

FROM FORMAL GUARANTEES TO EFFECTIVE PARTICIPATION: WHAT UZBEKISTAN CAN LEARN FROM GERMAN, BRITISH AND EUROPEAN STANDARDS ON THE PROCEDURAL RIGHTS OF MINORS IN CRIMINAL PROCEEDINGS

Tojiev Jurabek Mukhtorovich
Judge of the Bukhara City Court for Criminal Cases, Independent Researcher at the Academy of Justice
Tel.: +998 97 282 71 71
E-mail: tzurabek231@gmail.com
https://doi.org/10.5281/zenodo.23339890

Abstract. This article compares the models used to secure the procedural rights of minors in criminal proceedings in Germany, England and Wales, Directive (EU) 2016/800 and the case-law of the European Court of Human Rights. It shows that what these systems share is a functional criterion: rights are judged by their real influence on decisions rather than by their presence in the statute. Drawing on a study of 156 criminal cases from Uzbek court practice, the author proposes that Uzbekistan introduce a mandatory social inquiry report, a single video-recorded interview for child victims and witnesses, a pre-trial correction (diversion) system and a "child rights screening" step before procedural decisions.

Keywords: minors, effective participation, social inquiry report, special measures, Directive 2016/800, European Court of Human Rights, comparative criminal procedure.

Introduction

International law has long recognised that children who come into contact with the criminal justice system require special protection. The UN Convention on the Rights of the Child (CRC) obliges States to treat every child alleged to have infringed the penal law in a manner that takes into account the child's age and promotes the child's reintegration (Article 40), and the Beijing Rules require proceedings to be conducted "in an atmosphere of understanding" allowing the juvenile to participate and express himself or herself freely (Rule 14.2). The difficulty lies less in proclaiming such rights than in making them work.

Uzbekistan illustrates this gap. Its Criminal Procedure Code (CPC) contains a chapter on proceedings concerning minors and a number of scattered safeguards, including closed hearings at the court's discretion (Article 19), mandatory defence counsel (Article 51), the participation of a teacher or psychologist (Article 121), an extended subject of proof (Article 548) and the court's duty to consider release with compulsory educational measures (Article 564). In 2025 minors committed 3,266 crimes in the country, and courts heard cases against 2,431 minors, up from 2,214 in 2024. In its concluding observations on Uzbekistan's fifth periodic report, the UN Committee on the Rights of the Child nevertheless noted that the rights of child participants are frequently ensured only formally, and the national Parliament adopted a joint resolution in 2024 to implement its recommendations[1].

The problem has been studied in Uzbek scholarship from several angles – procedural guarantees at the preliminary investigation stage (A.A. Bazarov, 2011), investigation

[1]Joint Resolution of the Kengash of the Legislative Chamber and the Kengash of the Senate of the Oliy Majlis of the Republic of Uzbekistan No. 4068-IV of 21 February 2024 // https://lex.uz/docs/6848811

methodology (N.A. Ramazanova, 2019; O.D. Allanazarov, 2022), specific features of proceedings against minors (M.A. Nodirov, 2024) and first-instance trials (Sh.I. Khamraeva, 2025) – and in the CIS by N.I. Snegireva, E.B. Melnikova, S.V. Tetyuev and others[2]. International literature has increasingly focused on children's participation and on the distance between the recognition and the implementation of their rights[3]. What remains under-explored is a systematic comparison of the institutional mechanisms that close this gap and an assessment of their transferability to Uzbekistan.

The aim of this article is to identify, through comparative analysis, the mechanisms that turn formal guarantees into effective participation, and to assess which of them can be transferred to Uzbek criminal procedure.

Methods

The study combines three methods. First, a comparative legal analysis of German legislation (the Code of Criminal Procedure – StPO – and the Youth Courts Act – JGG), the law of England and Wales (the Youth Justice and Criminal Evidence Act 1999 – YJCEA – and the Achieving Best Evidence guidance), Directive (EU) 2016/800 and selected judgments of the European Court of Human Rights (ECtHR). Second, a doctrinal analysis of the Uzbek CPC and related legislation. Third, an empirical case study of 156 criminal cases concerning minor defendants drawn from Uzbek court practice, coded against ten indicators derived from the Beijing Rules (Rules 5.1, 16.1, 17.1, 20), the CPC and Resolution No. 21 of the Plenum of the Supreme Court of 15 September 2000. The comparison was structured around a single question: by what institutional means does each system make a child's rights affect the outcome?

