

JUVENILE DIVERSION IN ROMANIA

WORKING IN ISOLATION.





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ACRONYMS

- AWAY** - the acronym of the project “Alternative ways to address Youth”
- NAP** - National Administration of Penitentiaries
- NAPCRA** - National Authority of the Protection of Children’s Rights and Adoption
- NDP** - National Directorate of Probation
- SCM** - Superior Council of Magistracy

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EXECUTIVE SUMMARY

This report presents an analysis of the juvenile justice system in Romania with a special focus on the diversion measures. The evaluation was conducted in the light of EU standards (Directives 2012/29; 2001/220; 2012/800) but also important UN standards (such as Havana Rules, Beijing Rules, Riyadh Guidelines and so on).

The evaluation was based on extensive literature review, legislative analysis, documentation, interviews and focus-groups. Juveniles themselves played an important role in identifying the gaps and solutions.

As far as diversion is concerned, Romania enjoys a progressive legislation that allows more juveniles to be diverted from the conventional justice than convicted ones. Approximately 4,000 juveniles are diverted from prosecution every year. However, there are early signs that this trend might cease in the near future as stakeholders are not fully satisfied with the outcomes of diversion. Participants in this research noted that a more professional response is needed in order to consolidate the status of diversion. In concrete terms, they suggested:

- better training for the professionals involved,
- legislative changes that will bring juvenile obligations under the child protection or probation umbrella,
- a better monitoring system of the juvenile justice.

Overall, the juvenile justice legislation was found in line with the European and international standards. There are still slight changes that would make the system work more efficient. One of the main recommendations of this report is to adopt a national strategy for juvenile justice that would ensure a coherent and coordinated mechanism of implementation. Institutional fragmentation and insufficient specialization of staff were the most significant obstacles identified in this report. A national strategy, a registry of children in conflict with the law, clear standards and procedures together with systematic training could deal effectively with these difficulties.

Juveniles themselves and their families could also play a more active role in designing and implementing effective interventions with children in conflict with the law.

INTRODUCTION

This report is an evaluation of the juvenile justice system in Romania with a special focus on diversion. The report is a contribution to the EU-funded project AWAY - “Alternative Ways to Address Youth” (JUST/2015/RCHI/AG/PROF/9589) that aims at promoting the use of diversion and child-friendly approaches in juvenile justice system.

Three procedural directives of the European Parliament and of the European Council were used as a reference point for this evaluation: Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2016/800 on the procedural safeguards for children who are suspects or accused persons in criminal proceedings.

In the same time, other core international instruments were taken into account: UN Convention on the Rights of the Child, UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines).

BASED ON THESE INTERNATIONAL STANDARDS, THE FOLLOWING PRINCIPLES WERE INSTRUMENTAL IN THIS RESEARCH:

- In all State interventions, the child best-interest shall be observed. Juvenile sentencing should favor rehabilitation and reintegration over more punitive approaches.
- Custodial sentences shall be used a measure of last resort and for the shortest amount of time as possible.
- Non-custodial, community-based measures shall be prioritized.
- Diversion, restorative justice and other alternatives are best situated to achieve broader objectives of rehabilitation and reintegration.
- Juveniles have the right to be informed about the procedures and the likely outcomes of the processes they are involved in.
- Juveniles shall have the right to actively participate in the decision-making process.
- Interventions should take a holistic approach where all juvenile’s needs are taken into consideration.
- Families, communities and significant others shall be involved in the rehabilitation and reintegration process.
- Interventions shall follow the continuous care approach whereby rehabilitation activities continue inside and outside institutions.
- Staff interacting with juveniles in conflict with the law shall benefit from specialized training and procedures.

In light of these principles, the research concluded that overall the Romanian juvenile justice system complies with the international standards. However, more efforts need to be placed on ensuring an active participation of juveniles in the decision making process and the involvement of their families and communities. Furthermore, national and local agencies have to improve coordination, as working in isolation was one of the most important deficits identified in this report. Further specialization and training should be provided to all categories of staff involved in the juvenile justice sector, including lawyers.

As far as diversion is concerned, Romania still diverts more juveniles than it sends to court. The current normative framework seems to promote these practices. However, recent indicators suggest that, if the practical implementation of the diversion measures will not be improved soon, these practices will be replaced by others that are more punitive. In concrete terms, the obligations that can be imposed once the waiving prosecution is applied need to be enforced by specialized child friendly bodies. Child protection units need to be equipped with the right standards and procedures to enable professionals to work with juveniles in conflict with the law in a more effective way. An integrated communication and cooperation mechanism should be created among all the agencies working with juveniles in conflict with the law. A family-based and holistic approach should be the dominant theoretical models for these agencies while children's rights and best interest of the children should stay as the core principles of the juvenile justice.

KEY CONCEPTS AND DEFINITIONS

Concepts and definitions were used as agreed in the project research methodology.

METHODOLOGY

This report is based on the methodology developed and agreed under the AWAY project. The starting point of this report was the international standards and the literature review that emphasised some of the difficulties in the juvenile justice system. A thorough review of documentation of the national legislation – codes, laws, Governmental decision and internal regulations – and relevant statistics – judicial and extra-judicial – was conducted. Although the authors of this report have tried to collect data for 2011-2016 this was not always possible. The main reason for this was that in February 2014 a new Penal Code entered into force and changed the sanctioning system applicable to the juveniles criminally liable. Therefore, for the trial stage only data from 2014 onwards was collected to capture the new trends.

Interviews with stakeholders were organized such as:

- two interviews with treatment staff at Detention center Craiova.
- three juveniles interned in the Detention center Craiova (two boys and one girl).
- two interviews with interned juveniles in Buzias educative center (one boy and one girl).

- three professionals working at the Child Protection Department / Center for the delinquent minors/ Dolj.
- one juvenile under specialized supervision measure Dolj (boy)
- four professionals at the Sf Stelian Center for juveniles in conflict with the law Ghimbav.
- two juveniles interned in Sf Stelian Center for juveniles in conflict with the law Ghimbav (one boy and one girl).
- three probation counselors at Probation Service Brasov.
- three juveniles under probation supervision Brasov (boys)
- one representative of the NAP
- one representative of NAPCRA
- two representatives of NDP
- three magistrates from the Brasov Tribunal and Prosecution office.
- one educator in the Buzias educative center.

Overall, ten juveniles, sixteen professionals and three magistrates were interviewed for this evaluation.

Following from the interviews, three focus groups were organized in three different locations:

- Timisoara – 12th of October 2017
- Brasov – 25th of October 2017
- Craiova – 26th of October 2017

Professionals representing child protection departments, police, prosecution, the courts, probation services and custodial staff took part in these focus groups.

