

Alternative Ways to Address Youth

Bulgarian report

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Acknowledgments

Acronyms and abbreviations

AWAY	Alternative Ways to Address Youth
CPO	Child Pedagogical Office
the Comission	Commission for Combating Juvenile Delinquency
CRC	Convention on the Rights of the Child
CBS	Correctional Boarding Schools
ECtHR	European Court of Human Rights
FASBMUPA	Fighting against Anti-Social Behaviour of Minors and Underage Persons Act
IJJO	International Juvenile Justice Observatory
PDJS	Program for the Development of the Judicial System
SPBS	Socio-Pedagogical Boarding Schools

Introduction

The project AWAY (Alternative Ways to Address Youth)¹, co-financed by the Justice Program of the European Commission, aims at promoting restorative justice and the diversion programs in favour of minors in conflict with the law. One of the objectives of the project AWAY is to make sure that the main actors who have a decision-making power on the matter consider using these methods before using the traditional solutions (usually detention).

The project AWAY is coordinated by *Terre des hommes* Foundation Lausanne in Hungary, in partnership with DCI – Belgium, Brave Phone in Croatia, the Program for the Development of the Judicial System (PDJS) in Bulgaria, *Terre des hommes* Helvetia in Romania, The International Juvenile Justice Observatory (IJJO) and PILNET. It started in January 2017 and will end in December 2018.

The involvement of PDJS in the project AWAY has for primary objective to present the diversion measures and other similar measures, existing in Bulgarian legal system, to analyse how they are implemented in practice and to present recommendations for improvement in this field.

This report is the result of a research combining desk researches, analysis and semi-structured interviews of experts working with children suspected or accused of having committed a criminal offence involved in judicial proceedings. We have interviewed and talked with lawyers, social workers, members of the Commission for Combating Juvenile

¹ <http://www.dei-belgique.be/en/our-actions/our-projects/>

Delinquency (“the Commission”), police officers, judges, prosecutors, teachers, university professors and children.

The present report aims at identifying the challenges and obstacles for the use of diversion, and mapping the existing alternative measures to the traditional judicial systems for children in rural areas.

Overview

Juvenile justice system in Bulgaria has developed during the past 25 years. In 1991 Bulgaria ratified the Convention on the Rights of the Child (CRC). The same year the new Bulgarian Constitution was adopted. During the following years Bulgaria ratified several international human rights treaties. In 2000 the Child Protection Act was adopted. In 2007 the country became a member of the European Union.

Despite the important development and achievements in children’s rights and child protection concepts, Bulgarian juvenile justice system remained deeply bounded to the perceptions concerning juvenile delinquents and “fighting” with their anti-social behaviour.

At present in Bulgaria there are two laws that operate simultaneously – Child Protection Law, adopted in 2000, which is focused on the protection of the normal physical, mental, moral and social development of the child and the Fighting against Anti-Social Behavior of Minors and Underage Persons Act (FASBMUPA), adopted in 1958, which regulates the activities for prevention and counteraction to anti-social behavior of under-aged and minors. Since the changes in 1989 the FASBMUPA, which is amended more than 25 times, had two significant reforms: in 1996, the Labor Educational Schools have been renamed in Correctional Boarding Schools (CBS) and judicial review was introduced of the decisions for placement in them, and in 2004, when was included the court to decide on placement of the children in CBS and Socio-Pedagogical Boarding Schools (SPBS). In Bulgarian legislation there is no definition of the term anti-social behavior. The Local Commissions have a margin of appreciation to decide which act can be considered as anti-social behavior. As it can be seen in the statistics of the National Statistics Institute anti-social behavior is: running away from home, wandering, drinking, drug use, prostitution, homosexuality, truancy, begging and others.

Despite that the minimum age of criminal responsibility, stipulated in the Bulgarian Criminal Code, is 14 and no child under this age should be subject to criminal charges, all measures under FASBMUPA, including placement in closed institutions, are imposed on children between 8-18 years old.

Child Protection Law and FASBMUPA are pursuing different aims: the first guarantees the children’s rights and their protection by the institutions and the second is focused on the combat of anti-social behavior of children and the maintenance of public order. Presently both systems are working in parallel and it is difficult to establish examples of coordination between them. The procedure under FASBMUPA focuses on punishment, prosecution and

on detention rather than on protection, rehabilitation, diversion, restorative justice and alternatives in community. The children involved in the procedures under FASBMUPA do not participate in them voluntarily and the measures are imposed unilaterally by the Commission or the court.

In Bulgaria there is not specialized and separate justice system for children. The statistics discloses that the biggest number of children in conflict with the law are accused of petty or non-violent offences or even acts, which if committed by adults will not be considered as an offence.

Definitions

For the purpose of this research,

a **Child**: shall be understood as any person below the age of 18².

Criminal proceedings are to be understood as the procedure under which a person is suspected or accused³ of having committed a crime (as defined under national or international law) until the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal. As a consequence, the term when the person serves the sentence (i.e. post-conviction) do not fall under the definition of criminal proceedings.

Diversion⁴: channeling of children in conflict with the law away from judicial proceedings towards a different way of resolving the issue that enables many - possibly most - to be dealt with by judicial or non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record. It can start before the arrest and proceed until the final disposition, ideally should start as soon as possible depending on national legislation. Diversion can have restorative and welfare parts and may involve measures based on the principles of restorative justice while diversion and restorative justice are two different concepts; diversion options do not necessarily “restore the harm caused”, ie. warning can be taken as a diversion method as well⁵.

Restorative justice is a way of responding to criminal behavior by balancing the needs of the community, the victims and the offenders⁶.

Restorative process: any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate

² Article 1 of the UN Convention of the Rights of the Child, 1989.

³ We use the term “suspected” and “accused” in this document but in some systems the terms used can be different (“charged”, etc.).

⁴ UNICEF, *Toolkit on Diversion and Alternatives to Detention*; United Nations Office on Drugs and Crime. *Manual for the Measurement of Juvenile Justice Indicators*, United Nations, New York, 2006.

⁵ UNICEF, *Toolkit on Diversion and Alternatives to Detention*.

⁶ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, United Nations, New York, 2006, p. 6.

together actively in the resolution of matters arising from the crime, generally with the help of a facilitator⁷.

Restorative justice programme: a programme which uses any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles⁸.

Child-friendly justice: Child-friendly justice refers to justice systems which guarantee respect for and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed (in tables) below and giving due consideration to the child's level of maturity, understanding and the relevant circumstances of the case. It is, in particular, justice that is accessible, age-appropriate, speedy, adapted to and focused on the needs and rights of the child. Furthermore it respects the rights of the child including the right to due process, the right to participate and to understand the proceedings, the right to be respected in his/her private and family life and to be entitled to integrity and dignity⁹.

⁷ ECOSOC Resolution 2002/12 of 24 July 2002, para. 2.

⁸ United Nations Office on Drugs and Crime, *Manual for the Measurement of Juvenile Justice Indicators*, United Nations, New York, 2006, p. 54.

⁹ Council of Europe Child friendly Justice guidelines.