Results

Germany: an integrated functional model. German juvenile justice is built not as a "privileged" regime but as a model designed to secure the child's real procedural capacity. The JGG applies to persons aged 14 to 17 at the time of the offence and may be extended to young adults aged 18 to 20 (§§ 1, 105 JGG)[4]. Its central element is the youth court assistance service (Jugendgerichtshilfe), which reports on the young person's family, educational and social background at the pre-trial and trial stages (§ 38 JGG); this report in practice shapes the choice both of preventive measures and of educational or disciplinary measures. Prosecutors and courts may discontinue proceedings where educational measures have been taken or are fulfilled (§§ 45, 47 JGG), and pre-trial detention of juveniles is subject to a strict subsidiarity requirement. For child witnesses, the StPO allows interviews to be video-recorded (§ 58a) and, under defined conditions, the recording to replace live examination at trial (§ 255a).

England and Wales: special measures and best evidence. The YJCEA 1999 treats children and vulnerable witnesses not as formal participants but as active subjects in need of protection. Its "special measures" include screens shielding the witness from the defendant (s. 23), live link evidence from outside the courtroom (s. 24), removal of wigs and gowns (s. 26), video-recorded evidence-in-chief (s. 27) and pre-recorded cross-examination (s. 28), as well as

[2]Bazarov A.A. Procedural guarantees of the rights and lawful interests of minors at the stage of preliminary investigation: abstract of Cand. Sc. (Law) dissertation. – Tashkent, 2011 (in Russian); Khamraeva Sh.I. Improving the consideration of cases on crimes of minors in courts of first instance: abstract of PhD dissertation. – Tashkent, 2025 (in Uzbek).

[3]Kaldal A. From recognition to implementation of children's rights // The Rights of the Child: Legal, Political and Ethical Challenges. – Leiden: Brill, 2023. – P. 129–132.

[4]Jugendgerichtsgesetz (JGG); Strafprozessordnung (StPO) // https://www.gesetze-im-internet.de

intermediaries (s. 29). Under the Achieving Best Evidence (ABE) guidance the best evidence is that obtained earliest, in the most natural setting and with the least harm to the child; the child is ideally interviewed once and the recording serves as evidence at trial[5]. Youth Offending Teams provide courts with reports on which supervisor, programme and mentor the child needs. Known weaknesses – shortage of skilled interviewers, dependence on technical resources – concern implementation rather than the concept.

The European Union and the Council of Europe. The Council of Europe Guidelines on child-friendly justice (2010) rest on the child's right to be heard, an individual assessment of best interests in every decision, protection from secondary victimisation and the protection of privacy. Directive (EU) 2016/800 gave these principles binding force for suspected and accused children, requiring information to the child and the holder of parental responsibility (Article 4), access to a lawyer (Article 6), an individual assessment (Article 7), audiovisual recording of questioning in appropriate cases (Article 9), detention only as a last resort (Article 10) and protection of privacy (Article 14)[6].

The ECtHR: the "effective participation" doctrine. In T. v. the United Kingdom the Grand Chamber found that the trial of an eleven-year-old in an adult court, in public and under intense media attention, was intimidating and incomprehensible to him, so that his participation was not effective[7]. In S.C. v. the United Kingdom the Court held that effective participation presupposes that the child broadly understands the nature of the process, what is at stake and the evidence against him[8]. In Blokhin v. Russia it stressed that deprivation of liberty of a minor must be a last resort, individually justified and preceded by consideration of alternatives[9].