The aim of these focus groups was to clarify some of the observations, test the validity of out evaluations and check on whether the recommendations we have are feasible and desirable for the Romanian juvenile justice system.

LIMITATIONS

This evaluation is not a detailed examination of the daily practices in the juveniles justice sector. On the contrary, it is a helicopter view over the juvenile justice system with a special focus on the diversion: if it takes place, how it takes place, who is doing it, how the juvenile experience it and so on. However, due attention was paid to Romania's compliance with the three main EU directives mentioned above.

I. LITERATURE REVIEW

The purpose of this review is to identify the evidence regarding the juvenile justice system in Romania with a special focus on the diversion of juveniles from the conventional judicial system. Due to the fact that any search that included “di-

I.1 INCLUSION CRITERIA, KEYWORDS AND THEMES

This review is structured around the following inclusion criteria:

- Literature based on research conducted in Romania;
- Published between 2011 and 2017;
- Peer-review publications were given special priority;
- Grey literature;
- Published in English and/or Romanian. If one report was available in many languages, the English version was preferred.

We consulted several electronic databases (Sage, Taylor and Francis, and JSTOR). These databases host most of the journals specialized in psychology, social sciences and economy. Nevertheless, since searches within these databases yielded a limited number of publications, we

version” or “diversion methods” in the Romanian context did not yield any results, we extended the search to all publications that deal with juvenile delinquency in Romania.

extended the search to Google Scholar. At the same time, we included publications identified through citations from other papers and publications recommended by experts in the field. However, results from Google Scholar yielded many repetitions and we were forced to exclude many results. We excluded all materials that make only passing reference to the Romanian context as well as those which present comparative data for the European context.

The information presented therein is widely available in official statistics. At the same time, we excluded from analysis all conference proceedings as in most of the cases they present work in progress, rarely use date or present incipient research stages.

The keywords used for the selection of literature are: “juvenile delinquency,” “juvenile justice,” “diversion,” “diversion methods,” “juvenile criminal justice,” “minor/young offender.” The same search was repeated in Romanian.

TABLE 1. THE LITERATURE REVIEW

Data-base	Juvenile delinquency		Juvenile justice/ juvenile criminal justice		Diversion/ diversion methods		Minor/ young offender	
	Results	Included	Results	Included	Results	Included	Results	Included
SAGE	15	0	20		0	0	3	0
JSTOR	8	0	7	0	0	0	0	0
Taylor and Francis	18	2	20	5	0	0	6	0
Google Scholar	1370	72	1241	4	4	0		
Total	N=1411				INCLUDED =15			

Based on the identified literature, three main categories of papers were identified:

(1) etiology of juvenile delinquency. All the studies are based on quantitative or experimental methods and focused on identifying risk factors and causes of juvenile delinquency.

(2) rights of minor offenders and conditions of detention. This category includes grey literature – reports from the Ombudsman’s Office (2014), a national report from Children Behind Bars (2014) and four reports following the visits of APADOR-CH (2013; 2014a; 2014b; 2014c), a NGO dealing with the rights of inmates. When it comes to the rights that minors have while in custody, the reports issued by APADOR-CH and the Ombudsman’s Office focus on the standards of prison life. As such, the reports issue recom-

mendations regarding the material conditions of incarceration – overcrowding, the quality of food, and the ratio of the number of prison staff and number of incarcerated minors. At the same time, a great deal of attention is given to violent behaviors, either between minors, or between minors and staff. From what we have seen so far, one important observation can be drawn – the rights of minors are more likely to be violated while the minor is in remand.

(3) legislative aspects regarding changes in the criminal code, which generally salute the changes in juvenile penology, by focusing on the shift from custodial measure to alternatives to detention. We will discuss changes in the criminal code in the next section.

This review tries to bring together both the scientific literature and the one termed as grey lit-

erature. Each one, treated separately, gives only a fragmented view of the realities of juvenile delinquency. Combining the two types of insight produces valuable tropes for understanding the social worlds of children in conflict with the law. The review is structured as follows: Firstly, the most invoked indirect causes of juvenile delinquency, namely poverty, unemployment, and parents migration are dealt with. Although they are widely referenced in most of the literature we review, these phenomena are used as a backdrop and not researched in their own right. Education and family background seem to be key matters of concern for both social scientists and NGOs, articulated both as causes of juvenile delinquency and rights of the children behind bars (e.g. right to education; relationship with the family). As a consequence, the authors have dealt with them together, trying to glimpse into how the prison setting manages compliance with these rights. Lastly, the authors have focused on medical treatment and access to medical facilities while detained. With the new regulations in place, the authors have paid attention to the following rights – the right of the child to be informed; the right of the child to be implicated in his penal trajectory; the right for individualized treatment; and relationship with the family. The child’s implication and the right for individualized treatment are not mentioned in any of the reports, which is somewhat standard, given that the last visits to a center of detention dates July 2014. The right to individualized treatment surfaces in several findings from the grey literature. In many detention centers, for instance, a case educator is employed, who is supposed to tailor programs and activities to the needs of the child. Nevertheless, because detention centers are understaffed (a common predicament of the Romanian prison system), one case educator does not deal with only 40 cases, as the law stipulates, but has to deal with the entire center. The situation changed in 2016, when more treatment staff was employed in both educative and detention centres.

From the report issued by the Ombudsman’s Office (2014: 54), two thirds of the children investigated (65,4%) were informed about their rights and obligations while in custody. The rights they were informed about were: to receive visitation, foodstuff and correspondence; to use the public phone; to receive medical assistance and psychological treatment; to enjoy adequate standards of food, rest, hygiene and dwelling; to buy goods from the commissary; to attend school; to go to the library; to go out in the community; to work; to file complains; to be informed (as in watch television). The Ombudsman’s Office report makes no reference either to the child being involved in decision-making or to the right to receive individualized treatment.

TRANSITION AND OTHER SOCIAL FORCES

The most frequently mentioned underlying causes of juvenile delinquency referred to in the literature fall under the umbrella of post-socialist transition, namely poverty, unemployment, and migration. It is claimed that these phenomena have lead to reconfigurations of the family unit – children are more likely to be left unattended, to show significantly lower academic performance than their peers, to drop out from school, and to engage in acts of rebellion that later turn to crime. In contrast, Muller-Fabian (2016) shows that juvenile delinquency is by no means a post socialist invention. Analyzing the main characteristics of juvenile delinquency before and after 1989, the author shows that under socialism, criminal behaviour amongst children existed and was even higher than the present day but that the socialist state tampered with official records and attempted to render juvenile delinquency invisible.