Children in juvenile justice in Bulgaria

Prevalence of the phenomenon

According to the data from the Prosecution of the Republic of Bulgaria, pre-trial proceedings against children (14-18 years) represent between 1,1 and 1,4% of the total number of pre-trials per year. The exact numbers for the period between 2012 and 2016 are shown in Table 1:

Table 1¹⁰:

Year	Total	Children	%
2012	244 467	3319	1,36%
2013	241 153	3281	1,36%
2014	222 839	2888	1,30%
2015	213 181	2379	1,12%
2016	211 079	2413	1,14%

Table 2 represents the number of children, acquitted by a verdict in force and the number of convicted ones. An increase of the acquittals was observed, except for year 2014, where the percentage is lower in comparison to the previous 3 years.

Table 2¹¹:

Year	Total pre-trials	Convicted	Acquitted by a verdict in force	%
2012	3319	2221	12	0,54%
2013	3281	1888	12	0,64%
2014	2888	1681	11	0,65%
2015	2379	1231	6	0,49%
2016	2413	1130	16	1,42%

Contrary to the tendency of reducing the number of child offenders, there is an increase in the percentage of the children detained during the pre-trial proceeding. The highest rate is in 2014 when 89 children were detained in pre-trial stage, amounting to 3.8% of the total pre-trials. Table 3 represents the figures related to children, held during the pre-trial proceeding.

Table 3¹²:

Year	Total	Held in pre-trial	%
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¹⁰ http://www.prb.bg/bg/pub_info/dokladi-i-analizi/

¹¹ http://www.prb.bg/bg/pub_info/dokladi-i-analizi/

¹² http://www.prb.bg/bg/pub_info/dokladi-i-analizi/

2012	3319	58	1,75%
2013	3281	56	1,71%
2014	2888	89	3,08%
2015	2379	59	2,48%
2016	2413	49	2,03%

For the period from 2012 to 2016 an average number of 4240 children, aged 14-18 are registered in the Child Pedagogical Offices (CPO) under the Ministry of Interior for having committed crimes (Table 4). As can be observed, the number of children, committed a crime is decreasing progressively (approx. with 21% from 2012 to 2016).

Table 4¹³:

Year	Age 8-13	Age 14-17
2012	1475	4829
2013	1457	4550
2014	1434	3968
2015	1322	4040
2016	1168	3812

Male offenders outnumber females in both age groups. Gender ratio could be observed in Table 5:

Table 5¹⁴:

Year	2012	2013	2014	2015	2016
Girls 8-13	282	241	272	245	213
Boys 8-13	1193	1216	1162	1077	955
Girls 14-17	745	744	644	564	613
Boys 14-17	4084	3806	3324	3476	3199

According to Eurostat significant decline of the number of the suspect juveniles is observed for the period between 2012 and 2015. The number of suspected juveniles in 2012 is 5337 when in 2015 is 3319 or 37,8% less. Table 6 represents the number of the suspected juveniles compared to the number of adults.

Table 6¹⁵

Year	Total	Juveniles	%
2012	46071	5337	11,58%
2013	44591	5047	11,32%
2014	41297	4949	11,98%
2015	40825	3319	8,13%

¹³ https://infostat.nsi.bg/infostat/pages/reports/result.jsf?x_2=247

¹⁴ https://infostat.nsi.bg/infostat/pages/reports/result.jsf?x_2=247

¹⁵ http://ec.europa.eu/eurostat/estat-navtree-portlet-prod/AppLinkServices?lang=en&appId=nui&appUrl=http%3A%2F%2Fappsso.eurostat.ec.europa.eu%2Fnui%2Fshow.do%3Fdataset%3Dcrim_just_age%26lang%3Den

Profile of children (who, age, types of crimes) suspected or accused

The Prosecution of the republic of Bulgaria states in its annual reports for 2012 and 2013 that 4,3% (2012) and 4,5% (2013) of the convicted children are *recidivist*. No other information about previous offences of children could be found in the collected sources. These statements are missing in the reports from 2013 till present¹⁶.

Regarding the type of committed crimes, the number of children who have committed thefts predominates in all 5 years and in both age groups. Burglary, domestic thefts and thefts from shops predominate.

Similar are the figures concerning the children, committed destroying and damage of property (8% for 2016), hooliganism (5% for 2016), bodily injuries (4% for 2016) and robberies (3% for 2016).

Debauchery appears in all years in the following figures: < 0.01% in 2016, 2014 and 2012 and >0.01% in 2015 and 2013.

Single, but constant cases of rape committed, rape attempted, homicide committed and homicide attempted are also in the data.

Number of children committed "other crimes" vary from 13% from the total number in 2012 to 6% in 2016.

There is significant difference in these figures for the last five years from 6304 children for 2012 to 4980 children in 2016, which is approx. 21%.

There is significant difference is in the number of children, committed drug-related crimes, which increased with almost 50% from 2012 (277) to 2016 (407).

Table 8 represents number of the crimes, divided in type, committed by minors and underage and Table 9 represents only the crimes, committed by minors.

Table 8¹⁷:

Year	2012	2013	2014	2015	2016
Total committed crimes by children	6304	6007	5402	5362	4980
Homicide (committed)	2	1	4	4	0
Homicide (attempted)	1	2	1	2	1
Bodily harm	269	226	201	237	209
Debauchery	70	56	60	47	56
Rape (committed)	13	7	7	8	6
Rape (attempted)	10	0	2	2	9
Destroying and damage of property	343	363	421	462	447
Robbery	223	223	204	157	163
Theft - total	3827	3621	3210	3089	3019
Hooliganism (incl.	356	337	339	326	254

¹⁶ http://www.prb.bg/bg/pub_info/dokladi-i-analizi/

¹⁷ National Statistical Institute of the Republic of Bulgaria

football)					
Drug-related crimes	277	342	356	406	407
Other	845	754	507	532	315

Table 9¹⁸

Year	2012	2013	2014	2015	2016
Bodily harm	41	29	27	41	20
Debauchery	23	24	34	20	15
Rape (committed)	6	1	1	1	0
Rape (attempted)	1	0	0	0	1
Destroying and damage of property	118	142	179	154	158
Robbery	19	25	25	23	27
Theft - total	974	1005	945	870	834
Theft of motor vehicles	8	14	17	15	17
Hooliganism (incl. football)	77	56	74	87	33
Drug-related crimes	5	8	22	4	1
Other	203	153	110	107	62

Gender balance in different type of crimes and age is represented in Tables 10 (8-13) and Table 11 (14-17).

