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Research Article

## PROCEDURALLY RELEVANT VULNERABILITIES OF CHILDREN IN CRIMINAL PROCEEDINGS: ADAPTED AND CHILD-SENSITIVE PROCEDURAL MODELS

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### ABSTRACT

**Background:** Ensuring children's effective participation in criminal proceedings is a major challenge for European justice systems, which increasingly recognise that children's developmental, psychological, social, and other characteristics may create susceptibility to procedural disadvantage. Existing guidance, however, is fragmented and insufficiently structured. This article examines the structure and function of procedural protections applicable to children who participate in criminal proceedings as offenders, victims, or witnesses. It focuses on the concept of procedurally relevant vulnerabilities, understood as durable intrinsic conditions that impair a child's ability to understand, participate in, or cope with the criminal process by increasing susceptibility to procedural disadvantages.

**Method:** This study employs doctrinal analysis of EU law, the UN Convention on the Rights of the Child, and the jurisprudence of the European Court of Human Rights to develop an analytical framework grounded in the concept of procedurally relevant vulnerabilities. It proposes a functional

*typology of vulnerabilities and evaluates its procedural implications. Two procedural models are examined – adapted procedures for juvenile offenders and child-sensitive procedures for victims and witnesses – through a structure of core rights, procedural safeguards, and procedural options.*

**Results and Conclusions:** *The two models pursue distinct purposes and rely on different, though flexible and case-adaptable, approaches to vulnerabilities to ensure fairness, protection, and effective participation. The suggested framework strengthens the coherence and predictability of child-related procedural practice and offers a conceptual foundation for judicial guidance and potential harmonization within European criminal justice involving children. Three core contributions are advanced: (1) an operational definition of procedurally relevant vulnerability; (2) a principled separation of adapted and child-friendly procedural models; and (3) a matrix tool for mapping vulnerability-sensitive procedural responses across children's procedural roles.*

## 1 INTRODUCTION

Ensuring the effective participation of children in criminal proceedings is a challenge for contemporary justice systems.<sup>1</sup>

European criminal-justice systems increasingly acknowledge that children differ from adults not merely in legal status but also in developmental, psychological, social, and other capacities that may render them more susceptible to harm or procedural disadvantage. Yet practical knowledge on how children interact with criminal proceedings, how their characteristics affect participation in different procedural roles, and how such characteristics should be addressed is fragmented and inconsistent.<sup>2</sup>

**Children, as a broad and heterogeneous group, do not easily sustain generalisation-based solutions.** Such approaches are methodologically risky and have increasingly been overshadowed by case-by-case methods. The tension between general and individual approaches is particularly acute in the context of criminal justice. It is best resolved not by abandoning general standards in favour of individualised discretion, nor by favouring efficiency over specific needs. A recommended approach would seek goal-oriented, holistic models that equip authorities with specialised knowledge of how flexible, multi-solution mechanisms may be applied to secure the child's best interests in concrete cases. What remains deficient is a deeper, knowledge-based understanding of the specific characteristics that children may present beyond age alone, how these characteristics shape their procedural behaviour, and which procedural responses best safeguard their rights.

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1 FRA, *Mapping of Child Protection Systems in the EU: Update 2023* (Publications Office of the EU 2024)

2 FRA, *Towards Integrated Child Protection Systems: Challenges, Promising Practices and Ways Forward* (Publications Office of the EU 2025) doi:10.2811/7596124; FRA, *Fundamental Rights Report 2024* (Publications Office of the EU 2024) doi:10.2811/28742.

This article aims to clarify the structure of these responses by developing an analytical framework grounded in a concept of *procedurally relevant vulnerabilities and mapping it against* two distinct procedural models: the adapted criminal procedure for juvenile offenders and the child-sensitive (friendly) procedure for child victims and witnesses.

Existing scholarship on child-friendly justice has primarily developed along trauma-sensitive procedural adaptations for victims<sup>3</sup> or participatory rights and fair-trial guarantees for defendants.<sup>4</sup> Children are primarily viewed as age-specific participants in procedures without distinguishing their capacities determined only by age from other characteristics subject to individual assessment, which might by themselves additionally undermine the quality of trial comprehension and participation. Moreover, age – though extensively analysed as a procedurally relevant factor – is not universally analysed from a vulnerability-sensitive standpoint, as it does not always warrant such an approach. Parallel debates address vulnerability as a broad social condition or as an individual deficit, often without distinguishing its procedural relevance.<sup>5</sup> Less independent attention has been given to the structural incompatibility between participation models for accused children and protective models for child victims, or to vulnerability as a criterion for allocating procedural safeguards and remedies. The literature does not always systematically distinguish between children's procedural roles, nor does it operationalise vulnerability as a procedural-legal concept which is relevant, yet different for both roles and distinct from risk factors.<sup>6</sup>

The study addresses this gap by **developing** a practical definition of procedurally relevant vulnerability – distinguishing it from related phenomena such as situational and materially-relevant vulnerabilities and risk factors, and by proposing a functional typology consistent with the relevant acquis of EU law (Directives 2012/29/EU and 2016/800/EU),<sup>7</sup> the

3 Ursula Kilkelly, *Barriers to the Realisation of Children's Rights in Ireland* (Office for the Ombudsman for Children 2007); Ursula Kilkelly, *Listening to Children about Justice: Report of the Council of Europe's Consultation with Children on Child-Friendly Justice* (Council of Europe Publishing 2010); ECtHR, *Guide on the Case-Law of the European Convention on Human Rights: Rights of the Child* (Council of Europe, updated 31 August 2025).

4 Ton Liefwaard, 'Access to Justice for Children: Towards an International Standard?' (2019) 27(2) *The International Journal of Children's Rights* 195, doi:10.1163/15718182-02702002; Terre des Hommes, 'Our Impact: For Children's Access to Justice' (Terre des Hommes, 2025) <<https://www.tdh.org/en/our-impact/justice>> access 20 November 2025.

5 Illustrative example in FRA, *Towards Integrated Child Protection Systems* (n2) 37-40; Lourdes Peroni and Alexandra Timmer, 'Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law' (2013) 11(4) *International Journal of Constitutional Law* 1056, doi:10.1093/icon/mot042; Julia Korkman and others, 'White Paper on Forensic Child Interviewing: Research-Based Recommendations by the European Association of Psychology and Law' (2024) 31(8) *Psychology, Crime & Law* 987, doi:10.1080/1068316X.2024.2324098.

6 FRA, *Towards Integrated Child Protection Systems* (n 2) 8.

7 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA [2012] OB L 315/57; 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 [2016] OJ L 132/1.

UN Convention on the Rights of the Child (CRC),<sup>8</sup> and the case law of the European Court of Human Rights (ECtHR).<sup>9</sup> It examines the procedural implications of various categories of vulnerability. It compares how they interact with the protective measures specific to the adapted and the child-friendly participation models, which are classified into core procedural rights, procedural safeguards, and discretionary procedural options. Based on this, it builds a structured role-sensitive matrix tool for mapping vulnerability-responsive procedural responses across children's procedural roles, thereby clarifying the normative trade-offs between protection and defence rights.

## 2 METHODOLOGY

This study employs a doctrinal legal research methodology consisting of systematic analysis, interpretation, and functional systematisation and comparison of normative legal sources. The primary materials analysed include EU secondary law, the UN Convention on the Rights of the Child, and selected ECtHR judgments, all of which are directly relevant to children's procedural participation and vulnerability assessment. General scientific methods of analysis, abstraction, and classification were applied. Specialised legal methods include teleological interpretation, functional comparison of procedural models, and normative systematisation.

The ECtHR's case law has been selected where the Court explicitly addresses children's procedural capacity, vulnerability, or effective participation. It is analysed using a functional approach, focusing on how specific child characteristics affect effective participation and trigger procedural safeguards. The analysis does not seek to reconstruct individual judgments exhaustively, but rather to identify functional reasoning patterns in the Court's analysis of children's effective participation in criminal proceedings. In particular, attention is paid to how the Court distinguishes between durable personal conditions that structurally impair a child's procedural capacity and situational factors that affect fairness only contextually. This approach allows case law to be used analytically rather than declaratively to support of the conceptual distinctions developed in the article.

To **additionally** reinforce practical grounding, **the analysis cross-checks recent instruments** that operationalise vulnerability in practice.<sup>10</sup>

8 Convention on the Rights of the Child (adopted 20 November 1989 UNGA Res 44/25) <<https://docs.un.org/a/res/44/25>> accessed 20 November 2025.

9 Bulgarian national legislation, particularly the Code of Criminal Procedure (CCP), is occasionally referred to in examples. See, Criminal Procedure Code of the Republic of Bulgaria (effective 29 April 2006) [2005] State Gazette 86.

10 ECtHR, *Guide on the Case-Law* (n 3); FRA, *Towards Integrated Child Protection Systems* (n 2); UN, 'Draft General Comment No 27 on Children's Right to Access to Justice and to an Effective Remedy' CRC/C/GC/27 (United Nations Human Rights: Office of the High Commissioner for Human Rights, 1 February 2024) <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/draft-general-comment-no-27-childrens-right-access>> accessed 20 November 2025; Shauneen Lambe and others, *Child-Friendly Justice Assessment Tool* (Child-friendly Justice Project, Council of Europe 2025).