Popa et al (2017) depart from the premise that juvenile delinquency is a by-product of the transition process. Drawing on Robert Mer-

ton’s strain theory (1938), a similar argument is forwarded by Ungureanu (2013: 209) who attributes juvenile delinquency to poverty and the extended economic crisis, which strongly influences children’s education and increase the appeal of illegal behaviour as solutions for achieving goals. The fall of the socialist regime created massive unemployment and migration, which, in turn, lead to children left in Romania without proper adult supervision. Popa et al (2017:2) coin the term “children home alone” to make sense of the increasing rates of juvenile delinquency. The migration of one or both parents is seen to lead to a higher risk of juvenile delinquency. However, other data suggests that is not always the case. The research conducted by the Ombudsman’s Office (2014: 39) shows that 60% of minors serving time in a detention or education center were living with both parents at the time when they committed the offence, 20% lived only with their mother, 10% with their father and 10% with other relatives. Furthermore, analyzing the academic performance of “home alone children,” Hatos (2011) shows that parents’ labor emigration has little effect on their children’s school performance. Although this account is does not reference directly juvenile delinquency, it unpacks what is largely considered as one of the contributing factors of juvenile delinquency. Home alone children are said to perform badly in school, leading to problems of “psychological adjustment, suicidal tendencies, depression, anxiety, and increased rates of juvenile delinquency” (Hatos 2011: 86). With 60,000 to 170,000 Romanian children having one or both parents working abroad, we can see why this is considered a problem. Hatos conducts a multivariate modeling analysis on 1811 school students, from grades 10-12, showing that children from transnational families do not

have poorer academic performance, but they are “more likely to be placed in unattractive academic tracks, in classes and schools with higher rates of academic failure” (idem: 94).

Unfortunately, although migration, transition, poverty and parents’ unemployment are used as a backdrop in nearly every study of juvenile delinquency, their actual influence is yet to be determined. Juvenile delinquency in the Romanian setting in general is under-researched and still incipient. Most of the studies identified that deal with the etiology of juvenile delinquency are based on quantitative methods (surveys and experiments), and give little insight into the social worlds of minor offenders.

EDUCATION

The research conducted by Popa et al (2017) aims at identifying risk factors for juvenile delinquency, testing the relationship between the individual and family characteristics of minors and juvenile delinquency in Romania. The research is a cross-sectional quantitative survey conducted between January and June 2008¹, with delinquent minors (14-18 years old) incarcerated and subject to educational measures in re-education services. Although a longitudinal research would be more efficient and reliable in establishing the causal effects of risk factors in juvenile delinquency, a limitation the authors acknowledge (10), their findings are helpful in building a profile of the minor offender. The authors add content to one of the premises of the causal model of the etiology of juvenile delinquency. Most authors dealing with the topic depart from the premise that education is one the variables with the greatest explanatory force. As such, as this research shows, at the time of committing the

¹ An important mention is that within the context of the recent changes in the criminal code and the shift from punitive to educative measures their findings may not be applicable to the current situation.

crime, 16% of the sample were illiterate, around 62% had abandoned school, and 45% had repeat school year/years (7). These results are not singular. Muller-Fabian (2016) constructs a theoretical model (The Integrativae Model of Juvenile Delinquency) that shows that 38,3% of juvenile delinquents graduated only elementary school, and 8,3 declare themselves illiterate, but most of them are in a situation similar to functional illiteracy. The study conducted by the Ombudsman's Office (2014: 39-40) reveals a similar situation, as half of the children investigated never attended school prior to their incarceration, or graduated only primary school. What is more, the report shows, after being placed in remand, 30% of them do not continue their education. Furthermore, children with ambiguous penal situations (in remand, or sentenced in the court of first instance) are more likely to interrupt their educational trajectories, leading to a serious violation of the right to education, especially in the cases when the investigation and trials can be delayed up to three years (40). Education is important not only for social scientists, but for children behind bars as well, as more than 79% of respondents consider that one cannot achieve success in life without school (41).

Banciu (2011) reviews the current juvenile justice system in Romania. His analysis is built on several claims: (1) attention given to punishment instead of rehabilitation (2) juvenile delinquents are victims of a deficient educational process (2011:19). The author sees juvenile delinquency as a response to "juvenile crisis" or "difficult age," portraying delinquent acts as acts of rebellion that come with teenage years. Insisting on the potential positive effects of education and a beneficial socialization process, he recommends that the criminal justice system for minors be tailored to the minor's individual potential, not his criminal past, similar to other strengths based approaches. Although the recommendation of individualized treatment is welcomed in all penal contexts, Banciu fails to provide a

convincing explanation as to why some minors engage in delinquent acts while others do not. A similar account is delivered by Karacsony (2014; 2015). Seeing the new penal code as based on punishment, the author enumerates several causes of juvenile delinquency. Analogously to Banciu (2011), Karacsony attributes acts of delinquency to poor familial and educational background and to failures in the process of socialization (2014: 270). Furthermore, the author adds lack of moral and educational values, the lack of positive models and a deficient parental style (idem) to this model.

There is a disjuncture between the importance accorded to education in the legislation and the way education is achieved in practice in detention facilities. The reports compiled by NGOs dealing with human rights and conditions of detention show a precarious state of educative facilities. Apador-CH (2013) reviewed the former Penitentiary for Minors and Youth in Târgu Mureş and showed how the material conditions and infrastructure restrict the development of socio-educative activities. First of all, in 2013, this penitentiary hosted 461 inmates, when it should have only 234. Secondly, they the socio-educative sector was understaffed, hiring only 15 out of 19 people, out of which four were psychologists and nine educators. Although the library was well supplied, it proved difficult to access, the books were locked, and, probably as a consequence, only 15 books were borrowed every month. Similarly to all other penitentiaries, the one analyzed had a school for students attending grades 1 to 9. At the time of the visit, the authors say, there were only two rooms allocated to schooling activities for 89 students. Although the academic year had already started, the incarcerated children had not started school. Nor was it possible for them to attend tenth grade because there were not sufficient requests, nor were they informed of the right to continue their education within the community. With such a complicated arrangement, it is

no wonder that the director of the penitentiary complained that it was difficult to work with minors because of their lack of education. The authors do find important one of the statements made by the staff: school and work are rewarded differently. For every school year graduated, children are written 30 days off their sentence, while in the case of work, one receives a day for every working day. A similar situation is reported in the detention centers in Craiova and Tichilești, where the number of children attending school is too low. The staff justified low attendance by delegating responsibility for obtaining school records (mandatory for enrolling a child in a grade) to the minor, and not the staff. At the same time, despite the new provisions in the criminal code that makes school attendance mandatory, the staff characterized children as disinterested in school matters (APADOR-CH 2014a: 2014b). Meantime, as we shall see in the next sections of this report, the normative context has changed and the reintegration infrastructure has improved significant in the new educative and detention centers. However, difficulties with school and the relationships with the families continue to exist.

