



Guidelines for Juvenile Justice in Iraq: For Judges and Prosecutors

Permeable

This guidebook aims to provide instructions and practical guidance for the judges and prosecutors working in juvenile justice in Iraq. This is to ensure the proper application of relevant legislations and regulations, and to respect the international standards for juveniles and children. It particularly aims to protect the best interests of juveniles and to extend the application of alternative penalties whenever possible, especially in cases where judges have the discretionary powers to expand the application of the legal text, considering the particular circumstances of each case.

These instructions and guidelines shall be read in conjunction with other various national laws, in particular the Juvenile Welfare Act No. 76 of 1983, the Code of Criminal Procedure No. 23 of 1971, the Penal Code No. 111 of 1969, the Public Prosecution Law No. 49 of 2017, the articles of the Iraqi constitution for 2005, and the decisions and interpretations by the Court of Cassation in this regard.

The Supreme Judicial Council, through its relevant institutions, especially the Judicial Oversight Commission, shall supervise the implementation of these instructions and guidelines to ensure a thorough development of juvenile justice in Iraq and the Kurdistan Region.

These instructions and guidelines address a number of different aspects which judges and prosecutors working in juvenile justice shall deal with them with great caution and attention, especially when they are in a position to protect the public order and security on one hand and to respect the rights of juveniles on the other. This inconsistency is often reflected in cases where juveniles are charged with serious crimes, such as crimes of terrorism, sexual exploitation, human trafficking, drug trafficking or other serious transnational crimes.



Contents

Permeable	1
First: General Principles.....	3
Second: Role of Judges and Prosecutors during the Apprehension of Juveniles by Police in Lockups and Detention Centers.	6
1. Role of Judges.....	6
2. Role of Public Prosecutor	7
Third: The Role of Investigating Judges in dealing with Juvenile Cases	8
1. Verification of the principles of criminal liability, provisions of moving and raising lawsuits, and career specialization:	9
2. Examination and review of cases of torture and mistreatment	10
3. Respect the principles of juvenile rights during investigation.....	12
4. Criteria for Juvenile Apprehension	13
5. Maintaining confidentiality and privacy	14
6. Office of Personality Studies	15
Fourth: The Role of Public Prosecutor in the Investigative Procedures against Juveniles	16
Fifth: The criteria and considerations to be taken into account when charging juveniles with serious crimes.....	17
1. Considerations related to the case file shall be referred to the Court of Cassation	18
2. Considerations related to the judicial investigation and the trial of the accused juvenile .	18
Sixth: The Role of Juvenile Judges during Trial	20
Seventh: The Role of Public Prosecutor in Judicial Investigation and Trial	21
Conclusion	23



First: General Principles

All professionals working in juvenile justice, especially judges and prosecutors, shall consider the general principles of juvenile justice, as set out below.

- Judges, public prosecutors and juvenile police officers shall pay attention to their responsibilities in the early detection of juvenile delinquency. In this regard, they shall cooperate with all relevant institutions, both formal and informal. They shall also hold joint meetings to discuss plans and strategies necessary to prevent delinquency.
- Judges, public prosecutors and juvenile police officers shall take into account the best interests of juveniles when dealing with them. This requires them to always think that juvenile justice is not based on punishment and deterrence, either public deterrence or private deterrence, but mainly aims to protect juveniles from mistreatment, psychological or physical abuse, and to protect them during investigation and trial proceedings. Hence, judges, public prosecutors, and juvenile police need to constantly explore the best measures for juvenile rehabilitation and reintegration into society.
- All juvenile justice professionals, particularly judges and prosecutors, shall not deal with juveniles as criminals, but rather search for personal (psychological and physical) and social reason that led to commit criminal acts. Hence, they shall be treated as juvenile delinquents, who deviated from the right path, who are ignorant of the nature of the crime they committed, and who are unaware of the penalties they face, so that they do not get the impression that they are now classified as criminals.
- All juvenile justice workers shall respect the constitutional rights of children and juveniles that are referred to in the Iraqi Constitution of 2005, in particular the principles of non-discrimination on the basis of race, color, sex, language, religion, country of origin or political belief.
- All juvenile justice workers shall respect the relevant human rights, in particular those referred to in the Universal Declaration of Human Rights of 1948, the 1966 International Covenant on Civil and Political Rights, the 1989 Convention on the Rights of the Child



ratified by the Iraqi Government. They shall also make all efforts to ensure consistency with the standards contained in other relevant international conventions, particularly the United Nations Standard Minimum Rules for the Administration of Juveniles (the Beijing Rules) of 1985.