Comparative CIS practice. Closer to Uzbekistan, the Criminal Procedure Codes of the Russian Federation (Article 280) and the Republic of Kazakhstan (Article 215) provide for the participation of a teacher or psychologist when a minor victim or witness is questioned, whereas in Uzbekistan this safeguard is guaranteed to a minor suspect or accused but left to the investigator's discretion in respect of a minor victim.

Uzbek practice. Against these benchmarks, the case study of 156 Uzbek cases produced the following picture: a social inquiry report was present in none of the cases; no case recorded a child-friendly procedure, child-appropriate time limits, the participation of a teacher or psychologist at trial, or specific confidentiality measures; the child's best interests were expressly assessed in 10 cases (6.4%); release under Article 87 of the Criminal Code with compulsory educational measures was discussed in 8 cases (5.1%); and the appointment of a public mentor was considered in 37 cases (23.7%). Proportionality of the preventive measure (101 cases, 64.7%) and custody as a last resort (93 cases, 59.6%) were noted, but without any individual social assessment, i.e. formally. Pre-trial detention of minors lasting six to almost ten months, sometimes followed by a non-custodial sentence, was also found.

[5]Ministry of Justice. Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures // https://www.gov.uk/government/publications/achieving-best-evidence-in-criminal-proceedings

[6]Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings // OJ L 132, 21.5.2016.

[7]ECtHR [GC]. T. v. the United Kingdom, no. 24724/94, 16 December 1999.

[8]ECtHR. S.C. v. the United Kingdom, no. 60958/00, 15 June 2004.

[9]ECtHR [GC]. Blokhin v. Russia, no. 47152/06, 23 March 2016.

Discussion

The comparison reveals a common denominator: in all three European systems a right is considered secured only when an institution exists that translates it into an influence on the decision. The German social report, the British special measures and the Directive's individual assessment are not additional rights; they are mechanisms that make existing rights operative. This supports what may be called the functional conception of a minor's procedural status, under which status consists of five elements – the normative basis, institutional guarantees, procedural mechanisms, real ability to use rights, and actual influence on the outcome. The Uzbek CPC is strong on the first element and weak on the last three.

The first lesson concerns individualisation. Article 548 of the CPC lists the circumstances to be established about a minor but does not say by what means. Without a body responsible for producing a social report, courts depend on investigative materials and decide largely on the basis of the offence rather than the child. Legal scholarship has also observed that even in Europe the best interests of the child at sentencing remain contested and are often treated cautiously by judges[10]; precisely for that reason a mandatory, evidence-tested report is needed to give the principle concrete content. As R. Adami notes, without procedural criteria the best-interests principle grants authorities wide discretion and risks ignoring the child's real needs[11].

The second lesson concerns child victims and witnesses. Article 121 of the Uzbek CPC already permits questioning in a specially equipped room with audio and video recording in sexual-offence and trafficking cases. What is missing is the rule that makes the recording count: a "single interview" principle and the admissibility of a properly recorded statement without repeated live questioning. The British experience shows that protecting the child need not be traded off against the quality of evidence; an early recording is often more accurate and less susceptible to later pressure. The principle of immediacy should therefore be balanced against the child's best interests rather than treated as absolute.

The third lesson concerns diversion. The Beijing Rules (Rule 11) and Article 40 of the CRC regard formal prosecution as a last resort. Uzbekistan's Probation Act operates only after sentencing, and the commissions on minors' affairs have no power to apply pre-trial alternatives with procedural effect. As a result, a first-time child offender passes through the full criminal process. The German model of discontinuance conditional on educational measures suggests a "middle way" between impunity and over-punishment, provided it is accompanied by judicial supervision, a social report and a best-interests assessment.

The fourth lesson concerns the actors who are meant to secure the child's rights. In the Uzbek model the legal representative is treated as the sole voice of the child's interests, and the teacher or psychologist participates largely as a formality: in none of the 156 cases did either attend the trial. European practice increasingly recognises that the State is not a neutral arbiter in cases involving children but bears positive obligations to take special procedural measures, failing which its responsibility may be engaged[12]. Where the interests of the legal

[10]Markel D., Collins J.M., Leib E.J. Privilege or Punish: Criminal Justice and the Challenge of Family Ties. – Oxford: OUP, 2009; Minson S., Condry R. The visibility of children whose mothers are being sentenced for criminal offences in the courts of England and Wales // Law in Context. – 2015. – Vol. 32. – P. 28.