As emphasised by APADOR-CH, the case of the Buziaş education center seems to be an instance of good practice. The visit by APADOR-CH (2014c) revealed that all minors were attending school and that the staff managed to find a way around the complicated bureaucratic arrangements for minors to attend tenth and eleventh grades.

FAMILY BACKGROUND

Family background is one of the key variables included in the predictive model of juvenile delinquency. Taking into account the family background of the respondent, the Popa et al (2017) show that juvenile delinquents come from large families, having at least three siblings, half of them were not living with their biological fami-

lies, and one fifth came from families with one or more alcoholic parents (idem). One of the most interesting results is that a staggering majority (78%) sentenced to imprisonment in a detention center had committed the crime together with a group. The resulted model identifies the following predictors of juvenile delinquency: age, type of offence, drug use, school dropout, recidivism, family alcoholism, the relationship to their biological parents and number of siblings (8.). Another study shows that 70% of incarcerated minors had at least one relative arrested (Rosan et al 2015). Muller-Fabian (2016) reports similar findings. According to her model, 55% of juvenile delinquents were socialized in disorganized families, while 85% of them come from unhealthy familial environment (conflicts, aggressive parents, lack of interest for the child's education etc.). Her comparison between delinquents and non-delinquents shows precisely the importance of the family environment, as the members of the control group were more likely to belong to a healthy family environment. Chisăliță and Podea (2013) conduct a similar comparison between delinquent and non-delinquent children, showing that children from dysfunctional families are subject to higher risks of behavior disorders. In their model, family type was the only factor of predictive value for delinquent behavior.

Although children are encouraged to maintain a good family relationship, a third of the children behind bars are never visited by their families while in prison. We will give the example of Buziaş Educative Center, which seems to be one example of good practice, at least as resulted from the repeated visits by NGOs (APADOR-CH, 2014). The numbers provided by the prison staff state that 25% of children are visited on a regular bases (every month) and 40% receive visits once or twice a year. On average, a minor receives three to four packages and foodstuff a year. One explanation can be that Buziaş hosts minors from 22 counties, which makes it difficult for families

to visit on a regular basis, preferring to send money instead of spending it on transportation. These findings are similar to those in the study by Ombudsman's Office (2014: 58-60; 82) highlights that 33% of children behind bars are not visited by family members and 35% have never received a package or money while in detention. Family ties are crucial during detention especially for children, who are placed in a position of vulnerability due to their increased difficulty of gaining money or having access to resources behind bars. Nevertheless, as this report shows, it is not the lack of resources that affect the minor, as the absence of contact with the "exterior world" and social isolation.

MEDICAL AND PSYCHOLOGICAL TREATMENT

Another theme that emerged from literature review is that concerning the prevalence of different psychological and psychopathological traits in delinquent children. As such, adolescent males (14-18 years old) who display callous-unemotional traits (remorselessness, manipulation, lack of empathy) and high levels of anxiety and depression are more likely to be impulsive and aggressive (Rosan et al 2015: 79). Psychopathological symptoms are present at large for the juvenile delinquent carceral population. Among them, the most prevalent are anxiety, depression, rule breaking, affective problems (Jurma et al 2014), and many respondents show symptoms of aggressive behavior: physical and verbal aggression, fury, and hostility (Chisăliță and Podea 2013: 84). Much of the research conducted in this area show that many juvenile delinquents are at risk of suffering from mental health problems. According to Jurma et al: "juvenile offenders are at high risk for psychopathology in adult life; the diagnosis and the effective treatment of psychiatric disorders may reduce the risk of delinquent behavior and the relaps-

es, the absence of psychiatric treatment could contribute to the increased crime rates and the psychiatric disorders in adult life" (2014: 198). This observation is important especially when juxtaposed with the reality of psychological or psychiatric assessment and treatment and in detention and education centers. Again, the authors make reference to the report by the Ombudsman's Office, which states that over 90% of minors declare that they can speak with a psychologist or educator whenever they need. However, the question addressed was "Are you allowed to speak whenever you need with the educator or psychologist?" (2014: 102) and not if the child actually turned to one of them in case of distress. Given the stigma surrounding mental problems especially in the Romanian context, we expect that many of these disorders to go unmentioned. Whereas detention and education centers are relatively well-staffed in terms of psychologists, it is a different situation when it comes to psychiatrists. The high incidence of mental disorders convinced the staff from the Penitentiary for Minors and Youth in Târgu Mureș to contract the services of a psychiatrist (APADOR-CH 2013), but the lack of financial resources may prevent other detention and reeducation centers from following suit.

Furthermore, the situation is similar when taking into consideration the right to general medical treatment. As such, there are detention centers where no doctors are employed on a permanent basis (Târgu Ocna Education Center, see APADOR-CH 2014), but the overall response is that a great majority of children can see the doctor and that they can receive treatment whenever they need. One troubling aspect is the one mentioned by Ombudsman's Office report (2014: 57), which states that ¾ of the children investigated got sick at least once in detention, placing the precarious living conditions in prison as one of the main causes of getting sick.

I.2 SUMMARY OF KEY POINTS

As illustrated above, the literature in Romania focuses very little on diversion or on primary prevention approaches. However, the following conclusions may be drawn regarding the treatment of juveniles in the criminal justice system:

- A good relationship with the family is the first step towards preventing criminal behaviour and successful reintegration. Given that detention and educative centers for minors are less widespread than prisons for adults, making it increasingly difficult for families to visit, more advantages should be afforded for the compliance with visitation rights. Prison staff should work towards encouraging both minors and their families to keep in touch.
- Education is widely discussed as the most important cause of juvenile delinquency. Since work is more conveniently rewarded than school (for every day of work, the minor receives one day written off her sentence as opposed to 30 days for every school year graduated), an equalizing principle should be put in place. School should be rewarded in the same way as work. Furthermore, the prison staff should work together with the Ministry of Education and other competent authorities in order to have instant access to minors' school records.
- Prison staff should be instructed on how to deal with psychiatric disorders and children with special needs. The presence of psychiatrists in detention and educative centers should be the norm and not the exception.
- Prison staff should be instructed on how to deal with violent behaviors, either between minors, or between minors and staff.
- The rights of minors are more likely to be violated while the minor is in remand.
- More attention should be paid to how the new regulations comply with the reality of custody life. No mentions are made on the right of the child to be involved in decision-making; or the right for individualized treatment.
- The minor should be involved in community life, increasing their contact with the exterior world.

