

2 - Children's rights at the Police Station

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Children are especially vulnerable when apprehended by police, either as a result of being taken into custody or in the context of any other contacts with the police (such as for example identity checks). As they are under the control of the police, it is the duty of the authorities to protect them (ECtHR, *Bouyid v Belgium*, 23380/09, §107). Protection may entail that they are not held in conditions which amount to inhuman and degrading treatment (see Factsheet no 4); that they are not ill-treated (see Factsheet no 4) and that due account is taken of their vulnerability not only throughout the trial, but also from the very first questioning by the police (ECtHR, *Blokhin v Russia*, no. 47152/06, §195). A child's first contact with the police can significantly impact on the unfolding of the subsequent legal proceedings, in particular (but not limited to) because the child's first declarations can weigh very heavily in the gathering of evidence. From the perspective of international law, questions which arise at this stage are: (1) when does the interaction with the police amount to a deprivation of liberty; (2) when does a child become a suspect or accused and (3) which are the guarantees associated with the being considered a suspect in a criminal investigation.

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1. Right to liberty and deprivation of liberty

As a matter of principle, everyone has the right to liberty and security of person (Article 5 ECHR and Article 6 of the EU Charter of Fundamental Rights). Under Article 5 ECHR, deprivation of liberty is an exception to the right to liberty and it is only permitted (1) if it is prescribed by law and (2) if it falls under one of the 6 (six) conditions strictly laid down by Article 5 (1) (a) to (f). Under these exceptions, deprivation of liberty is only authorized if (i) it concerns the lawful detention of a person after conviction by a competent court; (ii) it is ordered by a court to comply with a legal obligation; (iii) it is ordered on suspicion of having committed a criminal offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (iv) it is the lawful detention of a minor for the purposes of educational supervision ; (v) it related to the lawful detention for prevention of spreading infectious diseases, vagrants and persons of unsound mind ; and (vi) it concerns detention for the purposes of expulsion. All these paragraphs (5 (1) (a) to (f)), have been subject to extensive case-law where the ECtHR has detailed specific conditions for each of the subparagraph. It should be noted that for the purposes of criminal proceedings the most relevant subparagraphs are Article 5 (1) (a) (detention post conviction) and Article 5 (1) (c) pre-trial detention.

If a child is taken to the police station, the first question which arises under Article 5 ECHR, is whether that child has been deprived of liberty. If this is the case, all the guarantees of Article 5 (1)

to (5) ECHR apply. The ECtHR's settled case law provides that the right to liberty refers to the physical liberty of a person and in assessing whether a person has been deprived of liberty, the starting point shall be the concrete situation of a person and a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (eg. *Guzzardi v Italy*, no. 7367/76, § 92). In other words, the ECtHR may find that a child has been deprived of liberty under Article 5 ECHR, even if the domestic authorities do not qualify such measure as detention under national law and / or practice.

For young children, the ECtHR has considered that deprivation of liberty occurred even though the child had not been kept under closed and guarded premises as -in view of the age and vulnerability- the child could not have been expected to leave the police station alone.

The case of [Tarak and Depe v. Turkey](#) (ECtHR, no 70472/12) concerned an 8-year-old boy who had been taken to the police station and spent one night there until his mother had arrived. On the burden of proof, the Court reiterated that once a person has been to a location under the control of the authorities, it is incumbent on the state to demonstrate that such person has been released.

The Court further held that the applicant had been deprived of liberty in light of his very young age and the fact that he was unaccompanied at the police station. Thus, deprivation of liberty existed even if he had not been placed in a closed cell.

Once it has been established that a child has been deprived of liberty, in order to comply with Article 5 ECHR, the deprivation of liberty (i) must be provided for by a clear, foreseeable, non-arbitrary law and (ii) it needs to fall under one of the six subparagraphs (mentioned above) of Article 5 (1) which are exhaustive and should be interpreted strictly. Detention of children suspected or accused of having infringed criminal law is covered by Article 5 (1) (a) ECHR: lawful detention after conviction by a competent court and Article 5 (1) (c) ECHR pre-trial detention which exists in cases of a reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so. It should also be mentioned that Article 5 (1) (d) ECHR authorizes detention of minors for the purposes of educational supervision. The ECtHR has developed a set of criteria for the concept of 'education supervision' (see for example the case of *Bouamar v Belgium*, no 9106/80), however these types of detention fall outside the remit of criminal law and are hence excluded from the factsheets.