The typology of procedurally relevant vulnerabilities was derived inductively from recurring impairment patterns and legal responses identified in these sources, and tested deductively against the two procedural models applicable to children. The three-tier analytical matrix was constructed by mapping these vulnerability categories against two procedurally distinct participation models applicable to children – adapted procedures for offenders and child-friendly procedures for victims and witnesses – and identifying legally relevant points of interaction and divergence. The matrix serves as an analytical tool to visualise these interactions and their limits. It is analytical rather than predictive and does not replace individual assessment. The study thus uses conceptual analysis to systematise vulnerability categories and to examine their functional interaction with the two procedural models applicable to children.

Given the normative and structural nature of the research goal – how vulnerability is conceptualised and operationalised across legal frameworks – this methodology is the most appropriate. While empirical data are indispensable for evaluating implementation, the present study focuses on the legal architecture that determines when and how procedural protections are triggered. Empirical assessment of national practice, therefore, lies beyond its scope.

The purpose of the article is, therefore, not to suggest legislative reform but to provide a coherent conceptual structure that supports lawful, consistent, and vulnerability-informed procedural practice.

### 3 PROCEDURALLY-RELEVANT VULNERABILITIES - CONCEPTUAL FRAMEWORK

Building on the conceptual distinctions outlined above, this section operationalises vulnerability as a procedural-legal concept, distinct from both universal vulnerability theories and risk-based approaches.

#### 3.1. Definition and Differentiations

Legal doctrine throughout the EU struggles to reach a comprehensive consensual definition of what constitutes vulnerability in the criminal justice context. EU secondary law employs the term inconsistently, e.g., Directive 2012/29/EU (Articles 22–23, Recitals 38–39) uses a broad and variable concept of ‘victims with specific protection needs’, also described as ‘vulnerable’, or ‘particularly vulnerable’, whereas Directive 2016/800/EU grounds vulnerability in concrete impairments relevant to the child’s procedural capacity (Recital 27; Articles 7, 6(4), and 13(2)).

In its elaborations on effective participation, ECtHR stresses the necessity that the accused child have a broad understanding of the trial’s nature and potential outcomes, fully considering the child’s age, level of maturity, and intellectual and emotional

capacities, as well as other characteristics of the child. Although the Court does state that the child's right to effective participation requires 'due regard to his vulnerability and capacities from the first stages of procedural involvement',<sup>11</sup> it does not define these factors as vulnerabilities but rather as contributors to 'feelings of intimidation and inhibition' and thus as criteria to guide potential measures to promote ability to comprehend and participate.<sup>12</sup> Moreover, the Court analyses them together with relevant 'circumstances surrounding the criminal proceedings',<sup>13</sup> clearly not distinguishing durable intrinsic features of the child from situational external factual conditions. As a result, the term 'vulnerability' is frequently used intuitively or expansively which complicates the design of coherent procedural responses and threatens to either over- or under-include children who potentially require special protection.

In legal and socio-legal scholarship, vulnerability has been conceptualised variously as a universal human condition, a situational social disadvantage, or an individual deficit requiring protection.<sup>14</sup> While these approaches illuminate important dimensions of inequality and serve important normative and policy functions related to risk management, they often remain insufficiently operational for procedural law, as they offer limited guidance for allocating procedural rights and safeguards within criminal proceedings. This study aligns with their basic findings, but deliberately adopts a narrower, procedural-legal understanding, focused on vulnerability as a condition affecting the child's capacity to exercise procedural rights effectively. For criminal procedure, an operational concept must identify when differential treatment is legally justified and what procedural consequences follow. Accordingly, this article treats vulnerability not as a descriptive label but as a decision-relevant legal criterion, capable of triggering differentiated procedural obligations without collapsing into generalised assumptions about childhood or social disadvantage.

In this study's context, the concept will be applied to a **permanent or relatively durable state or condition** that makes a child more susceptible to harm or disadvantage during participation in criminal proceedings as an accused person, victim, or witness, due to trial-related environmental or personal factors. This approach corresponds to doctrinal understandings of vulnerability as a structural and relational condition limiting one's

11 *Blokhin v Russia* App no 47152/06 (ECtHR, 23 March 2016) para 195 <<https://hudoc.echr.coe.int/eng?i=001-161822>> accessed 20 November 2025.

12 *ibid*; *V v the United Kingdom* App no 24888/94 (ECtHR, 16 December 1999) paras 86, 87 <<https://hudoc.echr.coe.int/eng?i=001-58594>> accessed 20 November 2025; *T v the United Kingdom* App no 24724/94 (ECtHR, 16 December 1999) paras 84, 85, 87 <<https://hudoc.echr.coe.int/eng?i=001-58593>> accessed 20 November 2025; *SC v the United Kingdom* App no 60958/20 (ECtHR, 15 June 2004) para 29 <<https://hudoc.echr.coe.int/fre?i=001-61826>> accessed 20 November 2025.

13 *T v the United Kingdom* (n 12) para 85.

14 Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20(1) *Yale Journal of Law and Feminism* 1; Ursula Kilkelly, *The Child and the European Convention on Human Rights* (Routledge 1999) doi:10.4324/9781003579427; Liefgaard (n 4); Peroni and Timmer (n 5).

ability to exercise rights.<sup>15</sup> Such a condition is tied to the child's developmental, physiological, psychological, social, or legal capacities. It can significantly affect the child's ability to participate in, understand, or cope with the justice process. Thus is the concept aligned to links drawn in the child-law context between immaturity and dependency on one hand and procedural environments tailored to children's evolving capacities, on the other.<sup>16</sup> It also aligns with doctrinal approaches that conceptualise children's vulnerability not as a deficit, but as a basis for enhanced procedural participation<sup>17</sup> and with the emerging interpretation of children's access to justice under the UN Convention on the Rights of the Child, which emphasises effective participation and remedies tailored to children's capacities and vulnerabilities.<sup>18</sup>

Not every personal or social disadvantage constitutes a vulnerability in this narrow, procedural sense.

The concept of vulnerability is distinct from that of a **risk factor**. Vulnerabilities are intrinsic or structural *conditions* which establish or increase susceptibility to harm or disadvantage and exist independently of whether such adverse events actually occur. A risk factor, in contrast, is a factual circumstance or a set of circumstances (forming a situation or environment) that increases the *probability* of an adverse event occurring, all other conditions being equal.<sup>19</sup> This event must be definable and manageable,- avoidable or reducible, through appropriate rational intervention.<sup>20</sup> Risk factors may be **procedural** (e.g., absence of interpreter), **contextual** (e.g., threatening environment), **situational**,<sup>21</sup> or **contingent**, but they do not alter the child's internal capacities, vulnerabilities included. Legal scholarship also cautions that situational disadvantage and structural vulnerability

15 Fineman (n 14); Christa Tobler, *Indirect Discrimination: A Case Study into the Development of the Legal Concept of Indirect Discrimination under EC Law* (Intersentia 2005); Christa Tobler, *Limits and Potential of the Concept of Indirect Discrimination* (European Communities 2008) doi:10.2767/56607.

16 Kilkelly, *Listening to Children about Justice* (n 3).

17 Liefwaard (n 4).

18 UN, 'Draft General Comment No 27' (n 10).

19 The concept of risk factor is used within this meaning by all humanitarian sciences, see Patricia J Mrazek and Robert J Haggerty (eds), *Reducing Risks for Mental Disorders: Frontiers for Preventive Intervention Research* (National Academies Press 1994) 127, doi:10.17226/2139; Iva Pushkarova, 'Concept of Risk Factor' in Iva Pushkarova and others, *Risk Criminogenic and Victimogenic Factors in Children* (Union of Judges in Bulgaria 2009–2011) 50 [in Bulgarian].

20 Stefan Popov, *Risk: Conceptual Framework* (New Bulgarian University 2022) 73 [in Bulgarian]; Iva Pushkarova, *Criminal-Law Policies as a Risk and as a Risk-Management Instrument* (RiskMonitor 2023) [in Bulgarian].

21 For differentiations between enduring vulnerabilities and situational risk exposures, see David Finkelhor, *Childhood Victimization: Violence, Crime, and Abuse in the Lives of Young People* (OUP 2008) doi:10.1093/acprof:oso/9780195342857.001.0001; David P Farrington, Rolf Loeber and Maria M Ttofi, 'Risk and Protective Factors for Offending' in Brandon C Welsh and David P Farrington (eds), *The Oxford Handbook of Crime Prevention* (OUP 2012) 46, doi:10.1093/oxfordhb/9780195398823.013.0003.



generate different types of procedural obligations for states.<sup>22</sup> The impact of the risk factor depends on both the underlying vulnerability and other external factors.

For example, a very young minor (vulnerability) may be **at high risk** of being manipulated during questioning if no protective factors intervene. Another example is school dropout; it reduces the child's capacity to understand and participate in the criminal procedure (vulnerability) but also exposes the child to higher risks of manipulation and abuse of rights during trial (risk factor). Parents' conflict is a typical example of a risk factor that can threaten parental support during questioning, when parents argue over who should be allowed to attend, and both exercise parental rights and the authority considers parental presence necessary.

For this study's purposes, **vulnerability is understood as a relatively stable personal or legally relevant condition** that systematically reduces a child's procedural capacity across one or more stages of the proceedings. **By contrast, a risk factor denotes a factual circumstance or situational configuration** that increases the probability of adverse procedural outcomes without, in itself, altering the child's intrinsic ability to understand, participate in, or self-protect. This distinction prevents conceptual inflation of vulnerability and preserves its function as a trigger for structured procedural safeguards rather than ad hoc corrective measures.

