: a) before they are examined by prosecuting or judicial authorities, b) during the performance of an investigative act or other act of gathering evidence by an investigative or other competent authority, c) without undue delay immediately after their arrest, d) when they have been summoned before a criminal court, in good time before appearing before the aforementioned court.

However, in practice, the above provision is not applied throughout the country. It must be made possible for the right to legal assistance to be widely applied and for this it is necessary that it shall be provided for by the competent institutions throughout the country and that there shall be funding so that it can be applied by all bar associations.

Age-appropriate

The individual assessment of the child is carried out by juvenile probation officers and is taken into account by prosecutors and judicial officials at all stages of the criminal procedure.

In the past, there was less familiarity on the part of the judicial authorities with the individual assessment of juveniles, since 2020, however, as the individual assessment procedures have been upgraded and are provided throughout the juvenile's criminal course, there has been a greater familiarity of criminal justice professionals. Usually, the Greek judicial system is effectively inspired by the individual assessment, however judges and prosecutors are not bound by the content of the individual assessment in their decision regarding the treatment of the child, they are therefore not obliged to adopt the proposals of the juvenile probation officers regarding the treatment of minors.

Some problems are identified in the procedures that make them sometimes rigid and this happens mainly in the pre-trial. In some courts of first instance, during the pre-trial stage, an individual assessment is not requested, possibly due to workload and the need to speed up the process. In other courts of first instance, during the interrogation stage, the investigators asked to for an individual assessment to be carried out and a relevant report to be submitted on behalf of juvenile probation officers, however, the need to quickly conclude the interrogation, in several cases makes the whole

process procedural, as often the investigators, before receiving the individual assessment report, immediately proceed to issue a restraining order for minors, therefore not taking into account the individual assessment, which they order because it is required by law.

The individual assessment should be carried out without delay from the child's first contact with the criminal justice system and in particular from their arrest, however in most cases this cannot be done due to heavy workloads. In any case, the law provides that the individual assessment must be available at the beginning of the hearing and at this stage the procedure is effective, the individual assessment is always taken into account by the judicial authorities and affects the outcome of the trial.

On a case-by-case basis, the child's age and maturity are taken into account in the proceedings concerning him/her, but this is not the rule. It depends on each professional's personality, attitude, ability to empathize, education and training. Where special police sub-divisions for the protection of minors operate, in large cities, the appropriate behavior of the police in relation to the age of the child is ensured to some extent. In general, where there is experience, training and expertise of police departments, the situation is better than in police departments where the corresponding expertise does not exist.

With regard to the reception environment for children, not all services have suitable and sufficient spaces for holding meetings with children. Care must be taken to create functional and child-friendly spaces in order to ensure respect for their rights and effective cooperation with them.

Speedy procedures

Despite the fact that the processing time of criminal proceedings involving children has been improved in recent years, the time frames are not considered satisfactory in light of the principle of speedy processing of juvenile cases. Especially after the recent health crisis caused by the COVID -19 pandemic, due to the suspension of the courts' operation and the multiple postponements of the adjudication of cases, there are long delays in the administration of justice.

There are no official statistics as concerns the time frames for criminal proceedings. It is possible to be looked for in the registries of the local courts, however they are not officially kept.

Improvements need to be made so that the time of the process is sufficient, taking into account the best interest of the child. However, efforts are being made in this direction.

Diligence

In recent years, especially after the enactment of Law 4689/2020, trainings for juvenile criminal justice professionals have been increased. Trainings are carried out by the National School of Judicial Officers, the National Center for Public Administration, the Ministry of Justice, the Association of Juvenile Probation Officers in collaboration with Panteion University and the Police. However, they are not considered sufficient and the participation of professionals is not mandatory. There should be more trainings, mandatory, permanent, systematic and with a long duration, as short-hour or few-day seminars do not ensure the essential training of the participants.