Although they are not strictly focused on diversion, these conclusions could inform further the future strategy for dealing with juvenile in conflict with the law in Romania.

II. INTRODUCTION ON THE ADMINISTRATION OF JUSTICE IN ROMANIA

Broadly speaking, penal procedures in Romania consists of three stages: penal or criminal investigation, trial and enforcement. To facilitate the understanding of the whole process, the report will follow to the extent possible these three stages for both underage children and criminally responsible children. According to art. 113

of the Penal Code, children under the age of 14 are considered not criminally liable. Children between 14 to 16 years of age are considered criminally responsible if there is evidence that they committed the crime with competence. Children above 16 are considered criminally liable but they benefit of a special procedural position.

II. 1. CRIMINAL INVESTIGATION

The administration of justice in Romania includes in general the following institutions: police, prosecution, courts, probation services and penitentiaries. As far as juveniles are concerned more institutions are involved: social services, child protection departments, child protection commissions, residential centers, educative centers and detention centers.

POLICE

Romanian Police is organized in one central unit and 42 territorial units – one in each county and one in Bucharest. In each county there are units in each city and in each village (ro. comuna). The branch called ‘Criminal investigations’ investigates the majority of offences committed by the juveniles. In special cases, other police braches may also conduct the investigation (e.g. traffic police).

The investigation is always conducted under the supervision of a prosecutor.

Art. 2 of the Order no. 56/2014 on the prosecution coordination provides that police force is specialized in order to deliver the best investigation. However, there is no evidence that there are police branches or police staff specialized in working with juvenile or young offenders.

As it will be described later, Criminal Procedure Code provides detailed guarantees to protect the juvenile rights during the investigation stage. The National Police Inspectorate elaborated also a manual that describes further the procedural guarantees and the rights of the juveniles – ‘Investigation guide for working with juveniles’ (ro. ‘Ghidul de audiere a copilului in procedurile judiciare’).

Although the procedure is quite detailed and imperative, some children interviewed during the research described the statement procedure (ro. ‘luarea declaratiei’) at the police level without a proper assistance from a lawyer or an appropriate adult. This was the case especially in rural areas.

RECOMMENDATION NO. 1

We recommend Police Inspectorate to consider these observations and conduct its own investigations to ensure that juveniles are treated in the Police establishments according to the highest children’s rights standards. As mentioned above, police stations in the rural areas seem to struggle with the procedural requirements.

There is no data available at the Police level regarding the number of juveniles involved in crimes either as offenders or as victims (at least, we were not able to locate them in spite asking

for them from the Police Headquarter). It seems that Police is recording the crimes and not the offenders.

RECOMMENDATION NO. 2

In order to better measure, monitor and compare the juvenile delinquency phenomenon at the national level, it could be useful for the Police to record also juvenile offenders following a structure such as: age, gender, level of education etc.

INSTITUTIONS FOR THE UNDERAGE CHILDREN

In case the juvenile is under 14 year of age or it was determined that, although he/she is between 14 to 16, but did not act with competence, the police has to inform the Child Protection Department about the case. These departments are organized in each county (41) and in each sector of Bucharest (6) and are responsible ac-

cording to Law no. 272/2004 on child protection for the welfare of children at risk or in conflict with the law. This Law contains many principles and provisions relevant for the juvenile in conflict with the law. Moreover, it contains one dedicate section for this special group of juveniles. We will return to the substantive law in the next

section. Once the Child Protection Department is informed it has to elaborate a special plan for protection that recommends also a special protection measure. This plan is debated by the Commission for Child Protection that is set up in every county and every sector of Bucharest.

There are two special protection measures in place for the juvenile in conflict with the law – placement and special supervision (we will come back to this in the next section).

In case the juvenile or the situation demands some urgent measures, the director of the Child Protection Department may impose the measure of emergency placement. This measure will have to be confirmed within five days by the court. The parents and the tutors need to be informed. If the parents of the tutors are not satisfied with the measure imposed by the Child Protection Commission, they can address the court

that can confirm or overturn the Commission's decisions.

The special protection measure of placement can be enforced in a residential center or in a family or in a foster family (ro. asistent maternal).

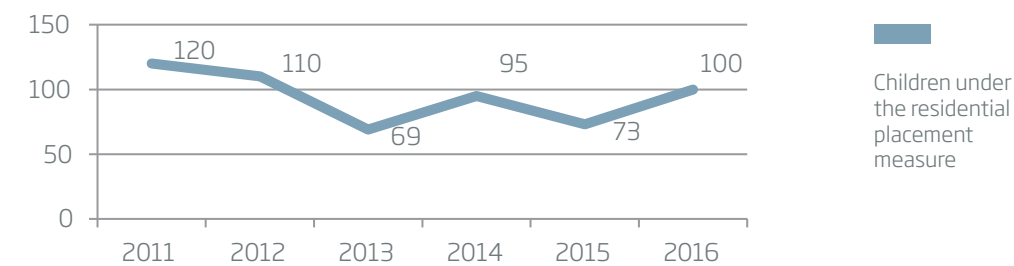
There are only four centers for juvenile in conflict with the law or with behavioral problems. Each of these centers has a capacity of around 20 places (80 places in total).

In many cases, the juveniles in conflict with the law are placed in the residential homes with other juveniles with other profile, like homeless children, abandoned children etc.

Most of the children under the placement measure are sentenced for theft. For instance, 54 children out of 100 children under placement in 2016 were sentenced for theft.

Graph 1.

CHILDREN UNDER THE RESIDENTIAL PLACEMENT MEASURE AT THE NATIONAL LEVEL



Source: National Authority for the Protection of Children's Rights and Adoption (NAPCRA)

A CASE STUDY

SFANTUL STELIAN CENTER GHIMBAV



During this evaluation, the Sf. Stelian Center for juvenile in conflict with the law in Ghimbav/Brasov was visited. This center was set up in 2011 as a special center for juveniles in conflict with the law. At the time of visit there were 21 children placed in this center: 17 boys and 4 girls. Most of them are placed in the Center for committing crimes such as theft but there are also some juveniles sentenced for prostitution, homicide etc. The mission of the center is to accommodate both emergency placement and residential placement. During the placement the children is obliged to graduate at least eight classes. The sentence is of indeterminate nature. The court does not decide the duration of the sentence. The Center's staff runs periodic reviews (every trimester) and makes proposals to the court regarding the release time.