From a procedural perspective, **this distinction has concrete legal consequences**. Only procedurally relevant vulnerabilities justify stable, stage-spanning safeguards and adaptations that structure the child's participation throughout the proceedings. Risk factors, by contrast, require situational corrective measures – such as rescheduling, environmental adjustments, or targeted support – without altering the underlying procedural framework or necessitating differentiated procedural treatment. Treating risk factors as vulnerabilities risks over-formalisation, while ignoring durable vulnerabilities undermines effective participation and fairness. While risk factors may interact with vulnerabilities and exacerbate their effects, they remain analytically distinct because, in themselves they do not justify long-term procedural adaptation.

When such interaction occurs, it triggers **causal links**: vulnerability is the **condition**, and risk is the **probability** of a negative outcome due to that condition. A factor qualifies as vulnerability when it **reduces the child's intrinsic capacity** to cope, participate fairly, or self-protect in the criminal procedure. Factors that only increase the probability of harm without affecting intrinsic capacity are more accurately described as risk factors.<sup>23</sup>

Illustrative examples of distinctions between durable versus temporary conditions and their impact on the ability to procedurally self-protect are ECtHR decisions in *Blokhin*,

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22 Suzan van der Aa, 'Variable Vulnerabilities? Comparing the Rights of Adult Vulnerable Suspects and Vulnerable Victims under EU Law' (2016) 7(1) *New Journal of European Criminal Law* 39, doi:10.1177/203228441600700104.

23 Pushkarova, *Criminal-Law Policies* (n 20).



*S.C. v. UK* (durable, intrinsic) and *Panovits* (temporary, situational disadvantages).<sup>24</sup> They express a consistent concern with whether a child's personal characteristics amount to a structural impediment to effective participation. In *Blokhin*, the Court explicitly treated the twelve-year-old's ADHD. It associated behavioural and physiological impairments as durable conditions that structurally reduced the boy's capacity to understand and engage with the proceedings, thus making him 'particularly vulnerable' and requiring 'special protection' (§ 203). In *S.C. v. UK*, it likewise found that an eleven-year-old's inability to understand the proceedings stemmed from developmental immaturity rather than contextual pressures, thus constituting a stable impairment affecting fair trial rights. By contrast, in *Panovits*, the applicant's fatigue and emotional distress at the time of arrest were examined as situational factors relevant to the overall fairness of the trial, but not as indicators of a stable vulnerability requiring systemic procedural adaptation. This distinction illustrates the Court's functional, capacity-oriented approach and supports the boundary drawn in this study between procedurally relevant vulnerabilities and risk factors.

The adverse event associated with procedural vulnerability is most commonly a **procedural harm or disadvantage** – such as coerced confession, unreliable testimony, secondary victimisation, or a substantial violation of procedural rules leading to the exclusion of evidence or the reversal of judicial decisions.

Therefore, **procedurally relevant vulnerabilities must be distinguished from material vulnerabilities**, which may require consideration in the proper individualisation of criminal liability or for judicial decisions on criminal insanity or other substantive issues. Material vulnerabilities serve as mitigating or aggravating circumstances, grounds for exclusion or reduction of criminal liability, or factors relevant to judicial determinations of guilt or authorship.

When a specific condition has both procedural and material relevance, these two dimensions must be recognised and distinguished. A classic example concerns a juvenile offender with an intellectual disability insufficient to establish criminal insanity. The condition reduces the child's capacity to assess the criminal consequences of the act (material relevance) but also necessitates procedural adaptations to ensure understanding of the proceedings and effective participation (procedural aspect). In short, **procedural vulnerabilities concern fairness, effective participation, and the safeguarding of procedural rights**, while **material vulnerabilities concern culpability, guilt, and sentencing**.

To reach a level of intensity that increases susceptibility to adverse events, vulnerability should, at a minimum, **remain constant throughout the proceedings**. Temporary, external, context-dependent disadvantages arising from specific situations, environment, or

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24 *Blokhin v Russia* (n 11) paras 141-8, 203; *Panovits v Cyprus* App no 4268/04 (ECtHR, 11 December 2008) para 67 <<https://hudoc.echr.coe.int/eng?i=001-90244>> accessed 20 November 2025; *SC v the United Kingdom* (n 12) para 29.

procedural circumstances - but not from the child's intrinsic characteristics or not producing significant or durable impact on the child's capacities – do not constitute vulnerability. They may create or increase risks or constitute procedural rule violations, but do not reduce the child's internal resources. Examples include interrogations when the child is exhausted (e.g., late at night, immediately after long journey or demanding school day), questioning immediately after a shocking event, stressful environments (e.g., crowded courtroom, presence of intimidating adults), family crisis, unexpected confrontations ordered by the court, emotional overload during testimony, or temporary unavailability of a psychologist for a planned interrogation of a minor.

Vulnerabilities provide the **basis for procedural protections**, which guide the procedural treatment of the child throughout the trial or until they are no longer relevant. As a rule, they affect all stages of the proceedings. Situational disadvantages, by contrast, trigger **corrective and organisational adjustments** – such as modifying timing, location, or environmental conditions – and require continuous monitoring because they may appear and disappear dynamically. They typically affect only a single procedural action or a limited stage of the proceedings and do not create stable entitlements to long-term safeguards.

Therefore, the identification of procedurally relevant vulnerabilities is not an end in itself. Its legal significance lies in guiding the allocation, intensity, and limits of procedural safeguards, ensuring that differentiated treatment is justified by impaired procedural capacity rather than by generalised assumptions about childhood.

These distinctions provide the analytical basis for the interaction matrix developed in the following sections, where categories of procedurally relevant vulnerability are systematically mapped against applicable procedural responses.

### 3.2. Typology of Procedurally Relevant Vulnerabilities

Procedurally relevant vulnerabilities may be grouped according to the **source, domain, or factor** from which the child's susceptibility to harm or disadvantage originates, and which has a **direct impact on the child's procedural capacities**. The following categories are also grounded in the principal frameworks of Directive 2016/800/EU and Directive 2012/29/EU, and in CRC and ECtHR case law, which explicitly recognise that certain durable conditions impede fair participation and require procedural measures.

**First, personal vulnerabilities** arise from the child's developmental, psychological, or physiological characteristics. This may be generally subdivided into three categories:

- **Developmental and cognitive vulnerabilities.** They originate from age-related cognitive and emotional immaturity or from structural developmental impairments. Examples include very young age, intellectual disability, neurodevelopmental disorders such as autism spectrum disorder, learning disabilities such as dyslexia or dyscalculia, communication and

speech impairments (e.g., stuttering, language processing disorders), and trauma-induced developmental regression.

The vulnerabilities of this subgroup are recognised by Directive (EU) 2016/800 and the CRC. The Directive acknowledges children's immaturity and vulnerability in Recital 27 and requires procedural treatment according to age and maturity (Articles 6(3)(c)–(d)) and an individual assessment of personality, maturity and specific needs (Article 7). The CRC similarly emphasises age and maturity as determinants of procedural capacity (Articles 12 and 40) and recognises the need to provide special protection for children with disabilities (Article 23).

Illustrative of young-age-related vulnerabilities are ECtHR cases of *Bouyid*<sup>25</sup> (age as a specific vulnerability in cases of police ill-treatment), *Salduz*<sup>26</sup> (young age requiring legal representation); *R.B. v. Estonia*<sup>27</sup> (very young age requiring protective procedural adaptations). Developmental and maturity-related vulnerabilities are discussed in *Blokhin* (attention-deficit/hyperactivity disorder, a disorder involving urinary incontinence); *S.C. v. UK* (learning difficulties and impaired reasoning skills); and *T. v. UK* [GC] (intellectual and emotional maturity). The decision in *V. v. UK* [GC] is illustrative of a combination of age, maturity, intellectual, and emotional capacities. In *Kuptsov and Kuptsova*,<sup>28</sup> specific age-related educational disadvantages are discussed as resulting from detention of a schoolboy. In *R.B. v. Estonia*, no procedural relevance is found to have been attributed by the national authorities to the 'particular vulnerability and corresponding needs' of a 4-year-old alleged victim of sexual crimes so as to afford her effective witness protection. The Court's approach in this line of cases reflects a coherent, though implicit, rationale: where young age or cognitive limitations affect comprehension or decision-making, assessment of effective participation shifts from formal to **substantive**. The Court has not articulated a unified doctrine of vulnerability, relying instead on case-specific assessments that leave significant discretion to national authorities. The judgments operationalise vulnerability through Article 6 fairness-test but do not define the concept, underlining the need for a more explicit conceptual framework.<sup>29</sup>

Such conditions may significantly affect comprehension of legal information, expressive and receptive communication, suggestibility, capacity for informed decision-making, and the

25 *Bouyid v Belgium* App no 23380/09 (ECtHR, 28 September 2015) paras 93, 110 <<https://hudoc.echr.coe.int/eng?i=001-157670>> accessed 20 November 2025.

26 *Salduz v Turkey* App no 36391/02 (ECHR, 27 November 2008) para 30 <<https://hudoc.echr.coe.int/eng?i=001-89893>> accessed 20 November 2025.