Coordination between the professionals involved is left to the personal care and concern of a professional in the particular case (prosecutor, judge, juvenile probation officer). There is no formal provision for coordination between the different agencies or persons dealing with juveniles in the penal system. It depends on each case.

Adapted and focused on the rights of children

The possibility of depriving minors of their liberty is provided for by law and there are cases where they have been deprived of their liberty. It follows from the legislation (Criminal Code and Law 4689/2020) that the deprivation of liberty of minors is imposed as a last resort and under strict conditions.

Our legal system provides for certain alternative means regarding minors, namely:

- Reformative and therapeutic measures
- Reformative measures as restraining orders
- Conditional dismissal of the juvenile prisoner
- Replacement of confinement in a special detention center for young people with house confinement

- Partially replacement of confinement in a special detention center for young people with community service
- House confinement with electronic monitoring
- Replacing detention with reformatory measures
- Diversion from prosecution
- Suspensive effect of the appeal

The minor's right to a medical examination is specifically provided for in Law 4689/20. According to article 8 of the above law, a minor deprived of his liberty has the right to request a medical examination of his mental and physical condition without undue delay. The medical examination is as minimally invasive as possible and is carried out without delay by a doctor or other qualified health professional. A written report is drawn up for the medical examination, which forms part of the case file. In cases where it is deemed necessary, the minor is provided with medical treatment. If required by the circumstances, any other medical examination is also carried out. The results of the medical examination are taken into account when they determine the minor's ability to fully understand and follow the criminal procedure, such as investigative acts, acts of gathering evidence or any measures taken or intended to be taken against him. The medical examination is carried out either ex officio, if there are specific indications that require verification of the mental and physical condition of the minor, or upon a relevant request by any of the following persons: a) the minor, b) the person exercising parental care or another suitable person, in accordance with the provisions of articles 5 and 14 and c) of the minor's defense attorney.

The rules for the application of the right to a medical examination in practice are provided for, in addition to article 8 of the Law 4689/2020, in relevant provisions of the Criminal Code and the Code of Criminal Procedure.

This right is effectively implemented by referring children to units of the national health system, staffed by specialized and qualified professionals.

Respecting the right to a due process

As already mentioned in the framework of the analysis of the first principle "Accessibility", according to Law 4689/2020, from the moment of arrest minors have the right to legal assistance and specifically provides that in order to ensure that minors effectively exercise their rights of defense, they are entitled to receive the assistance of a lawyer, without undue delay, as soon as they are informed by the competent authorities, by official notification or otherwise, at any stage of the criminal proceedings, that they have acquired the status of a suspect or accused for the commission of a criminal act. In any case, minors are entitled to receive the assistance of a lawyer in whichever of the following events occurs earlier: a) before they are examined by prosecuting or judicial authorities, b) during the performance of an investigative act or other act of gathering evidence by an investigative or other competent authority, c) without undue delay immediately after their arrest, d) when they have been summoned before a criminal court, in good time before appearing before the aforementioned court.⁷⁹

However, in practice, the child's right to legal assistance is not adequately guaranteed, since the above provision is not applied throughout the territory. It must be made possible for the right to legal assistance to be widely applied and for this it is necessary that it shall be provided for by the competent institutions throughout the country and that there shall be funding so that it can be applied by all bar associations.

The presence of a lawyer is provided by law at all stages. However, in practice, when it comes to the child's contact with the police, it is not always ensured. Not even at the preliminary examination stage it is ensured. During the interrogation stage, the presence of a lawyer is always ensured in every case, as the investigator has the obligation to appoint a lawyer ex officio in the event that the minor or the person exercising parental care has not appointed a lawyer of his/her choice. With regard to the procedure in the audience, the presence of a lawyer is ensured only in felonies, as only in these cases is the court obliged to appoint a lawyer ex officio.