Table 10¹⁹

	2012	2012	2013	2013	2014	2014	2015	2015	2016	2016
	M	F	M	F	M	F	M	F	M	F
Bodily harm	36	5	26	3	24	3	38	3	15	5
Debauchery	23	-	23	1	33	1	18	2	15	0
Rape (committed)	4	2	1	-	1	-	1	-	0	0
Rape (attempted)	1	-	-	-	-	-	-	-	1	0
Destroying and damage of property	112	6	128	14	168	11	142	12	142	16
Robbery	17	2	22	3	21	4	18	5	23	4

¹⁸ https://infostat.nsi.bg/infostat/pages/reports/result.jsf?x_2=247

¹⁹ https://infostat.nsi.bg/infostat/pages/reports/result.jsf?x_2=247

Theft - total	782	192	817	188	731	214	682	188	664	170
Theft of motor vehicles	8	-	13	1	14	3	13	2	17	0
Hooliganism (incl.football)	70	7	49	7	67	7	77	10	27	6
Drug-related crimes	3	2	8	-	19	3	4	-	1	0
Other	137	66	129	24	84	26	84	23	50	12

Table 11²⁰

	2012		2013		2014		2015		2016	
	M	F	M	F	M	F	M	F	M	F
Homicide (committed)	2	-	-	1	4	-	4	-	0	0
Homicide (attempted)	1	-	1	1	1	-	2	-	1	0
Bodily harm	208	20	173	24	150	24	171	25	164	25
Debauchery	44	3	32	-	25	1	25	2	38	3
Rape (committed)	7	-	6	-	6	-	7	-	6	0
Rape (attempted)	9	-	-	-	2	-	2	-	8	0
Destroying and damage of property	212	13	196	25	224	18	281	27	262	27
Robbery	194	10	187	11	164	15	122	12	129	7
Theft - total	2433	420	2181	435	1860	405	1908	311	1803	382
Theft of motor vehicles	58	2	59	2	71	2	73	2	76	1
Hooliganism (incl.football)	229	50	230	51	220	45	209	30	191	30
Drug-related crimes	220	52	284	50	283	51	339	63	329	77
Other	467	175	457	144	314	83	333	92	192	61

Diverted and non-diverted children

Prosecution is the legal body in Bulgaria that could officially divert a juvenile offender from the criminal proceedings to the Commissions for Combating Juvenile Delinquency for imposing educative measures. A look at the number of children diverted by the prosecution officers annually reveals that for the years 2015 and 2016 these numbers increase (Table 10).

Table 10²¹

	Pre-trials	Convicted	Acquitted	Diverted
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²⁰ https://infostat.nsi.bg/infostat/pages/reports/result.jsf?x_2=247

²¹ http://www.prb.bg/bg/pub_info/dokladi-i-analizi/

			by a verdict in force	
2012	3319	2221	12	445
2013	3281	1888	12	456
2014	2888	1681	11	464
2015	2379	1231	6	382
2016	2413	1130	16	369

As for the educative measures imposed under the FASBMUPA, data from the last 5 years shows that only two out of 13 types of measures are most commonly used. Those are *Warning* and *Placement under the correctional control of a public tutor*. Thus, in 2016 of the total of 5100 educative measures imposed, warnings are 2100 and the placements under the correctional control of a public tutor are 1162. Exact figures appear in Table 10:

Table 10²²

Year	2012	2013	2014	2015	2016
Art. 13, 1.Warning	2672	2704	2458	2292	2007
Art. 13, 2. Obligation to offer an apology to the victim	154	175	124	160	113
Art. 13, 3 Obligation to participate in consultations, training and programmes	560	635	556	487	488
Art. 13, 4 Placement under correctional supervision of the parents or the person substituting for them, under the obligation to take special care	862	816	781	795	681
Art. 13, 5 Placement under the correctional control of a public tutor	1511	1583	1497	1433	1162
Art. 13, 6 Prohibition of the underage to visit definite places and establishments	59	40	46	56	35
Art. 13, 7 Prohibition of the underage to visit and establish contacts with definite persons	165	134	104	115	76
Art. 13, 8 Prohibition of the underage to leave his permanent address	24	19	12	17	13
Art. 13, 9 Obligation of the underage to remove, by his work the caused damage if this is within his abilities	30	38	20	25	28
Art. 13, 10 Obligation of the underage to perform a definite job in favour of the	299	325	304	289	202

²² https://infostat.nsi.bg/infostat/pages/module.jsf?x_2=63

public					
Art. 13, 11 Placement in a Socio-Pedagogical Boarding Schools	29	65	27	45	27
Art. 13, 12 Warning for placement in a correctional boarding-school with a probation period of up to 6 months	385	296	244	286	216
Art. 13, 13 Placement in a Correctional Boarding School	96	54	82	58	52

The crime that provokes the greatest number of educative measures imposed is the theft. Most imposed measures for theft are those under Art. 13, paragraph 1 (warning), Art. 11 (Placement in a social pedagogical boarding school) and Art. 12 (Warning for placement in a Correctional Boarding School with a probation period of up to 6 months) of FASBMUPA.

According to of FASBMUPA there are 2 measures that comprise a kind of a community service work: Obligation of the underage to remove by his own efforts they caused damage if this is within his/her abilities (Art. 13, paragraph 9 of FASBMUPA) and Obligation of the underage to perform a definite job in favour of the public (Art. 13, paragraph 10 of FASBMUPA).

Outcomes of criminal procedures for children

The National Statistical Institute of the Republic of Bulgaria (NSI) gathers statistical information about the number of crimes, committed by underage, ended with penalty (Table 11). The only available data about the number of suspects or accused is from Eurostat and it concerns the *suspect juveniles (table 6)*.

Table 11²³: Crimes with penalty under the Penal Code in 2012 - 2016:

	Total	Male	Female
2012	1252	1175	77
2013	1103	1029	74
2014	913	851	62
2015	758	725	33
2016	751	697	54

NSI also gathers statistical information about the number of convicted children, which differs from that provided by the Prosecutors Office of the Republic of Bulgaria summered in Table 2. The data from NSI is quoted in Table 12.

Table 12²⁴ Number of convicted underage persons

²³ National Statistical Institute of the Republic of Bulgaria

²⁴ https://infostat.nsi.bg/infostat/pages/reports/result.jsf?x_2=525

	Total	M	F
2012	2312	2205	107
2013	1880	1787	93
2014	1633	1556	77
2015	1243	1198	45
2016	1108	1038	70

Trials against underage are typically held in the ordinary courts. During the five year period under review there are only single cases of trials in specialized criminal courts or military courts: one case in 2012, which ended with probation and one case in 2013, which ended with an imprisonment of up to 1 year²⁵. Table 13 shows the number of juveniles, being convicted with the duration of the penalty imposed.

Table 13²⁶

Year	Total	Imprisonment								Fine	Probation	Public censur e
		Total	Up to 6 month s	Up to 1 year	From 1 to 3 years	From 3 to 4 years	From 4 to 5 years	From 5 to 10 years	From 10 to 12 years			
2012	2312	1076	NA	957	109	6	0	4	0	NA	803	433
2013	1880	876	NA	791	78	2	2	3	0	NA	621	383
2014	1633	846	562	216	62	1	0	5	0	NA	518	269
2015	1243	575	335	174	54	2	2	8	0	1	438	229
2016	1108	495	303	148	42	1	0	1	0	1	394	218

Table 14 gives the number of the committed crimes, ended with penalty by chapter of the Penal Code. It can be seen that greater proportion is about crimes against property. Moreover, theft is the most common crime that ended with penalty.