[11]Adami R. The best interests of the child as a legal concept // The Rights of the Child: Legal, Political and Ethical Challenges. – Leiden: Brill, 2023. – P. 151–154.

[12]Kilkelly U. Protecting children's rights under the European Convention on Human Rights // Children's Rights in Regional Human Rights Systems. – Cambridge: Intersentia, 2024. – P. 61–63.

representative diverge from those of the child – for example, where the representative is connected with the offence or exerts pressure on the child's testimony – the child needs an independent representative accountable to the court. Likewise, the psychologist should be defined not as a generic "specialist" but as a participant responsible for the child's psychological safety, with a mandatory preparatory session before questioning and the power to recommend adjustments to the interviewing style. These are the Uzbek equivalents of what the YJCEA achieves through intermediaries and what the JGG achieves through the youth court assistance service.

A related issue is the child's own voice in decisions that affect him or her. Article 12 CRC requires that the child's views be given due weight in accordance with age and maturity. In reconciliation decisions in cases involving child victims, Uzbek practice relies almost entirely on the legal representative's position. A procedure in which the child's view and the representative's view are established separately and then balanced against the child's best interests would guard against reconciliation being used to serve adult interests, particularly in family-related cases.

Transplantation has limits. German and British mechanisms rely on specialised services, trained interviewers and technical infrastructure that Uzbekistan is still building. The proposals below are therefore framed as institutional rather than merely textual reforms, and their sequencing should follow available capacity – beginning with the social report and recorded interviews, which require modest resources and yield immediate gains in the quality of decisions.

Conclusion

The study leads to four proposals for Uzbek law. First, a new Article 548^1 CPC should oblige the court to obtain a social inquiry report before sentencing a minor, to examine it as evidence and to give reasons for following or departing from it. Second, the CPC should introduce the single recorded interview for child victims and witnesses and allow such recordings to be admitted without repeated live examination (amendment to Article 442), together with a separate article listing the special rights of a minor victim. Third, a pre-trial correction system and the conditional discontinuance of proceedings against minors (new Article 564^1 CPC) should be introduced, with the results of correction capable of grounding release under Article 87 of the Criminal Code. Fourth, a mandatory "child rights screening" should precede every procedural decision concerning a child, assessing best interests, proportionality and the risk of secondary victimisation.

Two further steps would complete the reform: the introduction of an independent child representative where the legal representative's interests conflict with the child's (amendment to Article 60 CPC), and a statutory definition of the psychologist's role and the mandatory participation of a psychologist when questioning children under sixteen in cases concerning sexual offences (amendment to Article 554 CPC).

Taken together, these measures would move Uzbekistan from a model in which rights are recorded to one in which they are exercised – the standard that the ECtHR has described as effective participation.

References:

1. UN Convention on the Rights of the Child, 1989.

2. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985.
3. UN Committee on the Rights of the Child. General Comment No. 24 (2019) on children's rights in the child justice system.
4. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010.
5. Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.
6. Youth Justice and Criminal Evidence Act 1999 (UK) // https://www.legislation.gov.uk.
7. Jugendgerichtsgesetz (JGG); Strafprozessordnung (StPO) (Germany).
8. Criminal Procedure Code of the Republic of Uzbekistan // https://lex.uz.
9. Adami R. The best interests of the child as a legal concept // The Rights of the Child: Legal, Political and Ethical Challenges. – Leiden: Brill, 2023.
10. Kilkelly U. Protecting children's rights under the European Convention on Human Rights // Children's Rights in Regional Human Rights Systems. – Cambridge: Intersentia, 2024.
11. T. v. the United Kingdom [GC], no. 24724/94, 16 December 1999; S.C. v. the United Kingdom, no. 60958/00, 15 June 2004; Blokhin v. Russia [GC], no. 47152/06, 23 March 2016.