- Juvenile justice professionals need to respect lawyers and understand their role in achieving justice as they represent the Standing Judiciary and are a key part of the judicial process. It is important to emphasize lawyer's ability in representing juveniles at any stage of proceedings. It is also important to consider the requests they make during the process of investigation and trial.
- Juvenile police departments are the only body to deal with all juvenile cases in accordance with the provisions of Articles 22(e), 23 and 48 of the Iraqi Juvenile Welfare Act No. 76 of 1983. This is why all members of the police and other security forces in which the law allows them to arrest a person without being issued an arrest warrant by the competent authority (such as Articles 102 and 103 of the Criminal Code) shall avoid mistreatment, psychological and physical abuse of juveniles. They are also obliged to inform juveniles of the reason of their arrest and to bring them directly before the juvenile police or juvenile magistrate.
- All juvenile police stations shall be subject to the supervision of the judiciary and members of the public prosecution, who shall:
 - Organize periodic visits to inspect juvenile detention centers and correctional facilities.
 - Ensure the safety of the legal procedures during the arrest of juveniles, and oversee their health and food.
 - Ensure that juveniles are not apprehended for more than permitted legal periods.
 - Prepare special reports about their visits.



- Judges and public prosecutors shall request from relevant bodies and institutions to review the works and responsibilities of those staff who violate their duties. If the staff violate their duties, they shall face a disciplinary trial, and this shall not create any obstacle for a disciplinary trial if any of them constitutes a crime.
- Juvenile police stations must prepare a record of all complaints and information against juveniles and refer them directly to the juvenile judge. No action shall be taken against a juvenile unless a decision by the investigation judge has been issued, except for those cases stipulated in Article 43 of the Code of Criminal Procedure.
- No unlawful means shall be used to extract a confession from the accused, and any confession resulting from unlawful means shall be considered null and void and shall not be relied upon to convict the accused.
- The practice of illegal means and mistreatment is a form of exceeding the limits of the employee's duties, and this requires that he/she be held criminally accountable under Articles 332 and 333 of the Penal Code. If convicted, he/she must be removed from the juvenile police.
- All juvenile justice workers working at the correctional facilities shall make all possible efforts to develop their capacities and increase their knowledge in juvenile justice, in particular:
 1. Reviewing all relevant local legislation, regulations and policies.
 2. Reviewing the experiences of other countries.
 3. Participating in the training and educational activities available.



Second: Role of Judges and Prosecutors during the Apprehension of Juveniles by Police in Lockups and Detention Centers.

1. Role of Judges

As mentioned above, juvenile police are considered the exclusive authority to deal with juvenile cases. Therefore, they are the relevant body to receive and record legal complaints concerning crimes committed by juveniles.

Under the supervision of the investigating judge and the public prosecutor, juvenile police conduct the initial investigation procedures in juvenile cases. Juvenile police shall not take measures that result in restricting individual rights and freedom such as arrest, inspection, etc. especially when the crime is not known and the arrest warrant is not from the investigating judge. In all cases, the relevant papers and procedures of the investigation shall be presented to the concerned judge as soon as possible. It is worth mentioning that according to the Article 49(a) of the Juvenile Welfare Act the professionalism and specialization shall be taken into account especially in places where juvenile judges are not present.

Juvenile police officers shall be subject to the supervision of the investigating judge, who may direct and instruct them to take necessary measures. The judge may verify the legality of the proceedings against juveniles and may ask their staff to look into the order of those who violate his/her duties.