27 *RB v Estonia* App no 22597/16 (ECtHR, 22 June 2021) paras 102, 103 <<https://hudoc.echr.coe.int/fre?i=001-210466>> accessed 20 November 2025.

28 *Kuptsov and Kuptsova v Russia* App no 6110/03 (ECtHR, 3 March 2011) paras 71, 91, 94 <<https://hudoc.echr.coe.int/eng?i=001-103636>> accessed 20 November 2025.

29 FRA, *Handbook on European Law Relating to the Rights of the Child* (Publications Office of the EU 2022) doi:10.2811/079581.

reliability of statements. They also reduce understanding of procedural consequences and may limit the child's ability to follow procedural instructions, give coherent testimony, resist pressure during questioning, or meaningfully exercise due process rights.

- **Physiological and medical vulnerabilities.** They result from physical or medical conditions that limit the child's physiological ability to engage with the procedural environment. Examples include chronic illnesses that impair cognitive or emotional functioning, sensory (hearing or vision) disabilities, mobility limitations, and pregnancy when it affects stress tolerance or capacity to participate.

Such conditions are recognised in *S.C. v. the UK* (cognitive difficulties); *T.H. v. Bulgaria*<sup>30</sup> (hyperkinetic disorder as an educational vulnerability), *V.I. v. Moldova*<sup>31</sup> and *I.C. v. Romania*<sup>32</sup> (intellectual disability), as directly affecting capacity for effective participation and requiring corresponding procedural adaptations. In *Korneykova*,<sup>33</sup> poor health (tuberculosis and psychiatric disturbances) was considered a relatively durable condition susceptible to being aggravated by remand in custody in an adult-detention facility, thus further diminishing participation capacities. The Court consistently emphasises that such impairments heighten dependency, reduce autonomy in decision-making and increase susceptibility to pressure, thereby necessitating reinforced guarantees and tailored procedural support.

Their procedural relevance lies in reduced stamina, limited capacity to endure lengthy questioning, susceptibility to distress and misunderstanding during procedural actions, or need for physical accommodations. Appropriate responses involve adapted scheduling of investigative actions, shorter interview durations, medical supervision when necessary, and the use of special arrangements.

- **Psychological and emotional vulnerabilities** which originate from mental health status, trauma histories, or emotional instability. Examples include depression, anxiety disorders, post-traumatic stress disorder, attachment disorders (particularly among children from institutional or disrupted care), emotional regulation difficulties, and persistent effects of severe or repeated victimisation (e.g., domestic violence, trafficking, exploitation). Child substance abuse may also create a durable impairment of attention, memory, and judgment, while acute trauma reactions (shock, dissociation, intense fear), self-harm tendencies, or high suggestibility or compliance traits can temporarily affect the reliability of testimony if

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30 *TH v Bulgaria* App no 46519/20 (ECtHR, 11 April 2023) para 23 <<https://hudoc.echr.coe.int/?i=001-224076>> accessed 20 November 2025.

31 *VI v the Republic of Moldova* App no 38963/18 (ECtHR, 26 March 2024) paras 174, 175 <<https://hudoc.echr.coe.int/?i=001-231739>> accessed 20 November 2025.

32 *IC v Romania* App no 36934/08 (ECtHR, 24 May 2016) para 56 <<https://hudoc.echr.coe.int/eng?i=001-163103>> accessed 20 November 2025.

33 *Korneykova v Ukraine* App no 39884/05 (ECtHR, 19 January 2012) paras 11, 41 <<https://hudoc.echr.coe.int/fre?i=001-108654>> accessed 20 November 2025.

not properly managed. Similar categories of barriers to effective participation have been identified in doctrinal analyses.<sup>34</sup>

Directive 2012/29/EU expressly links trauma, fear, intimidation or emotional harm to specific-protection-need status (Article 22; Recitals 17, 38 and 56) and requires protection during interviews to avoid emotional harm (Articles 23–24).

ECtHR similarly recognises psychological trauma, exploitation, and coercive environments as conditions that **intensify susceptibility to secondary victimisation** and impair reliability or completeness of testimony. Such examples are *N.Ç. v. Turkey*<sup>35</sup> (forced prostitution), *T.V. v. Spain*<sup>36</sup> (human trafficking and psychological damage as extreme vulnerability), *M.G. v. Lithuania*<sup>37</sup> (emotional vulnerability as a result of sexual crime). In *B. v. Russia*,<sup>38</sup> extreme emotional trauma resulting from sexual violence is recognised as persisting during the whole procedure vulnerability, causing secondary victimisation via repeated, traumatic interrogations, confrontations and complete disregard for the child's suffering. In *R.R. and Others v. Hungary*,<sup>39</sup> the Court discusses durable characteristics resulting from refugee-related history and detention under degrading conditions, which substantially aggravated the disadvantages associated with detention. In *O.G. v. Latvia*,<sup>40</sup> episodic paranoid schizophrenia with increasing residual symptoms was found to have been sufficiently lasting to impair the detainee's rights to independently appeal detention. Again, this recognition is fragmented and case-specific. These factors are addressed indirectly, through the State's positive obligations or fairness tests, rather than within a unified concept of vulnerability.

These conditions heighten susceptibility to fear, intimidation, emotional overload, and secondary victimisation during testimonies. They may impair memory, concentration, resistance to pressure, and the ability to provide accurate and reliable statements. Their procedural relevance is substantial in decisions about interview strategies, number of interviews and medical examinations, assessment of reliability of statements, protective

34 KilKelly, *Barriers to the Realisation* (n 3).

35 *NÇ v Turkey* App no 40591/11 (ECtHR, 9 February 2021) paras 69-71, 95, 101 <<https://hudoc.echr.coe.int/eng?i=001-207811>> accessed 20 November 2025.

36 *TV v Spain* App no 22512/21 (ECtHR, 10 October 2024) para 92 <<https://hudoc.echr.coe.int/eng?i=001-236200>> accessed 20 November 2025.

37 *MG v Lithuania* App no 6406/21 (ECtHR, 20 February 2024) paras 98-102 <<https://hudoc.echr.coe.int/eng?i=001-231083>> accessed 20 November 2025.

38 *B v Russia* App no 36328/20 (ECtHR, 7 February 2023) paras 53, 54, 68-71 <<https://hudoc.echr.coe.int/eng?i=001-222872>> accessed 20 November 2025.

39 *RR and Others v Hungary* App no 36037/17 (ECtHR, 2 March 2021) paras 49, 52, 58 <<https://hudoc.echr.coe.int/fre?i=001-208406>> accessed 20 November 2025.

40 *OG v Latvia* App no 66095/09 (ECtHR, 23 September 2014) para 63 <<https://hudoc.echr.coe.int/eng?i=001-146409>> accessed 20 November 2025.

measures during court participation, and length of the procedure. **Second, environment-related vulnerabilities**, which encompass the following two subcategories:

- **Social, socio-economic and environmental vulnerabilities**, which arise from structural or relational circumstances that create long-term disadvantage. Examples include lack of parents or unstable caregiving, parental absence or separation, single-parent households combined with other stressors, parental mental illness or substance abuse, parental criminality, exposure to domestic violence, long-term school dropout, markedly deficient education, institutionalisation (residential or closed care), homelessness, unstable housing and frequent displacement (where these create enduring developmental or educational deficits), social marginalization, early parenthoods when it imposes chronic responsibility burdens and developmental disruptions, and extreme poverty when it impairs cognitive, linguistic, or social functioning. Although most of these circumstances are often cited as social risks, they are also treated as long-term conditions requiring special measures in ECtHR case law.

Illustrative are ECtHR's decisions in *B. v. Russia*,<sup>41</sup> *V.I. v. Moldova* and *X. and Others v. Bulgaria*,<sup>42</sup> where institutionalisation and chronic deprivation of parental care are recognised as particular vulnerabilities – structural conditions that diminish a child's resilience, autonomy and ability to cope with procedural demands – rather than temporary disadvantages.

These vulnerabilities often increase dependence on adults, reinforce social isolation, intensify exposure to neglect, coercion, or manipulation, and reduce access to information and support. They weaken the child's ability to understand rights, follow procedural instructions and navigate procedural interactions coherently. Procedurally, they are relevant for evaluating a child's comprehension of rights, capacity to provide consistent testimony, or susceptibility to self-incrimination under pressure, and potential social inhibition or anxiety during questioning.

- **Cultural, language and other identity-related vulnerabilities**, which emerge from persistent language barriers, cultural differences, or identity-based factors that limit the child's engagement with the justice system. Examples include A lack of proficiency in the language of the proceedings, foreign nationality combined with unfamiliarity with the legal system, and cultural or ethnic minority status where long-term communication barriers or distrust of authorities exist.

Such conditions reduce understanding of procedural rights, discourage disclosure of sensitive information, impair communication with professionals, and may inhibit the child's ability to testify safely or accurately. Procedural relevance arises when these factors create

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41 *B v Russia* (n 38) paras 50-71.

42 *X and Others v Bulgaria* App no 22457/16 (ECtHR, 2 February 2021) para 192 <<https://hudoc.echr.coe.int/fre?i=001-207953>> accessed 20 November 2025.