In the case of [Blokhin v Russia](#) (GC no 47152/06) the Court held that placing a child who did not meet the age of criminal responsibility in a temporary detention center in order to prevent him from committing further delinquent acts coincides with the aim of criminal punishment and not with detention for the purposes of educational supervision under Article 5 (1) (d). Thus, the applicant's detention was in violation of Article 5 (1) as it was not prescribed by national law.

2. When do children become suspects?

Provisions of international law ensure guarantees to children who are suspected or accused of having infringed criminal law. These guarantees apply from the moment a child is considered a suspect, therefore identifying this moment is of particular importance. For the **European Court**, the assessment will be based on the actual conduct of the authorities rather than the formal

qualification (in that sense it was irrelevant if the authorities formally qualified the applicant as a witness, see *Kaleja v. Latvia*, no. 22059/08, §§ 36-41). The ECtHR has further held that, especially when the liberty of children is at stake, adequate procedural safeguards must be put in place to protect their best interests and well-being (*Blokhin v Russia*, § 219).

A distinction is made between rights derived from the quality of a suspect in criminal proceedings and rights of children suspects during police custody. This distinction is relevant in particular for the right to legal assistance. Children have the right to legal assistance from the moment of their first interrogation by the police, even if they have not been held in custody (see *Kaleja v. Latvia* §§36-41- the case concerns an adult offender but it is applicable to children as well, see also Factsheet no. 7 Children's right to legal assistance). Children who have been taken into custody, have the right to a lawyer even if they are not subject to police interrogations. In the case of *Beuze v Belgium*, 71409/10, the Court has held that the right to legal assistance entails that suspects must be able to enter into contact with a lawyer from the moment they are taken into custody, they should have the possibility to consult with the lawyer (prior to a police interview or even in absence of one) and that such consultation remains confidential (*Beuze v Belgium* § 133). Further (child) suspects have the right to have the lawyer physically present during the initial police interview and whenever they are questioned in the subsequent pre-trial proceedings (*Beuze v Belgium*, § 134). (see also **Factsheet no 7 - Children's right to legal assistance**)

Under **EU law**, the Procedural Safeguards Directive provides that when the child during questioning becomes a suspect or accused, the questioning should be suspended until the child is made aware that (s)he has become a suspect and is assisted by a lawyer (Recital 29).

3. (Procedural) Guarantees for Children

Under **EU law**, given children's vulnerability as well as their development, states are to undertake special efforts to avoid deprivation of liberty in view of the risks for their physical, mental and social development and because deprivation of liberty could lead to difficulties concerning their reintegration into society (**Procedural Safeguards Directive**, Recital 45).

In the same vein, the **ECtHR** has held that any measures against a child should be based on their best interests and from the time of the apprehension by the police they should be guaranteed at least the same legal rights and safeguards as those provided to adults (*Blokhin v Russia*, § 203). The ECtHR has strongly condemned 'unprofessional attitudes' of police towards individuals who are taken into police custody either for identity checks or for questioning. These individuals are under the control of the police and for this reason they are in a position of inherent vulnerability (*Bouyd v Belgium*, § 107). This is even stronger in the case of children where it is required that police officers show greater self control and vigilance than in the case of adults (*Bouyd v Belgium*, § 107). In the case of *Bouyd v Belgium* the Court found that the guarantee against inhuman and degrading treatment under Article 3 of the Convention was breached as the police officers had slapped the applicants once and that this conduct had not been made strictly necessary by the applicants' conduct (*Bouyd v Belgium*, § 111).