Juvenile police officers shall be subject to a direct supervision of the public prosecutor, who in accordance with Article 7/2 of the Public Prosecution Law, has the right to inspect detention centers and juvenile police stations on a regular basis and at least twice a month. Special reports about the visit and the inspection shall be directed to relevant bodies.

The investigating judge may assign the juvenile police to take the procedure of preliminary investigation, such as procedures of detection and inspection of the scene of the accident and other preliminary procedures without recording statements and testimonies. In this case, the juvenile



police shall provide the judge with all the minutes of the investigation and any other documents relevant to the investigation.

Under his/her direct supervision, the investigating judge may assign a judicial investigator to move to juvenile police stations or any other place to investigate juveniles or to carry out any investigation procedure legally permitted to perform them.

Judges shall always take into account the best interests of juveniles in all decisions. The basic principles of “the best interests of juveniles” include the following.

- Decisions on arrest must be used as the last resort, and that the decision is justified. In this regard, it is significant to emphasize that it is not permissible to arrest juveniles for all offenses but to deal with the situation according to the law. Juveniles shall only be arrested for crimes and misdemeanors according to Article 52 of the Juvenile Welfare Act). After the arrest, there shall be an examination and study of his/her character. And, when the Personality Assessment Office completes its duties, the juvenile shall be released on bail.
- Making sure that appropriate conditions are provided to protect the juvenile physically, mentally, and psychologically.
- Keeping the juvenile with his/her family and within his/her social circle as possible.
- In case of arrest or detention of juveniles, their families must be informed of this and the reason for arrest or detention as soon as possible.
- The juvenile may be interrogated only after he/she has been informed of the right to have his/her lawyer be present during interrogation. And, in the absence of such a lawyer, a lawyer specialized in cases of misdemeanors and offenses shall be appointed.

2. Role of Public Prosecutor

- The main responsibility of a public prosecutor is protecting families and children.
- Juvenile police officers shall be subject to the supervision of the public prosecutor, who is entitled to exercise his/her authority in accordance with Article 7/2 of the Public Prosecution Law regarding the inspection of detention centers and juvenile police



- stations on a regular basis and at least twice a month. Special reports about the visit and the inspection shall be directed to relevant bodies.
- Public Prosecutor has an important role in monitoring the investigation procedures carried out by juvenile police stations. The responsibilities of public prosecutor during investigations are:
 - Staying in constant contact with the investigating judges and conducting periodic visits to the juvenile police stations to ensure that legal procedures are followed and that juvenile detainees are treated well.
 - Exercising their legal powers in accordance with Articles 2 and 7 of the Public Prosecution Law No. 159 of 1979, in moving the criminal complaint if there is a conviction of cases of mistreatment or torture of juveniles.
 - Activating the role of the Office of Personality Studies in view of the importance of the report prepared by the employees of this office and its impact on the ruling issued by the Juvenile Court. This is in accordance with Article 62 of the Juvenile Welfare Act, which states, “The Juvenile Court shall issue its judgment in the case, taking into account the circumstances of the juvenile in the light of the report of the Office of Personality Studies.”

Third: The Role of Investigating Judges in dealing with Juvenile Cases

The investigating judge shall carry out the initial investigation, and he/she is the first supervisor to protect the rights of juveniles and to ensure that juvenile rights are not violated. This role is important and essential, and is consistent with the young age of juveniles. It takes into account their low level of awareness and ignorance of what they are doing. Meanwhile, this role agrees with the legislator’s goal, which is to carry out the basic principles of the Juvenile Welfare Act that are relevant to how to take account of juveniles at the different stages of criminal proceedings.



Hence, the legislator shall give the investigating judge the power to carry out the preliminary investigation as a general principle (in accordance with Article 52(a) of the Code of Criminal Procedure), and the investigator investigates only under the supervision of investigating judges. This is one of the fundamental principles of juvenile justice to avoid serious violations of juvenile rights. It also helps to build a lawsuit on sound legal grounds, and to reduce the possibility of wrongly accusing innocent juveniles. Still, it helps to avoid recording innocent juveniles in the justice system formally without sufficient legal grounds, thereby avoiding the possibility of stigmatizing them and their families.