**enduring** barriers rather than momentary misunderstandings, affecting comprehension or communication throughout the proceedings.<sup>43</sup>

In respect of Roma children, Bulgarian studies highlight the necessity to have the risk of cultural conflict always taken into consideration during questioning, regardless of the procedural role of the child—one of the major sources of tension concerns ethnonyms (terms used to designate the ethnic group). Ethnic subgroups often hold negative attitudes toward one another, and their members may object to being classified as belonging to a different subgroup. A child is frequently placed in a conflict of loyalties, where loyalties to the ethnic group and/or the family community can compete with the child's desire to cooperate with the investigation. Conflicting loyalties may also arise among different members of the ethnic group. The interaction of children from ethnic minorities with official state authorities is often influenced by the macro-stereotypes held by the minority about the state and its representatives.<sup>44</sup>

**Third, legal vulnerabilities which result from legal status**, which arise from the child's legal position or status or the legal conditions under which the child participates in proceedings, when such conditions generate durable procedural disadvantages. Examples include deprivation of liberty (particularly prolonged or repeated detention), detention during extradition or return procedures, and irregular or undocumented migration status. Unaccompanied foreign children also fall within this category, as their lack of legal guardianship and representation generates a durable procedural disadvantage.

Detention-related vulnerabilities are linked to isolation and coercion risks, while migration-related vulnerabilities increase susceptibility to language barriers, lack of guardianship, and limited knowledge of rights.

Both categories are mentioned in a variety of contexts in ECtHR decisions - *A.C. v. France*<sup>45</sup> and *Darboe & Camara v. Italy*<sup>46</sup> (unaccompanied minor asylum seeker); *R.R. and Others v.*

43 For general principles of the relevance of lack of language proficiency, see ECtHR cases *Vizgirda v Slovenia* App no 5190/16 (ECtHR, 28 August 2018) paras 75-9 <<https://hudoc.echr.coe.int/eng?i=001-185306>> accessed 20 November 2025; *Diallo v Sweden* App no 13205/07 (ECtHR, 5 January 2010) para 23 <<https://hudoc.echr.coe.int/eng?i=001-96885>> accessed 20 November 2025; *Öztürk v Germany* App no 8577/79 (ECtHR, 21 February 1984) paras 46-58 <<https://hudoc.echr.coe.int/eng?i=001-57553>> accessed 20 November 2025, among others. This study did not find ECtHR judgments explicitly on child language vulnerability.

44 More in Iva Pushkarova and others, *Children's Path: Guide for Professionals in Contact with Children at Risk of Violence, Victims, Witnesses or Offenders* (Kota 2023) [in Bulgarian]; A Kolev, *Handbook for Working with Ethno-Religious Communities on Public Order and Security in Bulgaria* (Institute of Psychology of the Ministry of Internal Affairs 2019) 21 [in Bulgarian].

45 *AC v France* App no 15457/20 (ECtHR, 16 January 2025) Legal Summary <<https://hudoc.echr.coe.int/eng?i=001-238825>> accessed 20 November 2025.

46 *Darboe & Camara v Italy* App no 5797/17 (ECtHR, 21 October 2022) paras 123, 173, 180 <<https://hudoc.echr.coe.int/fre?i=001-218424>> accessed 20 November 2025.



*Hungary* (unlawful detention of repeat asylum seekers); *Khan v. France*<sup>47</sup> (unaccompanied foreign minor); *Blokhin* (young age and health-related vulnerabilities during detention). In *NN and Others v. Greece*,<sup>48</sup> a situation of homeless unaccompanied immigrant minors is recognised as extreme vulnerability. In *Boumar*,<sup>49</sup> young age, foreign status, and family-related vulnerabilities are found to have led to behavioural deviations resulting in detention without safeguards. In *Korneykova*,<sup>50</sup> there were no exceptional circumstances justifying remand in custody of a 14-year-old suffering from poor health. These decisions express the view that certain legal statuses create **inherent procedural disadvantages** – particularly in respect to access to counsel, understanding of rights, and resilience to coercive environments – but do not follow a systematic vulnerability typology.

Such factors may severely restrict the child's ability to understand and exercise rights (e.g., the right to counsel, the right to remain silent), impede autonomous decision-making, increase exposure to coercive environments, and heighten confusion or fear during proceedings, thereby undermining procedural fairness. Their procedural relevance lies in the need for adapted legal explanations and translations, strengthened access to specialised representation, and increased protection from coercive or intimidating procedural contexts.

These categories do not operate as fixed compartments. They may overlap when vulnerability is more complex and satisfies criteria under more than one subgroup.

This structured typology of vulnerabilities is methodologically important because it links the *source* of a child's susceptibility to harm with the *procedural safeguards* required to protect their rights in criminal proceedings. It does not aim to catalogue all possible forms of vulnerability exhaustively, nor to mechanise individual assessment. Its function is analytical and guiding rather than determinative. By distinguishing developmental, psychological, physiological, social and legal domains, the classification enables systematic and individualised assessment consistent with international standards on child-friendly and adapted justice. It enhances clarity and consistency in decision-making by providing practitioners with a transparent framework for identifying each child's specific needs and justifying the corresponding protective measures. Moreover, the typology facilitates the detection of cumulative or intersectional vulnerabilities, supports inter-agency coordination, and enables more precise analytical and policy evaluation. As such, it serves not only as a conceptual tool but also as a practical foundation for designing procedurally adapted responses for children who participate in criminal justice processes as offenders, victims, or witnesses. It does not replace individual assessment but structures it by

47 *Khan v France* App no 12267/20 (ECtHR, 28 February 2019) paras 74, 92 <<https://hudoc.echr.coe.int/eng?i=001-191587>> accessed 20 November 2025.

48 *NN and Others v Greece* App no 59319/19 and Others (ECtHR, 19 December 2024) para 11 <<https://hudoc.echr.coe.int/?i=001-238569>> accessed 20 November 2025.

49 *Boumar v Belgium* App no 9106/80 (ECtHR, 29 February 1988) paras 7, 52 <<https://hudoc.echr.coe.int/eng?i=001-57445>> accessed 20 November 2025.

50 *Korneykova v Ukraine* (n 33) paras 40-41, 44-47.

identifying legally relevant impairment patterns that must be considered in determining appropriate procedural responses. Assessment of vulnerability remains context-sensitive and must be revisited where circumstances evolve. The typology is intended to enhance transparency and consistency in reasoning, not to replace professional judgment or individualised evaluation.

## 4 PROCEDURAL MODELS FOR CHILD PARTICIPATION

### 4.1. Adapted Criminal Procedure for Juvenile Offenders

The concept of an adapted criminal procedure for juvenile offenders emerged in the late Nineteenth Century, when the prevailing understanding shifted toward viewing juvenile delinquency as a consequence of criminogenic environmental influences rather than inherent criminality. This shift supported the idea that punitive repression is not always appropriate for children and that alternative, supportive, and pedagogically oriented measures should be preferred.<sup>51</sup>

Adapted procedure reflects this understanding by introducing modifications to the general criminal process to soften its stressful, formal, and potentially intimidating impact on a juvenile offender. The purpose is to create conditions in which the child feels sufficiently confident, secure, and supported to participate actively, effectively and personally in the proceedings and to exercise procedural rights fully. Thus, adapted procedures operationalise principles of effective participation, fairness, and respect for the best interests of the child within the juvenile justice context.

### 4.2. Friendly (Sensitive / Protected) Procedure for Underaged Victims and Witnesses

A child-sensitive criminal procedure is a refinement of the general criminal procedure, introducing elements designed to limit the adverse emotional and psychological impact on a child who is a victim or a witness of a crime. Child-sensitive justice seeks simultaneously to protect the child from unnecessary exposure to procedural structures and to safeguard the public interest in establishing the objective truth and resolving the case by a final judicial act.

Its purpose is to ensure conditions under which the child can provide full, reliable, and coherent testimony in an environment that is calm, safe, comprehensible, and responsive to their needs. These conditions must take into account age, maturity, views, needs, and concerns. By minimising intimidation, stress, and risks of secondary victimisation, this

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51 Anton Girginov, 'Systems of Justice Concerning Minors' (1993) 5 *Contemporary Law [in Bulgarian]*. For detailed analysis of the adapted procedure, see Iva Pushkarova and Alexey Pamporov, *Themis Sees the Child* (Justice Development Foundation 2024) ch. 2, 22-100 [in Bulgarian].

procedure encourages children to share information about relevant events as openly and accurately as possible.<sup>52</sup>

As a minimum standard, a procedure is child-sensitive when it is accessible, age-appropriate, adapted to and focused on the child's specific needs, timely, diligent, and conducted at least in compliance with the child's rights to a fair process, to participation and understanding of the proceedings, to respect for private and family life, and to dignity.<sup>53</sup>

### 4.3. General Comparative Description of the Structure of the Rights of the Child in Both Types of Procedures

Adapted and friendly procedures are **conceptually distinct**, emerging from different normative premises, as emphasised by child-rights literature.<sup>54</sup> They correspond to incompatible procedural roles, pursue different objectives, and cannot operate simultaneously in respect of the same child within the same procedural position. Despite surface similarities, they cannot be used interchangeably, applied by analogy, or merged. Transferring elements from one model to the other risks structural contradictions and rights violations. For example, measures designed to support an accused child's participation may constitute undue influence if applied to victims, while protections against self-incrimination for an accused conflict with friendly procedures, such as Barnahus models, encouraging a victim to disclose information in a safe, friendly and supportive environment. Likewise, minimising the number of interrogations, suitable for victims, may restrict the accused children's participation.