Table 14²⁷: Crimes with penalty by chapter of the Penal Code in 2012 – 2016:

	2012	2013	2014	2015	2016
Crimes against the person	126	105	106	102	83
Homicide (committed)	8	3	3	9	0
Homicide (attempted)	2	2	3	1	0
Bodily harm	55	45	48	45	38
Kidnapping and illegal constraint	4	1	1	1	3
Compulsion	4	4	0	4	3
Depravity	53	47	45	39	37
Debauchery	13	12	11	6	11

²⁵ NSI data given upon request

²⁶ NSI data upon request

²⁷ NSI data upon request

Rape (committed and attempted)	5	9	8	2	2
Pandering and abduction for debauchery	2	0	1	1	0
Forced to homosexual action	8	8	4	10	6
Traffic of people	0	0	2	0	1
Crimes against the rights of the citizens	6	8	6	6	3
Infringing the inviolability of a home, premises or vehicle	5	7	5	6	0
Crimes against the intellectual property	1	0	1	0	2
Crimes against marriage, family and youth	10	7	6	1	4
Crimes against the marriage and family	1	1	3	1	1
Non-payment of alimony	0	0	1	0	1
Crimes against the youth	9	6	3	0	3
Crimes against the property	1905	1449	1073	849	774
Theft	1632	1223	888	712	636
Robbery	218	177	155	107	115
Misappropriation	1	0	0	0	0
Embezzlement	7	1	4	3	3
Fraud	9	13	4	5	5
Documentary fraud	0	2	0	1	0
Extortion	2	5	2	4	3
Constructive theft	6	8	2	3	2
Destruction and damaging	27	19	16	13	9
Crimes against the economy	33	32	33	17	19
Crimes against individual economic branches	23	22	24	7	14
Crimes against the customs regime	0	1	0	0	0
Crimes against the monetary and credit system	10	9	9	10	5
Crimes against the financial, tax and insurance system	0	1	1	0	2
Crimes against the taxation	0	1	1	0	2
Crimes against the activity of state bodies, public organizations and persons performing public duties	71	144	245	113	45
Crimes against the order governing	65	142	239	113	44
Illegal crossing of the boundary	64	140	231	110	39
Bringing of persons across the boundary	1	2	3	1	1
Crimes against the Justice	6	2	6	0	0
Documentary crimes	10	4	8	0	1
Crimes against the order and the public peace	13	18	17	13	11
Hooliganism	10	13	15	12	10
Generally dangerous crime	138	112	138	142	166
Crimes committed in a generally dangerous way or by generally dangerous means	13	8	5	4	4
Arson	8	6	3	4	3
Illegal production, possessing and use of weapon, explosion and ammunition	5	2	2	0	1
Crimes against the transport and communications	42	31	31	41	45
Theft of motor vehicle	35	23	46	41	55
Drug-related crimes	46	49	55	56	60

Overview of the juvenile justice system in Bulgaria

Introduction on the administration of justice in Bulgaria

The courts are state bodies that administer justice in civil, criminal and administrative cases. The courts in Bulgaria are: district courts– 113; regional courts– 28; administrative courts – 28; Specialised Criminal Court – 1; courts of appeal – 5; Specialised Criminal Court of Appeal

– 1; military courts – 5; Military Court of Appeal – 1; Supreme Court of Cassation – 1; Supreme Administrative Court – 1.

The organisation and activities of the Bulgarian courts are governed by the Constitution of the Republic of Bulgaria and the Judicial System Act (JSA). JSA lays down the structure and operating principles of the judicial bodies and governs their interaction with each other and with the legislative and executive bodies.

The Supreme Judicial Council is the highest administrative authority and is responsible for managing the judiciary and ensuring its independence. It determines the composition and organisation of the judiciary and manages its affairs without interfering with the independence of the bodies concerned.

The main courts, that examine criminal cases in the first instance are the district courts. Their decisions are subject to appeal before the relevant regional court. Regional courts could be courts of first or second instance, depending on the subject matter involved. The courts of appeal consider appeals against first-instance rulings of the regional courts within their territorial jurisdictions.

The Specialised Criminal Court is equivalent to a regional court. Criminal offences, which fall under the jurisdiction of the Specialised Criminal Court are listed in Article 411a of the Criminal Procedure Code (crimes committed by or for organised criminal groups). The decisions of the Specialised Criminal Court can be appealed before the Specialised Criminal Court of Appeal.

The Supreme Court of Cassation is the supreme judicial instance in criminal and civil cases. It exercises supreme judicial review over the proper and uniform application of laws by all courts. It has its seat in Sofia.

Specialised children's and/or juvenile's courts do not exist in Bulgaria.

Privately prosecuted criminal cases: They are heard by the general (criminal) court for a committed lighter criminal offence (insult, slander, light bodily injury, etc.). In such cases the victim directly refers to the court by a penal complaint (tazhba). Under such cases police authorities do not conduct investigations and a public prosecutor does not take part, as the charge is maintained by the victim.

Publicly prosecuted criminal cases: They are heard by the general (criminal) court and are initiated for a committed criminal offence. The procedure is implemented in two phases - pre-trial and court procedure. The pre-trial procedure authorities are the public prosecutor as a judicial authority and the investigation authorities subordinated to the public prosecutor. The court procedure runs in three instances. A court investigation is carried out only at the stage of the first two instances, i.e. only then is evidence collected and it is decided whether the child can be interrogated or may respective procedural actions be performed with respect to the child."

Children and Criminal justice/diversion in Bulgaria

Significant changes in the field of children's rights have taken place during the last 25 years. In 1991 Bulgaria ratified the CRC. The same year the new Bulgarian Constitution was adopted. During the following years Bulgaria ratified several international human rights treaties. In 2000 the Child Protection Act was adopted. In 2007 the country became a member of the European Union.

Despite the important development and achievements in children's rights and child protection concepts, Bulgarian juvenile justice system remained deeply bounded to the perceptions concerning juvenile delinquents and "fighting"²⁸ with their anti-social behaviour. The norms on which Bulgarian juvenile justice system is build were adopted in 1950s. These are the FASBMUPA and the Sub-delegated legislation, adopted under it. Since its adoption in 1958 the FASBMUPA was amended more than 25 times, but its general terms, as stipulated in art. 1 and its methods remained unchanged.

The most relevant acts to the juvenile justice system in Bulgaria are:

- the Judicial System Act;
- the Criminal Code;
- the Code of Criminal Procedure;
- the FASBMUPA;
- the Legal Assistance Act;
- the Advocacy Act;
- the Child Protection Act;
- the Execution of Penalties and Detention in Custody Act;
- the Act on Protection of Public Order upon Conduct of Sports Events, and
- the Decree on Combating Minor Hooliganism.

The relevant policy documents are:

- National Strategy for Children (2008-2018)
- 2011 Concept for State Policy in the area of Child Justice
- Strategy for Reforming Places of Detention (2009–2015)

The current legislation identifies several main bodies with direct responsibility in the administration of juvenile justice – the prosecution, the court, the Central and Local Commissions, the CPO with the police, the closed institutions provided in FASBMUPA, probation officers:

1) The Prosecutor office²⁹

The Prosecutor General at the Prosecutor's Office of the Republic of Bulgaria is a unified and centralized structure. In principle, there are no specialised Prosecutors for children in conflict or in contact with the law. Prosecutors are required to take part in training activities in matters related to child justice and are under the internal obligation to share their experience with the other prosecutors in the same unit, for more effective workflow of their corresponding office.