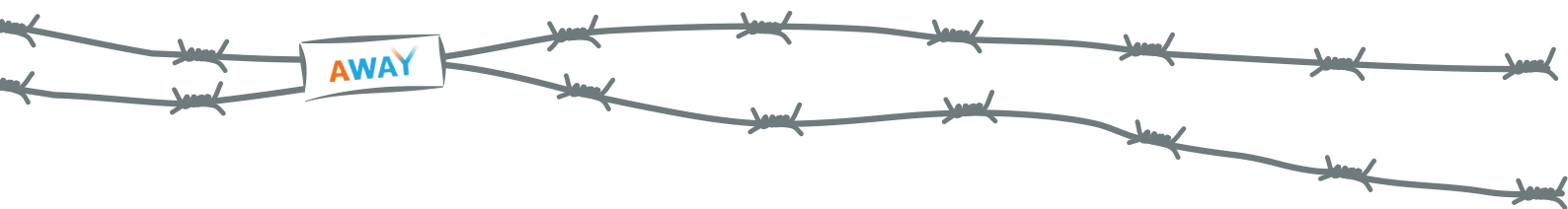
RECOMMENDATION NO. 3

As for other groups of people in conflict with the law, it may be important that the court has the possibility to set a maximum limit of time that the juvenile has to spend in the center (e.g. one year). This could create more predictability.

The internal review procedure of the Center needs to be standardized and written down. This procedure should clarify at least: when the review should take place, who sits in the commission, what sort of decision can be made, what is the position of the juvenile in front of this commission, is there an appeal to these decisions etc.

Children should have clear role and should be involved as much as possible in the decisions. Collectively, children could participate more in the Center's processes and decisions through children's board or council. This could provide a structured way of ensuring children's participation.

The Center's procedures are regulated by a general order (Order no. 21/2004) that applies to all residential centers. As mentioned by some of the staff:





“This Order applies to all residential centers in the country. However, we would need a special order dedicated to the working with the juveniles in conflict with the law. We are a specialized center and not all procedures fit with what we do.”

Staff at Sf. Stelian Center

This observation was also confirmed when looking at the tools and methods used by staff: most of them cover welfare needs of the children such as health, education, vocational training etc.

There is no special assessment and intervention focused on offending behavior (such as cognitive schemas, offending attitudes, peer pressure, problem solving etc.).

Working with the juvenile’s family is more theoretical than practical. There are no concrete procedures of how to work directly with the families or how to engage with other child protection structures to support and prepare the families for the release of their children. Staff was never trained on how to work with this special group and their families.

The lack of standards and clear procedures for working with this group was also noted among those working with the special protection measure of specialized supervision. Due to the lack of a clear structure of this measure, the juveniles experiencing this measure have not received a clear message of why this measure was imposed and what is the content of it:



“Researcher: Marius², what is measure about?

Marius: I have no idea. My father knows ... ”

Juvenile in Craiova

RECOMMENDATION NO. 4

Special procedures of how to work with juvenile in conflict with the law should be developed and staff should be trained in order to become more effective in working with this group. The procedures should cover all stages of intervention: risk/needs assessment, planning, intervention, referral, working with families, preparation for release/freedom, review and report writing to the court.

² Not the real name.

As mentioned in the interview with representative of the NAPCRA, it seems that in 2017 all the standards for the protection of children will be reviewed. Therefore, this recommendation might come at a good time. As the judges and the prosecutor interviewed stated, there is a significant need to set up more residential centers specialized for juveniles in conflict with the law.

RECOMMENDATION NO. 5

Although the residential placement should not be encouraged as a main way to deal with juveniles in conflict with the law, it may be useful for two-three neighboring counties to set up such a center in order to reduce the geographical distances and facilitate family relationships.

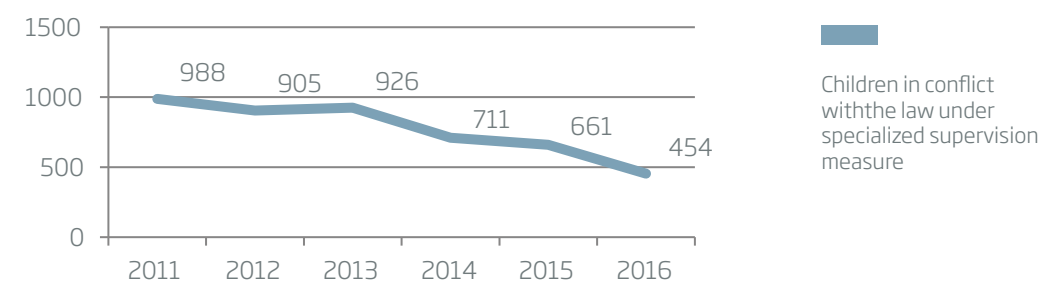
This suggestion was also raised during the interviews with the Sfantul Stelian Center - staff and children. One of the juvenile interviewed in Ghimbav is from Constanta and perceived the distance from Ghimbav as being enormous. Maybe this was one of the reasons his parents never visited him.

If the Child Protection Commission decides to keep the juvenile free but wishes to impose some supervision, it can order specialized supervision.

Child Protection Department or local social services are responsible for overseeing the implementation of this protection measure.

Graph 2.

CHILDREN IN CONFLICT WITH THE LAW UNDER SPECIALIZED SUPERVISION MEASURE AT THE NATIONAL LEVEL



Source: **NAPCRA**

As in the case of placement, most of the children under this measure were sentenced for theft. In 2016, 305 children out of 454 were sentenced to specialized supervision for theft.

During this investigation, two Child Protection Departments were visited – Dolj and Brasov.

A CASE STUDY

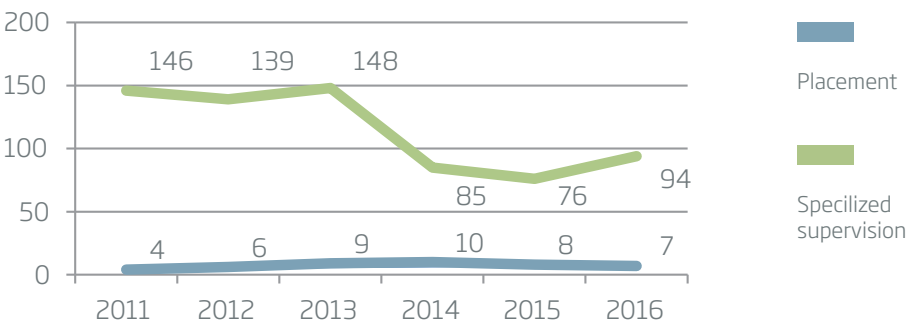
THE CENTER FOR COUNSELING FOR JUVENILES DELINQUENCY DOLJ

The Child Protection Department in Dolj has a special unit dedicated to working with juveniles in conflict with the law – the Center for counseling for juvenile delinquency. This center was set up in 2007 and has the main aim to support the children in conflict with the law.