As mentioned earlier, at this stage the investigating judge shall:

- Conduct a thorough and careful examination of all the facts of the case in hand.
- Review all the legal procedures, evidence, and lawsuits to ensure their authenticity and credibility, thus to maintain only reliable ones and to exclude the ones that are flawed by law.
- Ensure the validity of the confessions of juveniles and the circumstances in which they were made, and that they were not given under any coercion or pressure of any kind especially in serious cases such as cases in which a juvenile is alleged to have committed terrorist offenses or have engaged in drug trade, human trafficking or prostitution. Juveniles are often involved in such crimes without having a self-awareness or a free will to do so. They are often victims of forced recruitment, exploitation or coercion by adults or organized criminal groups, rather than being experienced criminals themselves, who are aware of the nature of their actions.

The following is a set of procedures that investigating judges shall take during the course of juvenile proceedings to ensure the necessary protection:

1. [Verification of the principles of criminal liability, provisions of Statue Limitations, and the Jurisdiction:](#)
 - Ensure the availability of elements of criminal responsibility which are represented by perception and freedom of choice, especially the following cases:



- Those cases that have no legal value due to having no perception, awareness, and freedom of choice, and having what is called “obstacles of criminal responsibility” (Article 47/first of the Juvenile Welfare Act, Article 2 of Law No. (14) for the year 2001, which is the law establishing the age of criminal responsibility in the Kurdistan Region – Iraq)
 - The case of lack of awareness and recognition (Article 60 the Iraqi Penal Code)
 - The case of lack of free will (coercion) (Article 62 of the Iraqi Penal Code)
 - The case of necessity (Article 63 of the Iraqi Penal Code)
-
- Take into consideration Article 6 of the Code of Criminal Procedure concerning the loss of the right to register a complaint in respect of crimes whose raise depends on the complaint within three months from the date of the victim’s knowledge of the crime or the disappearance of the coercive excuse which prevented the complaint.
 - Take into account Article 70 of the Juvenile Welfare Act concerning the right to file a lawsuit and the procedures of statute of limitation and initiating a lawsuit, as two inseparable parts of the public law whose provisions may not be violated.
 - Take into account Articles 48 and 49 of the Juvenile Welfare Act concerning the investigation of juveniles in the juvenile police and juvenile court, as two professional sides for that purpose which cannot be violated.

2. Examination and review of cases of torture and mistreatment

Due to their age and limited mental awareness of the nature of the acts they commit, juveniles are considered as one of the vulnerable groups. Hence, they may be more likely than other groups to be abused, both in word and in deed, such as threats to give information that would harm them or their families. They may therefore submit to intimidation and give information that may not necessarily be true. In light of this, judges are required to do the following:



- Judges need to hold the case in front of juveniles themselves, free of any restrictions or chains. They are also required to make juveniles understand that they are before a competent, independent and neutral judge whose mission is to seek the truth and whose goal is reform and care, not punishment, for the sake of implementing constitutional principles and human rights rules in this regard.
- The judge shall provide the opportunity for the juvenile, his guardian and his agent to speak freely before the court. The judge shall also give them adequate time and provide the appropriate conditions for them to present all the facts and details of the case and enable them to clarify the juvenile's psychological and social circumstances, in accordance with the sacred right of defense guaranteed by national legislation and international human rights charters.
- The investigating judge shall examine the health condition of the juvenile (physical, psychological, and mental). If the judge is convinced that such examination can be used to clarify the truth, provided that this is carried out before the investigation proceedings, he/she may benefit from the staff of the Personality Assessment Office, or any experts who believe that their expertise should be heard to clarify the truth.
- The investigating judge shall ask the juvenile whether he/she has been subjected to any form of mistreatment before the stages of investigation.
- If the juvenile informs the investigating judge that he/she has been subjected to torture or mistreatment, and the effects of torture are visible on his body, the investigating judge must record this in the investigation file and present the juvenile directly to a specialist doctor to determine his/her physical condition and to provide appropriate treatment.
- If the juvenile admits that he/she has been subjected to mistreatment and that his/her statements have been extracted under the influence of coercion and pressure, but that he/she has not been subjected to any form of torture, the judge must verify these allegations by working on two directions:



- The first direction is that the juvenile shall be presented to a specialized health committee to examine all the allegations of the juvenile, and a comprehensive report shall be submitted to the investigating judge in this regard.
- The second direction is to investigate those who investigated the case and dealt with it before bringing it to the court, and to confront both sides with each other to verify the truth of the allegations of the juvenile, and thus to help the judge determine the juvenile's claims.

3. Respect the principles of juvenile rights during investigation

The investigating judge shall take into account all the rights of juveniles involved in the proceedings of the investigation and fair trial. The basic rights include helping juveniles understand the constitutional and legal rights, which include the following.

- Juvenile's case shall not be referred to the juvenile court in absentia. His/her arrest warrant shall not be circulated to security checkpoints and border controls.
- The right to remain silent regarding the questions addressed to him/her with respect to the crime attributed to him/her.
- The right to freely choose a lawyer of his/her choosing, or to allow the juvenile's guardian or his/her relatives or a representative of social institutions to defend him/her without the need for a written agreement (proxy) in accordance with Article 60 of the Juvenile Welfare Act.
- If the guardian of the juvenile does not choose a lawyer to defend him/her, or if a relative does not defend him/her, the court shall appoint a qualified lawyer to represent and defend him/her. The designated lawyer shall make the necessary effort to defend his/her client in such a manner as to achieve the purpose for which the legislator required the presence of lawyer for the accused. The lawyer shall defend the client fully and genuinely, not truncated or just for the sake of formality.



- Lawyers should be able to perform their duty freely, which requires their freedom to communicate and meet with their client in complete secrecy. There should also be respect for the principle of confrontation, discussion and questioning the defense witnesses.
- The person who is not a lawyer and defends the juvenile shall have the right to challenge decisions before a higher judicial authority.
- The defendant (the accused juvenile) shall have the right to have his/her case heard promptly and without undue delay.

4. Criteria for Juvenile Apprehension

The judge shall not resort to the arrest of juveniles during the investigation stage unless there is no other alternative available, such as these cases:

- There is a fear that the juvenile might run away
- If his/her release might have a negative impact on the procedures of the investigation
- If his/her release might cause harm to his/her life.

In this regard, it is worth noting that Article 52 of the Juvenile Welfare Act must be adhered to in respect of the cases in which the juvenile may be arrested, and how to implement the arrest warrant must be according to the following.

- Juveniles shall not be arrested for infractions at all.
- Juveniles may be arrested for certain kinds of misdemeanors and felonies, and this is for the purpose of examining the juvenile and studying his/her character. Juveniles may also be arrested if they have no guarantor (Bondsman)
- Juveniles shall be arrested for a felony punished by death penalty if they are above 14 years old.
- In all cases, the arrest must be carried out in the observation house designated for this purpose. In places where there is no such house, measures must be taken to prevent



- mixing juveniles with adults. If the sponsor (guarantor) is unable to attend, the investigating judge must ensure that the juveniles are placed in their own rooms.
- The purpose of detention is to examine and study the condition/state of the juvenile. Upon the completion of the examination procedures, the investigating judge shall decide to release the juvenile, in accordance with Article 52 of the Juvenile Welfare Act.
 - The investigating judge or the assigned judicial investigator must interrogate the accused juvenile within 24 hours of his/her arrest. This shall be carried out after establishing his/her character and informing him/her of the crime attributed to him/her, based on Article 123 (a) of the Code of Criminal Procedure.
 - Since the purpose of arresting juveniles in crimes of misdemeanors and crimes not punishable by death is to complete the examination process and to study the character of the accused juvenile, it is not permissible to continue extending the defendant's detention unless it is impossible to have a guarantor.
 - It is not permissible to detain juveniles accused of misdemeanors punishable by imprisonment for a period of three years or less or a fine as long as he/she has a known address of residence and has a sponsor (guarantor). However, juveniles shall be detained if the investigating judge or the court believes on reasonable grounds that there is a risk to his/her life or his/her physical or psychological wellbeing.