²⁸ The term is used in General Terms art. 1 of Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

²⁹ Excerpts adapted from "[Gap Analysis of the Bulgarian Juvenile Justice System](#)", with relevant footnotes inserted

In a report drafted by the Ministry of Justice in 2013 it is pointed out that: "The team of the former Prosecutor General supported the regular conduction of expert discussions among the professional societies of the issues related to child justice and the initiatives in this aspect and a conclusion can be made that the institution has a generally positive attitude to the specialisation in child justice."³⁰

Article 385 of the Code of Criminal Procedure requires that the investigative authorities undergo special legal training when the pre-trial procedures involve cases of crimes committed by minors. Investigative authorities are investigators, who could be magistrates at the investigation departments of the respective district prosecutor's offices and investigating police officers from the structures of the Ministry of Interior. However, this requirement only applies to juvenile delinquents, and not in all cases in which a child participates.

In this regard, the police have a key role in the system for working with children in conflict with the law, even though it is formally under the supervision of the Prosecutor's Offices.

2) The Court

Currently there are no specialised courts for children in conflict or in contact with the law. In cases where children are involved, they are heard by a randomly assigned judge. However, some courts have adopted the practice to allocate cases involving minors to judges who usually do such cases and are competent in the field of juvenile justice. This practice is not always applicable due to the insufficient number of qualified judges and especially in smaller courts, where there are only few judges, sometimes none being trained in juvenile justice. Under the current legislation, judges are not required to have any special training in juvenile justice and children's rights.

In cases where there are jurors (lay magistrates) assisting the judge (in the hearing of the case before the first instance), according to Art. 390, Paragraph 2 of the Code of Criminal Procedure, jurors must be teachers or educators.

3) The Central and Local Commissions

The Central and Local Commissions for Combating Juvenile Delinquency are responsible for the prevention juvenile offences. The Central Commission³¹, composed of representatives of different ministries, develops, takes part in the development and proposes to the Council of Ministers, to the ministries and to NGOs programmes and activities for prevention and restriction of "criminogenic factors". The Local Commission, composed of representatives of departments of municipal government, organise and coordinate the social-and-preventive activity locally.

The tasks of the Local Commissions cover children from 8 to 18 years of age.

The Local Commissions cannot be qualified as an independent and impartial authority since they carry out proceedings and exercise both guidance/resolution and charging/prosecution functions. A similar conclusion was made by the ECtHR in 2011 in the case of *A. and others v. Bulgaria*.³² The proceedings before such Commissions are

³⁰ MOJ Report from 2013, p. 4

³¹ Article 8 and 9 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

³² Case *A. and others v. Bulgaria*, 29.11.2011, (application no. 51776/08), ECtHR, para.107

inquisitorial and offer weak to non guarantees that the process of gathering and presenting evidence will lead to the establishment of truth, fair justice and assuring the respect of the right of the child to be heard (Article 12 of the CRC) and their right to have their best interests taken as a primary consideration.

Social supervisors (also known as public educators) also work within the Local Commission. These Social Supervisors are appointed by Local Commissions, or in the words of the law: "As public educators are appointed, with their consent, persons with the necessary general education and experience."³³ Their main responsibility is "providing assistance to parents ... in the correction and re-education of minors"³⁴. This provision clearly states the correctional, rather than child-centred approach, as envisaged in the Riyadh Guidelines.³⁵

The specific functions of the social supervisors are described in Article 43 of the FASBMUPA as follows:

- (a) to assist parents or the persons substituting for them in bringing up the minors;
- (b) to assist for the right organization of the tuition, labour and rest of the minors;
- (c) to keep abreast of the minors' conduct and to take care of their correct guidance;
- (d) to notify the competent bodies when there is some threat to the minor's physical or psychical development;
- (e) to table the minor's social problems for consideration and solution before the respective directorate "Social support";
- (f) to present information to the respective directorate "Social support" in relation to the solution of the minor's social problems.

It is also a matter of concern that the Local Commissions are not legally required to ensure subsequent care for children having committed antisocial acts or for juvenile delinquents released from criminal liability, after the expiry of the term of the educational measures under the FASBMUPA (the same is also valid for penal sanctions under the Criminal Code).

4) The Child Pedagogical Offices (CPO)

In accordance with Article 2 Paragraph 1 "b" of the FASBMUPA adopted in 1958, the CPO are created in the Municipal Councils for the purposes of that Act. Their work is coordinated by Inspectors, appointed by the Ministry of Interior in the 28 regional offices (at least one Inspector per 30 000 inhabitants). The CPO Inspectors are police officers and are required to have completed pedagogical education. These police officers have, in general, a university degree and also an internal postgraduate training. Their work is managed and controlled by the National Police. Additionally, they are also controlled by the Central Commission and the Local Commission and are supervised by the Prosecutor's Office.

The CPO Inspectors are assigned a large number of functions defined in the 26 points of article 7 of the FASBMUPA. These functions include, among others:

- (a) tracing and finding out minor offenders and the reasons and conditions for their anti-social acts or crimes;
- (b) tracing and finding out minors who are subject of criminal encroachment, maltreatment, or have been left uncontrolled;

³³ Article 42 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

³⁴ Article 40 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

³⁵ Riyadh Guidelines, Rule 3

(c) taking the appropriate measures under sect. (a) and (b) or notifying the competent bodies;

(d) notifying the bodies of prosecution in case they receive information about criminal conduct in relation to minors by the parents, the persons substituting for them, or third parties.

(e) to observe the fulfilment by the minor or underage of the imposed measures under art. 13, para 1, item 6, 7 and 8.

These operational responsibilities express exactly the sanctioning nature of these Offices and the control work of their agents - CPO Inspectors. They have a broad scope of powers: they identify children involved in crime or anti-social behaviour, supervise some educational measures, and identify child victims of crime and report violations of the rights of children by parents or guardians. They also do prevention (in schools, for example) and monitor the situation of children at risk, "uncontrolled" or having been sentenced by the courts.

5) Closed institutions

The national legislation establishes four types of closed facilities for children involved in offending or anti-social behaviour. Two are special schools, established in the FASBMUPA and administered by the Ministry of Education and Science and the third one is a Reformatory.

- Socio-Pedagogical Boarding Schools (SPBS)³⁶ - these schools are for children from the age of 8 or older involved in 'anti-social' activity or at risk of involvement in such activities.

- Correctional Boarding Schools (CBS)³⁷ - these are schools for children 8 years of age or older found to have committed 'anti-social' acts, who lack an environment appropriate for normal upbringing.

The differences between the two types of specialized boarding schools are not significant, in practice.

Boys having to serve an effective sentence are placed in a reformatory, which is a part of the prison system, governed by the Ministry of Justice - there is one reformatory for boys convicted of offences committed while 14 to 18 years of age in the town of Boychinovtsi. girls of the age of 14 - 18 serve their sentence in special units of the prison for women in the town of Sliven.

The European Court has drawn attention to the fact that the conditions of placement in these facilities fulfil the minimum criteria to be considered as places of deprivation of liberty³⁸. The Court also observed that the duration of placement was long enough to inevitably cause negative impact to the minors. Moreover, the Court notes that "the specialists make the point that the lack of.