Respecting the right to participate in and understand the proceedings

Adequate explanations are given to children at the stage of questioning by the investigating officer, during the hearing process by the prosecutor and the juvenile judge, and by juvenile probation officers at all stages of the process in which

⁷⁹ Law 4689/2020, Article 6.

they come into contact with the children. Care is usually taken to use child-friendly language. When children come into contact with the police, however, we do not know whether they are adequately informed about the procedures and their rights. They are given a document outlining their rights, but we have some reservations about providing adequate explanations. In some police stations the appropriate briefing takes place, but in others, it is not implemented.

The child has the right to appear in person at the trial in accordance with the UN Convention on the Rights of the Child, the Code of Criminal Procedure and Law 4689/2020, as well as the right to be accompanied by the person exercising parental care or by another adult at all stages of the criminal procedure. The rights of the child, as provided for in Directive 2016/800 which was incorporated into the Greek legal order by Law 4689/2020 and in general the principles of child-friendly justice that have been reflected in our legislation, frame the rules for the participation of children in criminal proceedings.

The judge has a legal obligation to hear the child's opinion at the hearing. The interrogator during the child's statement at the interrogation stage. The child's opinion is always taken into account, as the Judge/Investigator/Prosecutor cannot make a decision before hearing the child. As long as the child's right to be heard has been violated or his hearing is not legal, the procedure is completely null and void.

Respecting the right to a private and family life

In Law 4689/20 and specifically in article 13 "Right to protection of private life", which reflects article 14 of Directive 2016/800, the framework for protecting the private and family life of minors involved in criminal proceedings is regulated in detail.

As a rule, the rules for the protection of children's privacy during criminal proceedings are applied in practice. Any deviations resulting from external factors, e.g. lack of respect for children's privacy by the Media or leaking of case files by lawyers.

The imposition of reformatory or therapeutic measures is not recorded in the children's criminal record. Only cases of deprivation of liberty of minors are recorded. As for all other elements, no one has the right to be informed except for the child himself/herself, his/her parents, his/her advocate, the competent judicial and prosecuting authorities and the juvenile probation officers.

Children always have the right to maintain regular contact with their parents and relatives during detention or alternative means.

Respecting the right to integrity and dignity

Young people pointed out mainly the behaviour of police officers towards them. Based on the testimonies of children who have come into contact with the police, there are police officers who treat them with respect for their rights and police officers who, with their behavior towards them, violate the minors' right to integrity and dignity. There are no follow-up procedures for the conduct of police officers or other professionals.

The continuous and systematic training of police officers, but also of all professionals involved in the juvenile criminal justice system, such as court officials, juvenile probation officers, lawyers, is necessary, as special skills are required for their contact and communication with children.

As regards the detention conditions, adequate infrastructure, care for the compliance with hygiene conditions and systematic training of the competent professionals are needed in order to improve the detention conditions of minors.

Final comments

Having as basic legal tools the Law 4689/2020, which incorporated into the Greek legal order the Directive 800/2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, in combination with the relevant provisions of the Greek Criminal Code (that provides sufficient alternative means with regard to the rights and needs of children) and the Code of Criminal Procedure, Greece respects and applies the principles of the child – friendly justice, as these principles are captured and specified in the form of procedural safeguards in the above Directive.

However, based on both the experience of professionals in the field of juvenile criminal justice and the valuable recording of the experience and opinions of the children and young people participating in the Just Closer project

(Youngsters and Youth Leaders), as far as the practical application of the directive 800/2016 in Greece is concerned, the following main points that need improvement, are noted:

- Full exercise of children's right to information during the procedure at the police stations
- Issues related to the immediate finding of suitable translators/interpreters
- Application of individual assessment in pretrial
- Provision of legal assistance throughout the country
- Coordination of professionals
- Strengthening the training of all categories of professionals in the field of juvenile criminal justice - and especially police officers - with an emphasis on issues regarding their behavior towards minors.

The outcomes of the above analysis in the framework of this national report are considered particularly useful in the light of strengthening the effective implementation of the Directive 2016/800/EU in the Greek criminal justice system.