5. Maintaining confidentiality and privacy

Considering the specificity of juvenile cases and their distinctiveness from adult cases, the legislator shall ensure to provide a range of safeguards that keep the information on juveniles being investigated within a very limited and narrow range, which requires juvenile justice workers to take into account the following issues.



- Juvenile justice workers need to take all necessary measures to ensure the confidentiality of the preliminary investigation and the hearings of the juvenile courts, and to preserve juvenile information and data.
- In accordance with Article 59 of the Juvenile Welfare Act, the juvenile court shall have the right to conduct the trial without confronting the juvenile in cases of morality and public morality. This is in order to prevent the juvenile from hearing expressions of morality and public morality.

6. Personality Assessment Office

Offices of Personality Assessment are an integral part of juvenile courts and an important side of the cases of juveniles. The involvement of such offices in the proceedings of cases of criminal offenses is considered necessary, whereas in the proceedings of cases of misdemeanors it is considered permissible. These offices may, in their best use, play an active role in assisting judges to deal with juvenile cases effectively and actively. Thus, the investigating judge shall take into account the following.

- Assigning the Personality Assessment Office to conduct a thorough examination of the health, mental and psychological condition of the juvenile. In serious criminal cases, all available data and information should be submitted to the Personality Assessment Office so that a thorough study is prepared, and recommendations are given that may be relevant to the case.
- Making sure that the Personality Assessment Office conducts a research on the accused juvenile about his/her social environment that he/she lives in, determining the extent of his/her involvement in the crime committed, and then specifying proposed measures for treatment. This procedure is carried out before referral to the Juvenile Court so that the investigating judge is fully informed of the case of the juvenile before the referral and the reasons for his/her crime.



- Following up the work of the Personality Assessment Office, and making sure that their tasks are implemented in accordance with the established rules, and they shall be informed of the shortcomings that will be in their performance to avoid them in the future.
- Activating the frequent visits of doctors of various disciplines as provided in the Juvenile Welfare Act, and enabling them to give their views with credibility, and not just for the sake of formality.
- Extending the powers of the investigating judge to benefit from the reports of the Personality Assessment Office by conducting social research and studying the personal status of the juvenile in all intentional crimes, whether a felony or misdemeanor. This is due to effects of the reports of the Personality Assessment Office on the procedural and substantive aspects of criminal cases, and to help them identify cases of deviation and finding out the causes; thus, helping to choose the best means of how to avoid committing crimes in the future.

Fourth: The Role of Public Prosecutor in the Investigative Procedures against Juveniles

The public prosecutor has a supervisory role over the procedures and decisions of the investigating judge during the preliminary investigation stage. This requires having an active role through implementing the following points.

- The public prosecutor shall attend the investigative procedures taken in the case of the accused juvenile to make sure that these procedures are taken justly and in accordance with the law.
- The public prosecutors shall contribute to the completion of the investigation by fully reviewing all the procedures and decisions issued in the case, and by writing



- recommendations to the investigating judge in what he/she deems necessary to clarify the truth in the case and the speed of resolution.
- The public prosecutor shall monitor juveniles detained in the correctional facilities to ensure that they are not tortured or mistreated in the police stations or the correctional facilities.
 - The public prosecutor shall attend the questioning of the accused juvenile to ensure the freedom of the accused during the interrogation and ensure his/her right to defense.
 - The public prosecutor shall submit applications to the investigating judge for referral to a special medical committee if he/she believes that the juvenile may have been subjected to torture and mistreatment.
 - The public prosecutor shall appeal the decisions and procedures of the investigating judge in case of violation of law, and follow up the implementation of appeal decisions in case of revocation of the procedure or the decision.
 - The public prosecutor shall resort to the use of intervention appeal in respect of the proceedings and decisions issued in the case, should the appeal expire.