For these distinctions, it is irrelevant whether a child simultaneously bears characteristics associated with being a victim of abuse, violence, ill-treatment, or crime and of being a perpetrator of an offence, as a child cannot occupy the procedural positions of victim/witness and accused within the same criminal proceedings in respect of the same offence. Although such duality – typical in juvenile justice contexts<sup>55</sup> – may be relevant for decisions concerning protective, educational, parental care, risk management, or other preventive measures, it does not determine the procedurally applicable safeguards that follow from the child's procedural role. The same applies where a child occupies intersecting procedural positions over time: **procedural determination operates sequentially by role,**

52 For a detailed analysis of the friendly procedure see *ibid.*, ch. 3, 100-38. This model reflects principles operationalised in integrated frameworks such as the Barnahus model, widely regarded as best practice for minimising secondary victimisation of child victims, see 'About Barnahus' (*Barnahus Network*, 2025) <<https://barnahus.eu/barnahus/about-barnahus>> accessed 20 November 2025.

53 Pushkarova and Pamporov (n 51) 103-5.

54 Lothar Krappmann, 'The Weight of the Child's View (Article 12 of the Convention on the Rights of the Child)' (2010) 18(4) *International Journal of Children's Rights* 501, doi:10.1163/157181810X528021. On the incompatibility between adapted and friendly models. see further, *SC v the United Kingdom* (n 12) and *OG v Latvia* (n 40).

55 Extensively on the matter see: Pushkarova and others (n 44) 29-38.

with safeguards calibrated to the current procedural status to avoid undue influence while preserving fair-trial guarantees.<sup>56</sup>

There are **some systemic differences** between adapted and friendly procedures. Adapted procedures prioritise **fair-trial guarantees** and **defence rights**; emotional protection is instrumental to participation. The underlying logic is to **empower** the accused child to interact meaningfully and autonomously with the procedural environment. By contrast, friendly procedures prioritise **trauma-sensitive protections**, limiting exposure to stressful procedural interactions (interrogations, environment, audiovisual recording, avoidance of confrontation). Protection from secondary victimisation constitutes an **autonomous core purpose** of the friendly procedure. Empowerment and protection are thus distinct and sometimes conflicting rationales: the same procedural interaction cannot simultaneously be maximally empowering for an accused and maximally protective for a victim.<sup>57</sup>

Violations of procedural rules and rights **generate different consequences**. In adapted procedures, violations more frequently concern core rights and typically constitute **substantial procedural breaches**, usually resulting in the discontinuation of the proceedings, the exclusion of evidence, or the invalidation of the conviction. Under Article 348 (3) 1 of the Bulgarian CCP, a violation is substantial when it restricts a party's rights and remains unremedied. According to Article 249 (4) 1 of the Code, a violation affecting the accused person's ability to understand the accusation, provide explanations or remain silent, participate effectively, be assisted by counsel, or use an interpreter when not proficient in Bulgarian is substantial but remediable. If unremedied or irremediable, the procedural consequences are unavoidable.

In friendly procedures, violations primarily undermine **protection**, may cause secondary traumatisation, and can establish State liability for damages, but do not invariably meet the 'substantial violation' threshold. The reason is that, as parties to the procedure, victims have fewer core rights and, when only witnesses, are not even parties. Under Article 249 (4) 2 of the Code, a violation of the victim's rights is substantial and remediable when it affects the right to be notified of the initiation of proceedings, the right to information about the victim's rights and the right to participation, or the right to receive written translation of decisions on suspension or termination of proceedings when the victim is not proficient in Bulgarian. This set of rights is narrower than the due-process rights list granted to the accused.

Procedures combine **core rights, procedural safeguards, and discretionary options**.

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56 In such an example, a juvenile witness makes self-incriminating accounts while being questioned as an alleged victim of the crime. Such complications may usually require interrogation techniques avoiding questions with potentially self-incriminating responses, switching to adapted procedures of questioning when questioning a child as a perpetrator, or other role-sensitive solutions which avoid merging of safeguards from both models.

57 For detailed analysis of the distinctions between both procedural models, see Kilkelly, *Listening to Children about Justice* (n 3); Pushkarova and Pamporov (n 51) chs 2-3, 22-143; Van der Aa (n 22).

**Core rights** are guaranteed to all children regardless of individual vulnerability and ensured automatically and uniformly in both procedures. As a rule, violations qualify as 'substantial'. Examples include the presumption of innocence, the right to silence, the right to legal counsel, and access to information.

**Procedural safeguards** are specialised protective measures triggered by the role of an accused/detainee, a victim, or a witness, or by individual vulnerabilities. They operationalise and reinforce core rights for children unable to fully exercise them due to age, development, language, disability, or trauma. As a rule, they are not mandatory, but authorities are generally required to state reasons for denying an application. Violations may amount to 'substantial'. They usually establish State liability, which may lead to disciplinary or other personal liability for responsible officials. Illustrative examples include parental accompaniment for accused children and assistance by a neutral professional (psychologist or pedagogue) during questioning for victims.

**Discretionary options** are available mechanisms which authorities may activate when circumstances justify it. Their scope differs substantially between adapted and friendly procedures, depending on legislative design and procedural roles. For victims, examples include limiting the number of interrogations or using the same interviewer; for accused children, accompaniment by a substitute adult in the absence of a parent and professional support during interrogation are optional.

This tripartite structure clarifies which elements are universal and mandatory, or conditional, or optional, enabling systematic comparison between the two procedural models.<sup>58</sup>

**The adapted procedure is dominated by core rights** that apply in their full scope. Examples include presumption of innocence, protection against self-incrimination, equality of arms, rights notification at first procedural contact, parental notification, legal counsel, legal aid, and specialised administration. Except for the presumption of innocence, most of these rights are **inapplicable** (such as the rights to silence and to have parental or substitute adults informed), **limited in scope, or optional** (e.g., the involvement of specialised bodies) for victims, who are less 'armed', especially regarding silence, parental involvement, and legal representation.

Bulgarian national law serves as an additional example. Protection against self-incrimination is narrower for witnesses who are generally required to disclose their knowledge truthfully and exhaustively (Article 120(1) CCP), unless the answer may incriminate them (Article 121(1) CCP). Minors under the age of 14 are instructed on the necessity of telling the truth (Article 140(4) CCP). Furthermore, access to a lawyer and legal aid is more restricted for victims. A child-victim has a **special representative** rather

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58 For detailed analysis of the structure of rights, safeguards and options in both procedural models, see Pushkarova and Pamporov (n 51) chs 2-3, 22-143.

than a defence counsel (Article 75(1) CCP). Unlike the latter, the special representative is not a party to the proceedings and thus is devoid of independent procedural rights. Special legal assistance is mandatory only when a conflict of interest between the child and parent is present. Legal aid is available under certain conditions, such as pregnancy, institutionalisation, foster care, established risks, domestic violence, sexual abuse, human trafficking, asylum-seeking or refugee status, or a foreign child is institutionalised (Article 22 of the Legal Aid Act). In contrast, it is always mandatory for the accused child (Article 94(1) CCP).

**Both adapted and friendly procedures contain numerous safeguards, but they differ substantially.** Adapted safeguards include the right to timely case handling and resolution (“reasonable time”), closed-door hearings, parental accompaniment during questioning, limitations on detention, alternatives to detention, special treatment and non-invasive medical examinations during detention. Most are **irrelevant** (e.g., detention-related protections) or **optional** (parental accompaniment or assistance by a neutral professional for adolescent witnesses when necessary) **for victims**.

Conversely, friendly-only safeguards include limiting private-life questioning, mandatory neutral professional assistance for minors under 14 years of age during questioning, an adapted environment, prompt questioning, audiovisual recording, protection from contact with the offender, and restricted repeated medical exams. None of these applies identically to accused children; identical safeguards include non-disclosure of the child’s identity and presumption of minority.

In conclusion, both procedures depend on the authorities’ practices in applying available protections. Although core rights seem to require the highest and strictest standards with an increasing margin of discretion when safeguards and options are concerned, the procedures are flexible as authorities are bound to operationalise them to secure the child’s best interest.<sup>59</sup> ECtHR has repeatedly emphasised the need to adapt procedures to children’s (and other vulnerable persons’) individual situation. Its case law is highly contextual precisely because there are hardly any ‘forever universal’ prescriptions.<sup>60</sup>

Illustrative **examples from Bulgarian case law** are provided by two landmark 2012 decisions of the Supreme Court concerning questioning of vulnerable child victims. Both were delivered before the transposition of Directive 2012/29/EU in 2023 and therefore rely on general principles rather than codified safeguards or procedural options. Thus, they are indicative of how procedural rules may be tailored a child’s individual needs. The cases concern minor victims of sexual assault who were found to qualify as “vulnerable” and, as such, entitled to “special protection”, at a time when national law did not expressly define

59 *Adamkiewicz v Poland* App no 54729/00 (ECtHR, 2 March 2010) para 70 <<https://hudoc.echr.coe.int/tkp197/view.asp?i=001-97477>> accessed 20 November 2025.