The fourth type of closed facilities for children is the Homes for temporary accommodation of minors and under-aged.³⁹ These homes are administered by the Ministry of Interior and were created for operational purposes as the maximum length for accommodation may not exceed 15 days, unless exceptional circumstances are present, in

³⁶ Article 28 Paragraph 1 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

³⁷ Article 28 Paragraph 2 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act (also known as correctional-educational boarding schools)

³⁸ Case A. and others v. Bulgaria, 29.11.2011, (application no. 51776/08), ECtHR, paras.62-63

³⁹ Art. 34-39 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

which case the accommodation may be extended for up to 2 months with approval by a prosecutor. Every accommodation exceeding a period of 24 hours must be reviewed by a prosecutor as well.⁴⁰ The purpose of these homes is to accommodate minors and underage persons whose home cannot be identified, those caught wandering, begging, prostituting, abusing alcohol or dealing or using narcotics. Those homes also accommodate those who have left boarding schools or institutions for compulsory medical treatment without permissions and those who have fallen into such a state of neglect that they should not remain with their parents.⁴¹ Aside from accommodation, these homes provide for medical, psychological and pedagogical evaluations and recommendations and for examination of the reasons behind the need for accommodations, followed with measures for returning the child, where appropriate.⁴² In the *A. and others v. Bulgaria* judgement, the ECtHR has pointed out that these institutions also meet the minimum criteria to be considered as places for deprivation of liberty.⁴³

6) Probation officers

Probation is defined as “a system of non-custodial measures for control and intervention that shall be imposed separately or collectively”.⁴⁴ Probational measures include:

1. mandatory address registration;
2. mandatory regular appointments with a probation officer;
3. restrictions on free movement;
4. inclusion in vocational courses and/or public intervention courses;
5. corrective labour;
6. community service.

Probational measures may be applied for a duration: from 6 months up to 3 years for points 1-4, from 3 months up to 2 years for corrective labour and from 100 hours up to 320 hours per year, for a maximum of 3 years – for community service. Corrective labour and community service are prohibited for children under the age of 16 in accordance with Article 42a, Paragraph 4 of the Criminal Code.

Execution of probation is regulated under Chapter 16 of the Execution of Punishments and Detention in Custody Act. Article 229 of the Act requires that probation officers, dealing with children under 18 must undergo special training together with a CPO inspector. Article 230 of the Act further stipulates requirements for application of probationary measures concerning children. It requires that the probation officer, a social worker from the Child Protection Agency, a CPO inspector and a member of the Local Commission must jointly prepare:

1. an individual curriculum for execution of the probationary measures regarding the convicted child;
2. programs for public intervention in regard to convicted children;
3. recommendations to the probation council for adopting decision by the council;
4. statements to the court, when required by the Code of Criminal Procedure.

⁴⁰ Article 37 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

⁴¹ Article 35 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

⁴² Article 36 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

⁴³ Case *A. and others v. Bulgaria*, 29.11.2011, (application no. 51776/08), ECtHR, para. 103

⁴⁴ Article 42a of the Criminal Code

State of transposition of the three directives

- Directive 2016/800/EU 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 has not been transposed yet into Bulgarian legislation.⁴⁵ Currently a draft legislation can be found on the Council of Minister's website for public consultations, aiming to transpose the safeguards of this directive into national legislation.⁴⁶ It received many critical and harsh remarks within the two-week consultation period. There is no information on the current state of this draft.

- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings has been transposed into Bulgarian legislation with a total of 5 measures adopted into national law. Amendments have been made to the Law on Extradition and the European Arrest Warrant; the Instruction on the Equipment in Premises for Detention within the Structures of the Ministry of Interior and the order within them from 15.09.2009; the Ministry of Interior Act; the Code of Criminal Procedure; the Judicial System Act;⁴⁷

- 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 has been transposed into Bulgarian legislation with a total of 16 measures adopted into national law. Amendments have been made for a total of seven years in 15 pieces of legislation, amongst which the Child Protection Act; the Code of Criminal Procedure; the Judicial System Act; the Legal Assistance Act; the Advocacy Act; the Law on Protection of Persons in Danger in Connection to Criminal Proceedings and others.⁴⁸

Procedural rights of suspected or accused children

Rights of children accused or suspected in criminal proceedings and in diversion

There is no specific juvenile justice act in Bulgaria. Some specific rules, concerning children (underage persons between 14 to 18-years-old) are stipulated in the general Criminal Code. Chapter 6 (from art. 60 to art. 65) of the Criminal Code is devoted on children in conflict with the law.

According to art. 60 of the Criminal Code the punishment shall be imposed on underage persons above all with the objective to re-educate and prepare them for socially useful work. The penalties, which could be imposed on underage persons are: deprivation of liberty, probation, public censure and deprivation of the right to exercise certain vocation or activity⁴⁹. Depending on whether the underage person is aged 14-16 or respectively 16-18 the Criminal Code provides reduction of the penalty: when a perpetrator is aged 14 – 16 the highest penalty is deprivation of liberty for up to ten years and when a perpetrator is aged 16 – 18 the highest penalty is deprivation of liberty for up to twelve years⁵⁰. The compliance of such duration of the deprivation of liberty (up to 12 years) with the standard of art. 37 b)

⁴⁵ <http://eur-lex.europa.eu/legal-content/BG/NIM/?uri=CELEX:32016L0800>

⁴⁶ <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=2272>

⁴⁷ <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0013>

⁴⁸ <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

⁴⁹ Article 62 of the Criminal Code

⁵⁰ Article 63 of the Criminal Code

to be used only as a measure of last resort and for the shortest appropriate period of time is arguable.

When children under the age of 18 are stripped of criminal responsibility due to having committed a crime that is “not a major public danger due to infatuation or because of thoughtlessness”⁵¹ alternative corrective measures are applied under Article 13 of the FASBMUPA.

The existing legislation currently does not envisages restorative justice programmes and processes such as mediation, conciliation, conferencing and sentencing circles. In regard to the mediation in criminal cases, the Law on Mediation contains a blanket provision, under which mediation may be applied in cases provided in the Code of Criminal Procedure.⁵² However, such cases have not been provided yet in the Code of Criminal Procedure.

Under Article 1 of the Fighting against Anti-Social Behaviour of Minors and Underage Persons Act, the aim of the alternative corrective measures is to prevent deviant behaviour and to ensure the proper development and education of the delinquents. The procedure for referring to these measures is regulated in the Criminal Code and the Code of Criminal Procedure. When these measures are not applicable, Chapter Six of the Criminal Code stipulates lighter punishments for children who have committed crimes, including being sent to a reformatory. The procedure for corrective measures may be initiated at the pre-trial proceedings by the prosecutor or the court or in the trial, before a verdict is passed. In the first case, the prosecutor may either discontinue proceedings or not initiate such, after which they refer the case to the Local Commission, which then decides on the correctional measures.

Chapter 30 of the Code of Criminal Procedure is titled “Special rules for examination of cases for crimes, committed by juveniles”.