It is further important to note that authorities cannot justify the deprivation of procedural safeguards on the ground that the domestic proceedings are deemed to protect the interests of the child subject to such proceedings (*Blokhin v Russia*, § 196).

The most important (binding) guarantees for children apprehended by police are set out in EU law and the ECtHR (which were inspired by the CRC as well as other non-binding international instruments).

These are:

- A Letter of Rights provided to the child pursuant to Directive 2012/13/EU which should include clear information on the child's rights under the Procedural Safeguards Directive (Procedural Safeguards Directive, Recital § 21; Article 4(3)). Under Article 3 (1) of Directive 2012/13/EU, suspects or accused persons should be informed promptly of at least the following minimum rights: (a) the right of access to a lawyer; (b) any entitlement to free legal advice and the conditions for obtaining such advice; (c) the right to be informed of the accusation, in accordance with Article 6; (d) the right to interpretation and translation; (e) the right to remain silent (see also Factsheet no 5- Fair Trial Guarantees for Children);
- Information in respect of the right to a medical examination at the earliest appropriate stage in the proceedings, at the latest upon deprivation of liberty where such a measure is taken in relation to the child (Procedural Safeguards Directive, Recital § 20);
- Information to the holder of parental responsibility about applicable procedural rights, in writing, orally, or both. The information should be provided as soon as possible and in such detail as it is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the child (Procedural Safeguards Directive, Recital § 22; ECtHR, *Panovits v Cyprus*) (see also **Factsheet no 5- Fair Trial Guarantees for Children**);
- the right to be accompanied by the holder of parental responsibility during police questioning (Procedural Safeguards Directive, Recital § 59);
- the right to be assisted by a lawyer during police questioning (*Salduz v Turkey, Blokhin v Russia*, Procedural Safeguards Directive, Directive 2013/48/EU, see also **Factsheet no 7 Right to Legal Assistance**);
- the right to have the questioning by police audio-visually recorded where it is proportionate to do so (Procedural Safeguards Directive, Recital § 42, Article 9);
- the right to have the detention reviewed by a competent court and revoked whenever it ceases to be strictly necessary. In general, the ECtHR has considered that a 4 (four)-day period meets the promptness requirement under Article 5 (3) (for eg. *MacKay v the United Kingdom*, no. 543/03, § 33. However, in a case involving children, the ECtHR found a violation of Article 5 (3) when two 16-year-old children had been brought before a judge after a detention period of 3 days and 9 hours (*Ipek v Turkey*, 25760/94 § 36). (**Factsheet no 3 – Pretrial detention of children**)
- the right to have the questioning carried out in a manner that takes into account their age and maturity (Procedural Safeguards Directive, Recital § 44) (see also **Factsheet no 6 – Effective Participation of Children**);
- The right to not have the audiovisual recording disclosed (Article 14);
- The right to legal aid (Procedural Safeguards Directive Article 18; **Factsheet no 7 Right to Legal Assistance**);
- The right to an interpreter as per Articles 1 and 2 of Directive 2010/64 on the right to interpretation and translation in criminal proceedings

Last but not least, it should be noted that the ECtHR has repeatedly stressed “the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial.” When assessing the sanctions for breach of any of the rights of children accused or suspected of criminal offences during police custody, the ECtHR will look at the proceedings overall. The European Court has held that evidence obtained through breaches of Article 3 should be removed from the file so as to comply with Article 6 ECHR (*Gäfen v. Germany*, 22978/05; also

it was held that the manner of questioning and the lack of access to a lawyer could irremediably affect the fairness of the trial (see also Factsheets no 5, 6 and 7).

Further reading

- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, '[Child Friendly Justice Guidelines](#)', 17 November 2010 (in particular §§ 27-33 – Children at the police station)
[2019 UN Global Study on children deprived of liberty](#), A/74/136, 11 July 2019
- [Policing of Children and Young People](#): A Case for “Child-Friendly Police”, Defence for Children Policy Brief, October 2021
- [2019 UN Global Study on children deprived of liberty](#), A/74/136, 11 July 2019