60 ECtHR, *Guide on the Case-Law* (n 3); *AC v France* (n 45) and *Darboe & Camara v Italy* (n 46) (insufficient procedural safeguards in age-assessment).

the content of that protection. The Supreme Court held, in essence, that it is **the duty of the deciding courts to adjust the procedure in the manner most appropriate to the child's vulnerability, even in the absence of direct legal instructions.**

In the first decision, the Supreme Court expressly ruled that “the questioning of a child witness must always be adapted to his or her age and intellect, psychological maturity, and any possible dependence on the persons against whom the criminal proceedings are conducted, as such factors may contribute to feelings of intimidation and, while questioning must be sufficiently thorough to establish the objective truth, it must also be sufficiently protective to ensure a calm and secure environment.” The Court treated these elements as sources of vulnerability and concluded that “the age, social status, and personal development of the minor in the present case indicate that he qualifies as a ‘vulnerable victim’ and is therefore entitled to special protection, with particular regard to personal dignity.” It further held that judicial authorities “must afford special treatment due to vulnerability, meaning that questioning should take place only when and only as many times as truly necessary, and in a manner compatible with fundamental legal principles.” The authorities retain **discretion as to how proceedings are adjusted**, but remain bound by the requirement to balance the interests of the victim and the defendant. In the case at hand, the minor victim was confronted by a defence witness in the absence of persons entitled to attend his questioning. The Supreme Court expressed doubts as to whether his answers could be considered sincere and uninfluenced, finding that the lower court had failed to strike the required balance by permitting a confrontation without adequate safeguards.<sup>61</sup>

The second decision concerned a girl who had been questioned four times during the pre-trial stage and once during the judicial phase. Although the defendant and defence counsel were present at the fifth questioning, they waived their right to ask questions. Before the Supreme Court, they complained that the appellate court had unlawfully refused their request for a confrontation. The Supreme Court upheld the refusal, reasoning that “the age of the victim, who was 13 at the relevant time, and the expert findings concerning her post-offence condition—persisting fear of renewed contact with the perpetrator, shame, and humiliation—clearly demonstrate that she qualifies as a ‘vulnerable victim’ entitled to special protection.” Given the consistency of her testimony, a sixth interview in the form of a confrontation would have been inappropriate. The refusal, therefore, did not constitute a violation of procedural rules.<sup>62</sup>

61 Case No 3106/2011 Decision No 359/2012 [2012] Supreme Court of Cassation of Bulgaria; Case No 3106/2011 Decision № 55/2012 [2012] Supreme Court of Cassation of Bulgaria.

62 Case No 1144/2012 Decision No 359/2012 [2012] Supreme Court of Cassation of Bulgaria.



## 5 MATRIX OF THE PROCEDURAL RELEVANCE OF CERTAIN VULNERABILITIES PER TYPE OF PROCEDURE

The matrix, presented in the table below, summarises typical procedural implications of the different categories of vulnerabilities across adapted and friendly procedures, highlighting points of convergence, divergence, and potential structural tension. Using examples of vulnerabilities, it illustrates the functional systemic asymmetry between the two procedural models. It was constructed by mapping each vulnerability category, identified above in relation to the child's procedural role, against legally available procedural responses within each model, distinguishing between core rights, safeguards, and discretionary options (Table 1).<sup>63</sup> The matrix visualises how identical vulnerabilities may generate different procedural consequences depending on whether the child participates as an accused, victim, or witness.

**Table 1. Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models**

Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models			
vulnerability	ADAPTED CRIMINAL PROCEDURE		FRIENDLY PROCEDURE
	Child as Accused	Child as Detainee	Child as Victim or Witness
Developmental and cognitive vulnerabilities (examples)			
Very young age	The borderline age of minority requires heightened attention to rights that ensure the child's effective participation, based on calmness, security, and understanding. These include the participation of a pedagogue/psychologist during interviews and rights briefings, the presence of a supportive parent or substitute adult, and similar safeguards. The decision-making authority's duty to monitor the quality of legal representation is also increasingly important.		Empirical research across EU Member States shows a minimal age threshold for interview at around 4-6 years of age <sup>64</sup> .  Young minors whose capacity to testify has been confirmed should be interviewed after preliminary preparation via videoconference in a

<sup>63</sup> The matrix is built upon previous research of the author, namely in Pushkarova and Pamporov (n 51), annex, 138-43.

<sup>64</sup> *ibid*, ch. 3, 117; Korkman and others (n 5).

Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models			
vulnerability	ADAPTED CRIMINAL PROCEDURE		FRIENDLY PROCEDURE
	Child as Accused	Child as Detainee	Child as Victim or Witness
			<p>specialised room, with video recording of the questioning, to avoid multiple questioning and reduce procedural contact.</p> <p>A state-funded legal representative should also be considered.</p>
<b>Intellectual disabilities</b>  Not affecting criminal sanity or capacity to participate in the respective procedural role	<p>The participation of a pedagogue/psychologist during the child's interview and when informing the child of their rights is essential. Compliance with rights related to parental accompaniment and notification is critical, and violations are often substantial. Video recording of interviews is strongly recommended, and an extended forensic psychological or psychiatric assessment may be required. Ensuring quality legal representation and the child's active participation are equally important.</p> <p>If the child is detained, adherence to rights-limiting detention, ensuring special treatment, and conducting medical examinations is crucial. Violations may compromise the child's right to a fair trial.</p>		<p>The participation of a pedagogue/psychologist during the child's questioning and when informing them of their rights is increasingly necessary, regardless of age. The significance of child-sensitive procedural rights increases, particularly for videoconference interrogation in a specialised facility, without contact with the accused, and with video recording. An extended forensic psychological or psychiatric assessment is required.</p> <p>A state-funded legal representative should also be considered.</p>

Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models			
vulnerability	ADAPTED CRIMINAL PROCEDURE		FRIENDLY PROCEDURE
	Child as Accused	Child as Detainee	Child as Victim or Witness
Disability-causing illness	Heightened attention to the child’s capacity to participate personally in the proceedings.	Complications regarding the right to special treatment and medical examination.	Right to legal aid potentially arises.
Drug / Alcohol abuse	Extended forensic psychological and psychiatric assessment.  It may give rise to specific health-care needs, which are particularly significant in the context of detention.		An extended forensic psychological and psychiatric assessment is necessary. The participation of a specialised psychologist in the interview may be necessary. The importance of video-recording the interview is increased.
Psychological and emotional vulnerabilities (examples)			
Exploitation, prostitution, involvement in human trafficking  (The child is normally considered ‘at risk’ throughout EU jurisdictions)	These circumstances are usually materially linked to the offence for which the child is detained/charged, reflecting the immediate criminogenic and motivational environment. They may serve as mitigating factors. Cases should be referred promptly to competent child-protection authorities to end the abuse and address its consequences. Placement in an institution, crisis centre, or other protective care may serve as an alternative to detention.		Potential right to legal aid (includes free access to a state-funded legal representative)  A child for whom these circumstances are present qualifies as a victim with special protection needs.

Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models			
vulnerability	ADAPTED CRIMINAL PROCEDURE		FRIENDLY PROCEDURE
	Child as Accused	Child as Detainee	Child as Victim or Witness
<b>Environment-related vulnerabilities (examples)</b>			
<b>Exposure to domestic violence among adults</b> (The child is normally considered ' <i>at risk</i> ' throughout EU jurisdictions)	Its significance must be assessed on a case-by-case basis. It may: <ul style="list-style-type: none"> <li>• be of no relevance if it does not impair parental capacity to support the child emotionally;</li> <li>• have a direct connection with the offence and require the child's removal from the family, as well as specific assessments regarding the parents' access to the proceedings;</li> <li>• give rise to specific health-care needs;</li> <li>• or otherwise, be relevant.</li> </ul>		Potential right to legal aid.  Exposure to domestic violence may give rise to special protection needs and grounds for appointing a special representative if the child has been the victim of a crime committed under conditions of domestic violence.
<b>Lack of parents (orphan)</b> (The child is normally considered ' <i>at risk</i> ' throughout EU jurisdictions)	Complications arise concerning the presence of a parent in the proceedings and the designation of an appropriate substitute adult. The participation of a neutral specialist during questioning is necessary. The obligation of the decision-making authority to monitor the quality of legal representation gains increasing importance.	Measures involving 'parental supervision' are inapplicable as alternatives to pre-trial detention. The right to alternatives to detention requires additional safeguarding efforts.	Potentially granted the right to legal aid.  Complications arise regarding parental attendance during questioning.  There is an increased need for the participation of a neutral specialist in interviews with juveniles
<b>Absent parents (also due to conviction)</b> (The child is normally considered ' <i>at risk</i> ' throughout EU jurisdictions)			

Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models			
vulnerability	ADAPTED CRIMINAL PROCEDURE		FRIENDLY PROCEDURE
	Child as Accused	Child as Detainee	Child as Victim or Witness
Unhealthy parent Parental substance abuse	Possible impact on the parents' ability to provide emotional support to the child. Potential conflict with the child's interests triggering authorities' involvement. The possibility that the child provides health care to the parent must be considered.		
Parental criminal influence	The issue and its significance are examined at the individual-assessment stage and may be irrelevant for procedural treatment. Criminal influence often constitutes dependencies that generate conflicts of interest between the child and parent, affecting authorities' discretion regarding the child's parent-related rights.		If the influence threatens the reliability of the testimony or the child's safety, appropriate measures are necessary.  In other cases, the circumstance is usually irrelevant.
Early parentage (the child has parent responsibilities towards a very young child or a toddler)	The best interests of the child of the accused must be taken into account in its broadest meaning.  Additional efforts are required to ensure the accused child's full and effective personal participation in the proceedings.  Potential specific health-care needs.  Possible impediment to the detention of the accused.		Potentially high relevance of right to legal aid.
Low education	The participation of a pedagogue during the interview and rights briefings is necessary. The importance of the decision-making authority's duty to monitor the quality of legal representation and the accused's personal participation in the proceedings increases.		It is necessary to have a pedagogue participating in the interrogation even when the child is above the age of 14.

Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models			
vulnerability	ADAPTED CRIMINAL PROCEDURE		FRIENDLY PROCEDURE
	Child as Accused	Child as Detainee	Child as Victim or Witness
<b>School dropout</b> (The child is normally considered ‘ <i>at risk</i> ’ throughout EU jurisdictions;  <i>A factor for vulnerabilities related to deficient education</i> )			Right to legal aid – Free access to a state-funded legal representative regardless of other circumstances (Article 22, paragraph 1, item 5 of the Legal Aid Act)
Cultural, language and other identity-related vulnerabilities (examples)			
<b>Lack of proficiency in the language in which the criminal procedure is conducted</b>	The right to interpretation into a language the child understands is paramount in both procedures. It arises before all other rights, at the first contact with the proceedings. It increases the need for parental presence during questioning.		
	The importance of the decision-making authority’s duties to monitor the quality of legal representation and the accused’s personal participation in the proceedings grows. Rights related to involvement and informing parents and substitute adult are of high importance.  Complications may arise regarding the right to special treatment during detention.		The participation of a supportive specialist and a parent during questioning may be necessary.  The right to legal aid may apply.  Options related to sensitive medical examinations, a limited number of interrogations and examinations, video recordings, and questioning in a special environment should be considered. Usually, the child qualifies as a victim with special needs.

Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models			
vulnerability	ADAPTED CRIMINAL PROCEDURE		FRIENDLY PROCEDURE
	Child as Accused	Child as Detainee	Child as Victim or Witness
The child belongs to a racial or ethnic minority	Practices ensuring protection against discrimination and equality of arms are increasingly important. An individual assessment should detail the child’s personal, linguistic, cultural, and other relevant features affecting the child’s exercise of rights and require competent authorities to be informed. Complications may arise regarding parental or adult involvement. Supportive specialists may need to participate, and video-recording of the interview is recommended.		
Vulnerabilities related to legal status (examples)			
Detention	N/A	Detainees enjoy more rights than an undetained accused	N/A
Child requested in EAW / return procedures	The status is identical to that of a detainee, but with language-related rights and safeguards, as often requested children in cases in which the child is a non-national.		N/A
Foreign status	Possible relevance of language-related rights and safeguards and procedural adjustments to cultural identity. Presumption of minority applies.		Some jurisdictions grant legal-aid rights to foreign child victims.
Illegal residence	Heightened attention is required to rights, ensuring the child’s effective participation, based on calmness, safety, and comprehension—such as interpretation, participation of a pedagogue during interviews and rights briefings, presence of a parent or substitute adult, and similar protections.	Detention is likely.	A need for interpretation is likely. The participation of a supportive specialist and interpretation may be necessary during the interview of a juvenile child.
Asylum seeker		Presumption of minor age applies.	
Unaccompanied foreign child  (these situations describe multiple vulnerability)		Detention is likely.	An unaccompanied child lacks legal representation and adult caregiving, which necessitates the appointment of a legal-aid representative.
		Complications arise when there is no parental or other	



Interaction Between Vulnerability Categories and Procedural Safeguards Under the Two Models			
vulnerability	ADAPTED CRIMINAL PROCEDURE		FRIENDLY PROCEDURE
	Child as Accused	Child as Detainee	Child as Victim or Witness
	Unaccompanied children lack a legal representative, making the authority's duty to monitor legal assistance more relevant.  Presumption of minority applies.	permanent legal representative.  Presumption of minor age applies.	The importance of a child-sensitive manner of questioning increases.  Presumption of minor age applies.

The matrix presented here is conceived as a general template. When applied within a specific national legal context, it requires adaptation to reflect how supranational standards are incorporated into the domestic legal system and the procedural consequences that national law attaches to violations under each procedural model. In particular, certain core rights may not have been fully transposed, some safeguards may have been elevated to the level of rights, or specific discretionary options may function in practice as safeguards or rights. Specific practices – such as participation of neutral specialists or parental figures during the questioning of child witnesses – may be mandatory regardless of age in some systems. In contrast, others they remain optional or contingent on individual assessment. National law may also differentiate the legal response to procedural violations according to their severity, remediability, or the procedural model within which they occur. The matrix may also reflect national best-practice approaches promoted by judicial authorities.

## 6 CONCLUSIONS

Procedurally relevant vulnerabilities – defined as durable conditions that impede a child's understanding, participation, or capacity to cope with the justice process due to increased susceptibility to procedural harm or disadvantage – form a coherent analytical basis for determining the scope and design of the applicable protective measures in both adapted and friendly procedural models.

The proposed typology of vulnerabilities – personal, environment-related, and legal – captures the main domains in which intrinsic limitations or structural disadvantages may affect a child's procedural capacity. It is also compatible with recent Council of Europe tools

that translate child-friendly justice standards into assessable procedural indicators.<sup>65</sup> This framework aligns with EU secondary law, the UN CRC and the jurisprudence of the European Court of Human Rights, which consistently recognise the heightened vulnerability of children and the need for adapted procedural guarantees to secure effective participation and, in case of victims, prevent secondary victimisation and optimise evidence gathering. Victim-friendly measures also favour the interests of the accused in being protected from false or unsubstantiated accusations.

The analysis has demonstrated that adapted procedures for juvenile offenders and friendly procedures for victims and witnesses are conceptually distinct, serve different purposes, and rely on different combinations of core rights, safeguards, and procedural possibilities. While adapted procedures prioritise defence rights and effective participation, friendly procedures emphasise protection from intimidation, trauma, and repeated exposure to the criminal process. Treating the two models as interchangeable risks structural contradictions, and violations of fundamental rights.

Methodologically, a matrix-based analytical tool enhances transparency and consistency in vulnerability-informed procedural decision-making without replacing individualised assessment.

Overall, the study concludes that a vulnerability-informed approach provides a consistent, legally grounded framework for structuring procedural responses to children in criminal proceedings. Such an approach enhances coherence and supports consistent, and legally sound decision-making in practice, enabling authorities to tailor procedural responses to children's specific capacities while maintaining compliance with EU law and ECHR standards.

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

### ПРОЦЕСУАЛЬНІ ОСОБЛИВОСТІ УЧАСТІ ДІТЕЙ ЯК ОКРЕМОЇ КАТЕГОРІЇ ВРАЗЛИВИХ ГРУП В КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ: АДАПТОВАНІ ТА ЧУТЛИВІ ДО ПОТРЕБ ДІТЕЙ ПРОЦЕСУАЛЬНІ МОДЕЛІ

**Іва Пушкарєва**

#### АНОТАЦІЯ

**Вступ.** Забезпечення ефективної участі дітей у кримінальному провадженні є серйозним викликом для європейських систем правосуддя, які дедалі більше визнають, що особливості розвитку, психологічні, соціальні та інші характеристики дітей можуть зумовлювати їхню вразливість в межах кримінального провадження. Однак наявні рекомендації є фрагментарними та недостатньо впорядкованими. У цій статті розглядається структура та функція процесуального захисту, що застосовується до дітей, які беруть участь у кримінальному провадженні як правопорушники, жертви або свідки. Вона зосереджена на концепції процесуальних особливостей окремої категорії вразливих груп, які розуміються як стійкі внутрішні умови, що погіршують здатність дитини розуміти кримінальне провадження, брати в ньому участь або справлятися з ним, збільшуючи схильність до виникнення процесуальних недоліків.

**Методи.** Це дослідження використовує доктринальний аналіз права ЄС, Конвенції ООН про права дитини та судову практику Європейського суду з прав людини для розробки аналітичної структури, що ґрунтується на концепції процесуальних особливостей окремої категорії вразливих груп. У ньому пропонується функціональна типологія аспектів вразливості та оцінюються її процесуальні наслідки. Розглядаються дві процесуальні моделі – адаптовані процедури для неповнолітніх правопорушників та процедури, що враховують інтереси дітей, для жертв та свідків – через структуру основних прав, процесуальних гарантій та процесуальних можливостей.

**Результати та висновки.** Ці дві моделі мають різну мету та спираються на різні, хоча й гнучкі та адаптовані до конкретних справ, підходи до категорії вразливих груп, щоб забезпечити справедливість, захист та ефективну участь. Запропонована структура зміцнює узгодженість та передбачуваність процесуальної практики, пов'язаної з дітьми, та пропонує концептуальну основу для судового керівництва та потенційної гармонізації в межах європейського кримінального правосуддя, що стосується дітей. Запропоновано три основні внески: (1) оперативне визначення процесуальних особливостей окремої категорії вразливих груп; (2) принципове розділення адаптованих та зручних для дітей процесуальних моделей; та (3) матричний інструмент для відображення процесуальних заходів, що зважають на інтереси дітей, у всіх їхніх процесуальних ролях.

**Ключові слова.** Процесуальна вразливість; участь дитини у кримінальному провадженні; ювенальна юстиція; правосуддя, що зважає на інтереси дитини; адаптований кримінальний процес; процесуальні гарантії.