- First, it contains requirements as to the participants in the criminal proceedings. Under article 385, the pre-trial proceedings in respect to juvenile delinquents may be led only by investigators with special training. However, this requirement lacks clarity and the law is not precise on what special training should this be. Further, article 388 stipulates that when a juvenile is interviewed, a pedagogue or a psychologist shall be present, but they must receive consent from the investigators to ask questions. The chapter also regulates the composition of the court chamber, which must include two or three jurors, who must be teachers or educators and one or two judges, depending on the severity of the crime.⁵³ It is also mandatory for the parents of the child to be summoned, but their presence is not mandatory.⁵⁴

- Second, the chapter contains specific rules for supervision measures for juveniles, different than those applicable to adults⁵⁵. These measures are:

1. Supervision by parents or guardians

⁵¹ Article 61 of the Criminal Code

⁵² Article 3, Paragraph 2 of the Law on Mediation

⁵³ Article 390 of the Code of Criminal Procedure 1111

⁵⁴ Article 392 of the Code of Criminal Procedure

⁵⁵ Article 386 of the Code of Criminal Procedure

2. Supervision by the administration of the correctional school, in which the juvenile is accommodated
3. Supervision by a CPO inspector or by a member of the Local Commission.
4. Detention in custody

Detention in custody shall only be applied in exceptional circumstances and in premises, different from those for adults.

Finally, the chapter contains procedural rules for conducting proceedings at both the pre-trial and the trial stage. In the proceedings, the investigators and the court shall gather evidence for the date of birth of the juvenile, his education, the environment and conditions under which he has lived and whether the crime committed can be attributed to influence by adults.⁵⁶ When the investigation is presented to the juvenile, it is mandatory that their parents or guardians are informed, and allowed to be present, if they request to.⁵⁷ Court proceedings shall always be initiated by a prosecutor and private prosecution is forbidden.⁵⁸ When information which may affect the child negatively has to be presented in the court proceedings, the court may temporarily remove the child from the room, in order to protect their best interest.⁵⁹ The chapter also contains a very controversial rule regarding cases in which the offense has been committed in complicity with an adult, the proceedings shall be conducted under the general rules.⁶⁰

Domestic legislation in light of the EU directives for children suspected or accused concerning diversion

- Directive 2016/800/EU 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 has not been transposed yet into Bulgarian legislation.⁶¹
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings introduced a total of 5 amendments into national law:
 - through State Gazette #55 from 19.07.2011: the amendment is said to have been made in the Law on Extradition and the European Arrest Warrant. However, the amendments made under SG #55 are not connected in any way to the requirements of the Directive and there is no mention of the right to information and in particular the declaration under Article 5 of the Directive.
 - the Instruction on the Equipment in Premises for Detention within the Structures of the Ministry of Interior and the order within them from 15.09.2009 under which the Directive was transposed was countermanded and a newer one was adopted through State

⁵⁶ Article 387 of the Code of Criminal Procedure

⁵⁷ Article 389 of the Code of Criminal Procedure

⁵⁸ Article 392, Paras. 3,4 of the Code of Criminal Procedure

⁵⁹ Article 393 of the Code of Criminal Procedure

⁶⁰ Article 394, Para. 2 of the Code of Criminal Procedure

⁶¹ <http://eur-lex.europa.eu/legal-content/BG/NIM/?uri=CELEX:32016L0800>

Gazette #9 from 03.02.2015. The latest instruction is in accordance with all the rights prescribed in the Directive⁶²;

- the Ministry of Interior Act under which the Directive was transposed was countermanded and a newer one was adopted through State Gazette #53 from 27.06.2014. It is in accordance with the rights prescribed in the Directive⁶³;

- through State Gazette #21 from 08.03.2014: amendments are said to have been made in the Code of Criminal Procedure and the Judicial System Act. However, the amendments made under SG #21 are not connected in any way to the requirements of the Directive. Regardless, the Bulgarian Criminal Justice system already contained the safeguards envisaged in the Directive and in particular, those under Articles 6, 7 and 8;

- 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 introduced a total of 16 amendments into national law. Some of the most relevant examples are:

- Support and Financial Compensation to Victims of Crime Act: amendments made through State Gazette #51 from 2016 safeguard the right to information to victims of crime. Under Article 6 of the Act, officers in the Ministry of Interior, investigators and organizations aimed at providing support to victims are responsible for the immediate dissemination of essential information of the victim's rights for support and participation in the criminal proceedings. Under Article 3 of this Act, only persons who were victims of very serious crimes such as murder, attempted murder, heavy bodily injury, trafficking, organized crime cases are entitled to financial compensation by the State, which may not exceed 10 000 BGN (5100 EUR) per person. The Act also envisages other forms of support to victims such as medical assistance, psychological consultations and assistance, free legal aid and practical assistance.⁶⁴

- Code of Criminal Procedure: two series of amendments have been published in light of Directive 2012/29 – one through State Gazette #79 from 13.10.2015 and the second very recently through State Gazette #63 from 04.08.2017, due to enter into force on 05.11.2017. The first set of amendments is unrelated to the Directive in any way. The second set of amendments is very extensive and welcomed. Most of the amendments were introduced specifically to transpose the Directive and are aimed at safeguarding the rights of victims of crime, both adults and children. As these measures (a total of 103) have not yet entered into force it is too early to assess whether they comply with the Directive and what possible problems may arise. Regardless, the provisions regarding participation of children envisaged in Article 24 of the Directive are transposed entirely.

- Law on Protection of Persons in Danger in Connection to Criminal Proceedings: the amendments presented as transposition measures are once again unrelated to the subject matter of the Directive. This Law provides assistance to all persons involved in criminal proceedings, including their closest relatives, excluding judges and prosecutors, whose lives may be in danger. The measures are stipulated in Article 6 of the Law and include physical

⁶² Article 15 of Instruction № 81213-78 from 24.01.2015 r. for the order for executing detention, the equipment of premises for detention and the order within them in the Ministry of Interior

⁶³ Articles 72 – 74 of the Ministry of Interior Act

⁶⁴ Article 8 of the Support and Financial Compensation to Victims of Crime Act

protection, property protection, temporary relocation, changes in living location, workplace, school or detention location and establishment of new identity.

Overview of diversion in Bulgaria

The Bulgarian legal system does not envisage diversion measures in the strict sense of that term. Some diversion-like measures, called educational measures, could be found in the Fighting against Anti-Social Behaviour of Minors and Underage Persons Act, which is applicable in cases of redirection of underage persons from the criminal justice system to the administrative procedures.

With respect to an underage person who has committed a crime for reasons of infatuation or because of thoughtlessness, which does not constitute great social danger, the prosecutor may decide to abstain from instigating pre-trial proceedings or to terminate the instigated proceedings, and the court may decide not to have him brought to court or not to have him tried, provided with regard to him educative measures can successfully be applied pursuant to the FASBMUPA. In such cases the court itself may impose an educative measure, informing thereof the Local Commission, or forwarding thereto the court file for imposition of such a measure. Where the prosecutor decides not to institute pre-trial proceedings or to put an end to pre-trial proceedings which have been formed, he shall send the case-file to the Commission, which shall impose a measure of education⁶⁵. The Prosecutor has no power to impose such measures himself.

Art. 61 of the Criminal Code authorizes redirection only when the person who committed an offence while under 18 years of age is still under the age of 18.

Conditions or factors contributing to the enjoyment of diversion

Internal (System-related or generated)

The possibility the cases to be redirected to the Local Commissions, can open the door for some diversion approach to be used, including restorative elements. Article 13 recognises compensation of the victim, the apology to the victim as well as community service – “obligation of the underage to perform a definite job in favour of the public”.

Another factor, contributing to the enjoyment of diversion is that according art. 61 of the Criminal Code the court itself may impose an educative measure.