One of the main activities is prevention in schools. Apart from that, the Center supervises currently 60 juveniles that were under specialized supervision and 20 that were under post-measure support.

The dynamic of the caseload in Dolj is reflected in the following graph.

Graph 3. THE DYNAMIC OF JUVENILES IN UNDER PROTECTION MEASURES IN DOLJ COUNTY



Source: The Center for counseling DGASPS Dolj

As for adults, most of them are boys and live in urban areas. This unit has six staff: two social workers, two psychologists and two inspectors.

As in the case of the residential center in Ghimbav, most of the working procedures were adapted from the other departments:



“We have adapted our own standards. There is no standard for working with juveniles in conflict with the law but we have adapted the standard of the center for general counseling.”

Staff at Dolj Center

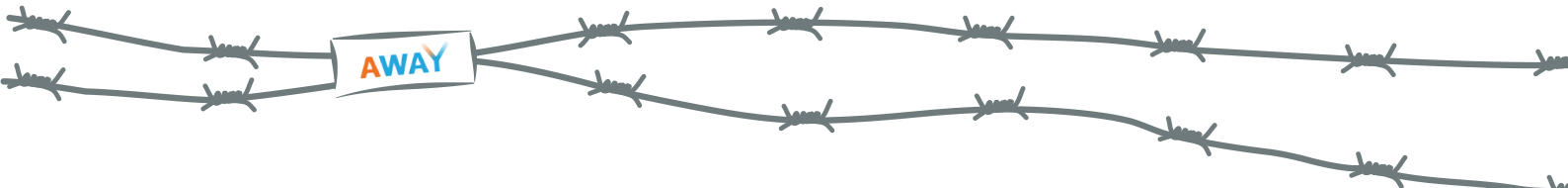
RECOMMENDATION NO. 6

This is the first opportunity of the State through the local communities to deal with the juvenile in conflict with the law. It is known from the literature that early intervention is a paramount for the effectiveness. Therefore, this is a unique opportunity to deal with juveniles in conflict with the law in a manner that ensures effectiveness and care in the same time.

In this context, it is essential that special procedures and dedicated training will be developed for working with this group of juveniles. These procedures should be as close as possible to the procedures developed for the juveniles placed in residential centers.

The tools, the approach, the forms and so on should be as similar as possible as this information might have to travel later to the residential centers, probation services or even educative or detention centers.

The Center’s staff is working most of the time with the juveniles at their own domiciles. As we observed during the field visit, staff engages both with juveniles but also with their families.



RECOMMENDATION NO. 7

More training should be provided to staff on subjects such as dangerous visits, working with families, working with cultural diversity etc.

Juveniles may be more involved in the running of their own 'protection measure' by helping them to organize themselves in self-help groups or street councils. Leisure, sport, art-based or cultural activities may be used as starting point for more involvement of the juveniles (see also Nenga, 2012; Batsleer, 2011 etc.).

Working with families should be further strengthened. The obligation of parents to undertake parenting classes should be mentioned in the court decision and followed by the Child Protection Department. Clear and constructive consequences of breach should be mentioned in the law. When working with the families, a more positive approach should be undertaken. Families should see what are the benefits of working alongside the local authorities: social benefits that are available to support the disadvantaged families, benefits to support the juvenile reintegration, respite care for very young juveniles in the household, counseling, job seeking advice and other services that can support a good parenting.

As this is the first and the most prevalent form of diversion used with juveniles in conflict with the law, it is of utmost importance to structure the intervention in such a way that this will not be a lost opportunity. A better professionalization of these units and more involvement of the juveniles and their families may provide the right starting point.

INSTITUTIONS FOR JUVENILES CRIMINALLY RESPONSIBLE

Those over 14 years of age who are proved to act with competence and those over 16 years of age are considered by the law as criminally responsible and are dealt with by the judicial system.

The judicial system is organized based on Law no. 304/2004 on judicial organization and comprises of courts of different levels and specializations (e.g. military court) and the prosecution offices.

The court system is structured in local courts, county courts, courts of appeal and the High Court of Justice and Cassation. The prosecution offices are organized in such a way to mirror the structure of the court system.

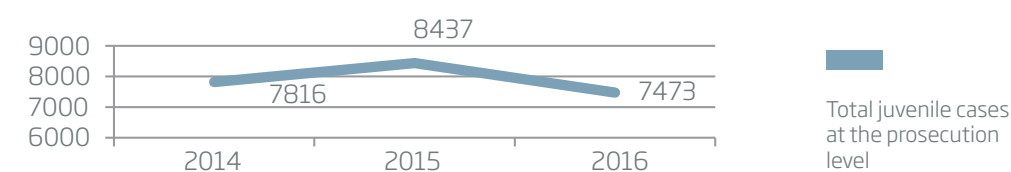
The prosecution has the main role to protect the society's interests and the citizen's rights and liberties. In achieving this aim, the prosecutors coordinate and supervise the criminal investigation conducted by the police.

Most of the prosecutors work with both juveniles and adult offenders. There is only one Prosecution Office for Minors and Family nearby the Brasov Tribunal for Minors and Family. At this moment there are only two prosecutors working in this office.

The number of juveniles that are dealt with by the prosecution is relatively stable in the last three years – around 8000.

Graph 4.