Fifth: The criteria and considerations to be taken into account when charging juveniles with serious crimes

Crimes of terrorism are serious crimes that have caused great harm to the state and society. Hundreds of thousands of citizens have been killed over the past years. Thousands of children have been exploited by terrorist groups and forcibly recruited in blatant violation of national legislation and international conventions.

Hence, without minimizing the seriousness of the crimes committed and their impact on the security situation and the stability of the society, it should be noted that the international standards consider these juveniles victims rather than criminals, whom were seduced by adults, whose needs



are exploited, and who were persuaded to engage in illegal acts. Thus, judges need to take into account a number of considerations during the investigation, which can be summarized as follows.

1. Considerations related to the case file shall be referred to the Court of Cassation

The Court of Cassation shall check the case file referred to it by the Investigative Court to verify the validity of the investigations conducted with the juvenile, the integrity of the evidence obtained, its adequacy and clarity, and the conviction of the verdict.

The Court of Cassation must ensure that the basic guarantees are provided for the accused juvenile when the interrogation is conducted, especially the guarantees regarding the right to choose a lawyer, and to ensure that the interrogation was attended by his/her lawyer or a lawyer that the court hires for him/her.

If the juvenile has no previous conviction, the Court of Cassation may take this as a reason for compassion in deciding or determining the type of the punishment.

The Court of Cassation shall examine the social condition and psychological state of the juvenile and his/her family to find out if the family is united or disintegrated. Such examination is carried out by relying on the report of the Personality Assessment Office as it plays an important role when issuing a judgment in the case of the accused juvenile.

2. Considerations related to the judicial investigation and the trial of the accused juvenile

The Court of Cassation shall take into account the following considerations when conducting judicial investigation and trial of the accused juvenile.



- Adhering to the principle of restricting the court to the limits of the criminal case in both personal and substantive terms, which means that it is not possible to try other than the juvenile who has been referred to trial, and that he/she cannot be tried except for the criminal offense that has been referred to trial.
- Adhering to the principle of verbal judicial investigation and trial, in the sense that all testimonies and witnesses are heard aloud within the courtroom, so that the defendant and his/her lawyer can discuss it.
- Not depending on the recitation of testimonies and witnesses that are specified in law, but making sure that the witnesses and those who made testimonies are present themselves in the courtroom to listen to their testimonies.
- It is not permissible to judge an evidence that was not discussed or mentioned in the trial.
- It is not permissible to judge personal knowledge, but it is necessary to consult experts in technical matters that require expertise, in order to clarify the truth of the crime attributed to the accused juvenile.
- It is necessary to protect the confidentiality of juvenile hearings, and not to publish any information leading to the identification of the juvenile and family circumstances.
- Adaptation of the crime attributed to the accused juvenile to a precise legal adaptation, explaining the charges against the juvenile in a language that he/she and the lawyer can understand, and to allow him/her to defend himself/herself and to grant him/her an appropriate period if he/she so requests.
- It is necessary to guarantee the right of defense for the accused juvenile and to inform him/her legal guardian thereof. If the guardian did not choose a lawyer for him/her, the court must assign a lawyer to him/her.
- Ensuring the right of defense requires provision of adequate conditions for full contact between the accused juvenile and his/her lawyer, and such contact must be kept confidential and private.



- As it is possible for the defender of the accused juvenile not to be a lawyer, the court must inform the juvenile and his/her defender about the procedures and the deadline to challenge the sentence.
- The legal status of juveniles accused of terrorism, sexual exploitation, and human trafficking should not be affected by the following issues:
 - ethnicity, nationality or ethnic origin, color, religion, sex, disability, political affiliation or belief;
 - Any considerations or feelings of a personal nature to the decision-maker vis-a-vis the accused, the victim or any person who participated in the investigation.
 - The potential political benefits or disadvantages against the government or any group or political party.
 - Any financial, political, or public opinion considerations. The poor and the less fortunate should be treated equally with others with strong authority or financial status.