External (situational, circumstantial, personal and others)

“Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child’s best interests. The preliminary use of such alternatives should not be used as an obstacle to the child’s access to justice.” - art. 24, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice

⁶⁵ Article 61 of the Criminal Code

Limitations hampering children's access to diversion

Internal (System-related)

It must be noted that in most of the cases, when art. 61 of the Criminal Code is applied, even though under para. 2 the court has the discretion to impose correctional measures, the case is not closed, but just transferred to another authority, which also has quasi-judicial power. Some of the correctional measures can be imposed only by court. These are the measures under article 13, para.1, points 11 and 13 of the FASBMUPA for placing in a Socio-Pedagogical Boarding School or an Correctional Boarding School.⁶⁶ The current Bulgarian legislation provides that redirection requires the imposition of one of the educational measures listed in art. 13 of the FASBMUPA. The measures under art. 13 of the FASBMUPA are imposed on the minor by an institution. These measures are coercive and require that the child perform or abstain of performing certain acts against his/her will. The child (and parents) are not entitled to refuse or to accept the measures. If the child fails to respect the measures imposed, they will be enforced by the State. The law allows cumulative imposition of measures, other than the most serious two (accommodation in a Socio-Pedagogical Boarding School and the Correctional Boarding School). If a minor does not comply with a measure imposed on him/her, a new educational case can be initiated and a more serious educational measure may be imposed.

The Prosecutor or the police officer has no power to impose such measures himself, but they are obliged to send the case-file to the Commission.

The "diversion" from the Court to the Local Commission is not in full compliance with international standards. For example, Art. 40.3(b) CRC obliges States to "seek to establish" diversion. The Council of Europe recommendation on new ways of dealing with juvenile delinquency states that "Expansion of the range of suitable alternatives to formal prosecution should continue. They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, apply only in cases where responsibility is freely accepted"⁶⁷.

Practice shows that these measures are more effective in preventing reoffending when they are voluntary and especially when they come during a restorative process, such as mediation.

Noteworthy practices

Noteworthy practices in the area of Juvenile justice in Bulgaria have been initiated during the last years mainly form NGOs as part of their projects. According to the established practice in Bulgaria the only way for an innovative practice that support children offering consultations or another kind of psychological, legal and or social support to be financed by the government, is trough the system for social services, managed by the Agency for social support. Thus, during the last 10 years several organizations were trying to

⁶⁶ Article 21, Para.1, Point 2 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act

⁶⁷ www.crin.org/docs/coe_rec_jj.doc

find stable financial support for supporting children in conflict with the law services, piloted by them, by registering the practice as a social service for children.

There are several organizations with notable work dedicated on reforming the way of support that children in conflict with the law received. The Institute for Social Initiatives and Practices have been created number of notable publications and trainings, available at their web page⁶⁸. A useful and valuable document is a Model for working with children in conflict with the law. The model was launched in Sofia and Shumen in 2014.

In September 2015 Unicef Bulgaria announced new integrated model developed by UNICEF in partnership with Sliven municipality and is in support of the juvenile justice system reform - A Complex of services for children in conflict with the law⁶⁹ was opened in Sliven that encompass a center for intensive socio-educative support, a Observed Home, and a Transient Home which is needed for the temporary stay of children below the age of 18, who have left correctional-educative institutions. After one year of testing this pilot model, Sliven Municipality is going to apply for state funding and try to turn this into a nationally delegated service. The web of services created in Sliven aims to support the crucial reform of the Justice-for-Children system in Bulgaria, introducing a new model of delivering integrated services for children in conflict with the law and children at risk in the community. For this purpose, an effective mechanism for coordination and cooperation on local and national level has been developed. The services and activities are in the areas of education, social services, justice and enforcement, healthcare and employment.

Similar examples from the recent past years (2010 -2012) is a project, implemented by Caritas Ruse and Prison Fellowship Bulgaria - «Active communities to prevent the institutionalization of children and youth⁷⁰». The project aims at reducing crimes committed by children and youths within the Ruse and Vratsa municipalities. The main goal of the project was to increase the community resources in Ruse and Vratsa municipalities to prevent the accommodation of minors in reformatory institutions. The project aims to establish a pilot model based upon best practice obtained from restorative justice systems popular in USA and Canada. This involves the minor participating in consultations and training programs to overcome behavioral issue. This includes work conducted for the benefit of the community. This is all overseen by members of a team of professionals and volunteers committed to the child's interests. The project provides a mentoring scheme where young offenders and mentors establish relationships of trust spending time together, (at least 10 hours per month), encourage good behavior and offer emotional support. In conjunction, support groups for parents and families are run to facilitate family understanding and develop family relationships. In addition, the project also seeks to address infrastructure: Creating a volunteer network of professionals and stakeholders; conducting family conferences on specific cases; organizing the training of volunteers to aid

⁶⁸ <http://www.sapi.bg/en/resource-center/deca-v-konflikt-sus-zakona>

⁶⁹ <https://www.unicef.bg/en/article/Detska-i-mladezhka-zona-Kompleks-ot-uslugi-za-detsa-v-konflikt-sas-zakona-beshe-otkrit-v-Sliven/927>

⁷⁰ <http://www.caritas.eu/sites/default/files/goodpractices.pdf>

young people; creating support groups for families of children with anti-social behavior and organizing working visits for magistrates and parents in order to increase the understanding of those who make decisions about the future of the child. It was hoped this project's outcomes will contribute to initiatives which seek to introduce an adequate system of juvenile justice in Bulgaria. This initiative seems to be closed after the end of the project due to lack of funding.

Recommendations

The following recommendation could be made in regard to improve the possibility of using diversion and to guarantee the rights of the children in conflict with the law:

- Adoption of a new specialised law for minors to replace the current juvenile justice normative and institutional framework in order to ensure conformity with international standards and children's rights;
- The definitions used in the legislation, concerning juvenile justice, including minimum age for criminal responsibility, "anti-social behaviour" of juveniles and others to be in accordance with the international standards in this field;
- Reform the legislation with the view to withdraw the notion of anti-social behaviour and imposing coercive measures for children under the minimum age of criminal responsibility;
- Make a clear definition of the legal age of criminal responsibility in order to guarantee that children under the age of fourteen years are totally treated exclusively outside of the criminal justice system on the basis of social and protective measures;
- Put in place a diversion system which is in conformity with the international standards and in the hands of the police, the prosecutors and the judges;
- Incorporate diversion, restorative justice (mediation, community service orders) in the Code of Criminal Procedure and Criminal Code and to provide for their use in the proceedings as early as possible;
- Using the deprivation of liberty as a measure of last resort and for the shortest possible period, taking into account the best interests of the child;
- Diversion to be applicable even if the offender has reached the age of 18 before trial;
- Guarantee the right of the child to be informed about the charges and the way the pre-trial and the trial is conducted not only on paper, but also in practice;

- Ensure that the minimal procedural guarantees are respected at all stages of the proceedings to prevent that lower standards are applied to minors in procedures under FASBMUPA, than the standards applied under the CCP;
- Establishing coordination between the Juvenile Justice System and the Child Protection System in order to ensure that the best interests of the child are respected when dealing with children in conflict/contact with the law and children at risk;
- Training and specialisation of the professionals, involved in the juvenile justice.

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