Sixth: The Role of Juvenile Judges during Trial

- Examining the legal adaptation and ensuring the validity of the accusation against the juvenile, the reasons on which such accusation was based, and the evidence and information supporting it, and keeping it or changing it in accordance with the established procedures, if there are reasons that support it.
- Urging the Office of Personality Assessment Office to examine the case of the juvenile under trial and to prepare a professional report that should include clear recommendations that reflect the reality of the case.
- Taking into account recommendations of the report of the Personality Assessment Office when making appropriate decision regarding the delinquent juvenile.



- Giving a role to the family and to community leaders through hearing their opinions, testimonies and recommendations, especially in decisions related to handing over the juvenile to the guardian.
- Guarantee the rights of the accused juvenile, and provide all requirements for a fair trial.
- Taking into account the best interests of the juvenile when making any decisions, and this requires:
 - Not resorting to punishments that result in the restriction of freedom, except when there is no other option that is better for the juvenile.
 - Keeping the juvenile in his/her social and family environments.
 - Keeping the punishment to the minimum as a discretionary power granted to the judge.
 - Expanding the use of discretionary power related to monitoring behavior.

Seventh: The Role of Public Prosecutor in Judicial Investigation and Trial

As the trial sessions of the Court of Cassation may not be held in the absence of a member of the public prosecution (Article 5 of the Public Prosecution Law), and since the public prosecutor represents the public opinion and is an observer on the proper conduct of the trial, he/she is required to do the following.

- Examining the case file referred to the Court of Cassation to ensure the integrity of the actions taken and the validity of the decisions issued therein, and ensuring the completion of the investigation in the case and that the right to appeal the decision is exercised by means of a discriminatory appeal or a discriminatory intervention, in case of issuance in violation of the law, or in case of a lack of investigative documents, both in terms of procedures or decisions.



- Making sure that notifications are in the file properly and in accordance with the law. This is to ensure that all the parties related to the criminal case and the witnesses are present at the scheduled time for judicial investigation or trial.
- Attending all judicial and trial hearings and exercising his/her right to discuss with the parties of the criminal case and the witnesses and direct any necessary questions and explanations he/she deems necessary.
- Making sure that the trial procedures are implemented secretly so that the juvenile's dignity is preserved, and working to reduce the possibility of returning to crimes.
- Adhering to the need that all parties of the criminal case and witnesses in particular have an oral discussion to ensure the validity of the information contained in their testimonies and to evaluate such testimonies in terms of objectivity and individuality.
- Monitoring the progress of the case in the judicial investigation stage in a way that guarantees the rights of the parties to the criminal action, in particular the right of the juvenile defendant that no unlawful action has been taken against him, to ensure his/her right to discuss the evidence presented in the case, to give his/her statement freely and to guarantee his/her right to defense.
- Applying to a special court to take any action it deems necessary or to issue any resolution that helps resolve the case in a fair and prompt manner.
- Challenging the decisions and judgments issued in the case if they were based on a violation of the law or an error in its application or interpretation, or if there was a fundamental error in the preliminary procedures or in the estimation of evidence or assessment of the penalty, and the error was influential in the judgment.



Conclusion

In order to uncover the cause of juvenile delinquency and to take measures that are commensurate with the physical and psychological formation of juveniles, legislators took into account the age of juveniles and their lack of awareness when enacting the Juvenile Welfare Act No. 76 of 1983.

The investigation and prosecution of juveniles requires familiarity with the principles provided in the Iraqi Juvenile Welfare Act to investigate and prosecute the case of the accused juvenile. In addition, the basic principles of investigation, prosecution and appeal of the provisions are provided in the Iraqi Criminal Procedure Code No. 23 of 1971.

Thus, this guide emphasizes the importance of reminding the juvenile police, public prosecutors and judges of the special rules for the investigation and prosecution of the accused juvenile. This is to uncover the truth behind the crime he/she was accused of, to identify the causes of the crime and its motives, to take action and make decisions that commensurate with his/her circumstances in a way that serves to address his/her deviation, and to put him/her away from the center of criminality and make them behave correctly.