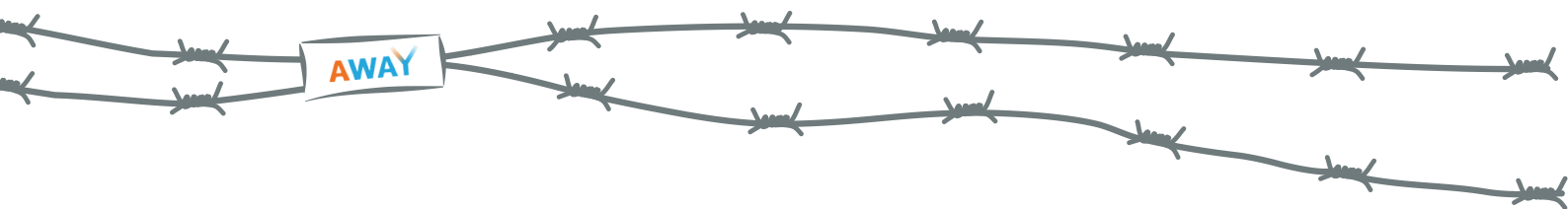
TOTAL JUVENILES DEALT WITH AT THE PROSECUTION LEVEL - NATIONAL



Source: SCM

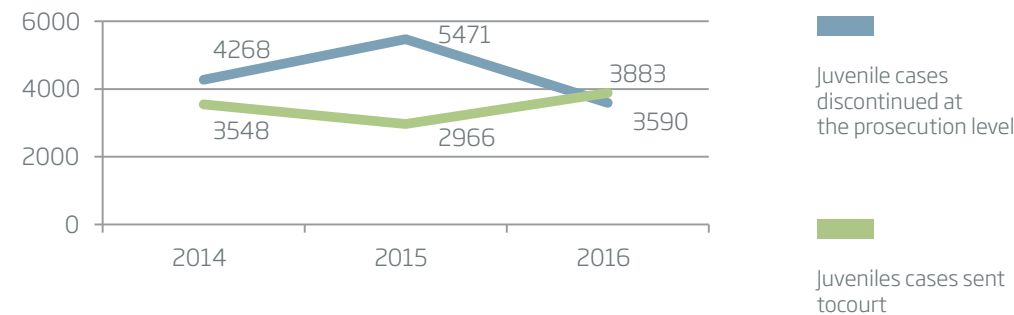
According to one of the prosecutors interviewed, only a proportion of juveniles are sent to court. For the others, the prosecutor applies discharge (ro. clasare) or waiving the prosecution (ro. renuntarea la trimiterea in judecata). We come back to these options in the next section.

In 2016, the Minors and Family Prosecution Office in Brasov worked with 135 juveniles in conflict with the law out of which 66 were sent to trial, which is about the average proportion at the national level.



Graph 5.

THE PROPORTION OF CASES DISCONTINUED AT THE PROSECUTION LEVEL - NATIONAL



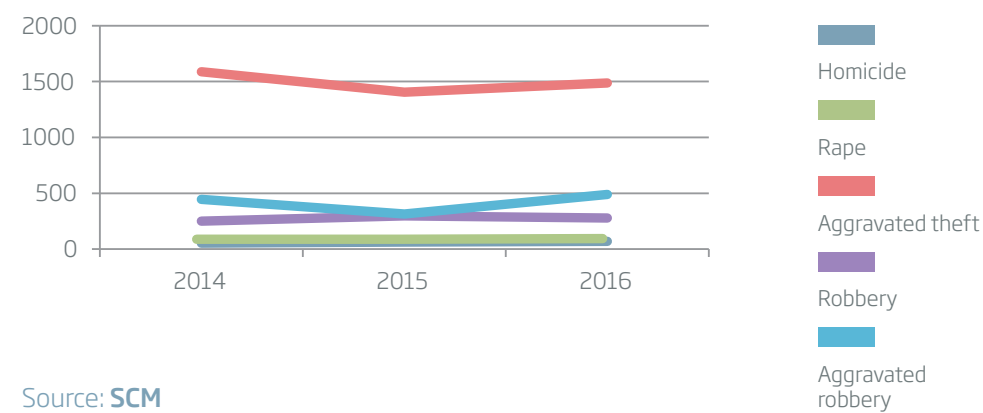
Source: SCM

Up to year 2016 the jurisprudence at the prosecution level was to discontinue the juvenile cases (using discharge or waiving prosecution) rather than to send them to the court. This practice seems to reverse in 2016, when more juvenile cases were sent to court than the discontinued ones.

Changes in the crime structure cannot fully explain this trend. Looking at the most serious crimes committed by the juveniles – aggravated theft, homicide, robbery, aggravated robbery and rape – we can see that not significant changes took place in the referenced timeframe.

Graph 6.

THE DYNAMIC OF THE MOST SERIOUS CRIMES COMMITTED BY JUVENILES



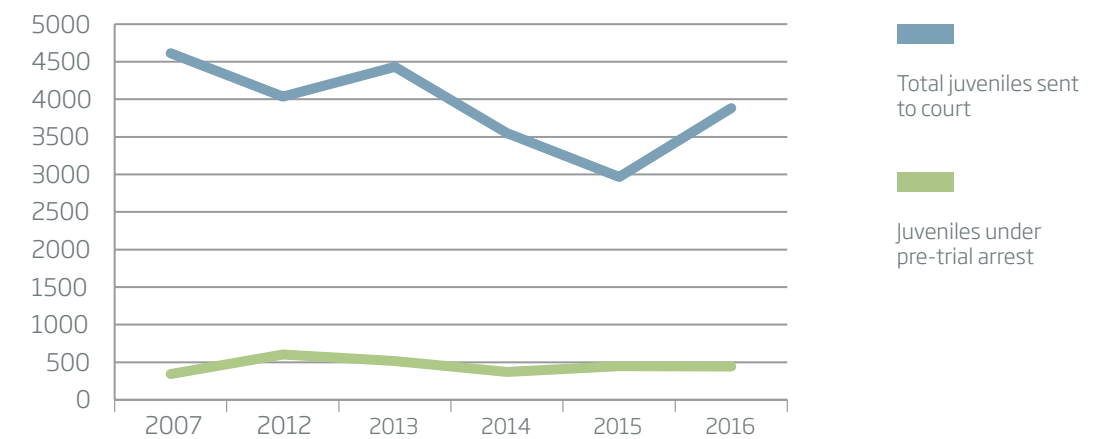
Source: SCM

In this context, one possible explanation is the 'moral panic' (Cohen, 1972) that is described as a process by which a group of persons emerges to become defined as a threat to society. This

consideration may be also supported by the high proportion of children sent to court under pre-ventive arrest. Although this trend is decreasing the proportion remains high – 11.5% in 2016.

Graph 7.

THE PROPORTION OF JUVENILES SENT TO COURT UNDER PRE-TRIAL DETENTION



	2007	2012	2013	2014	2015	2016
Juveniles under pre-trial arrest	343	603	517	371	446	445
Total juveniles sent to court	4613	4035	4431	3548	2966	3883

Source: SCM

The proportion of juveniles under pre-trial detention increased from 7,4% in 2007 to 14,9% in 2012. Decreased in 2013 to 11,7% and then increased again in the next two years to 12,5 % and 12,6%. In 2016, the proportion of juveniles under pre-trial arrest was 11,5% out of the total number of juveniles sent to court.

Another possible explanation for this reverse trend is the less confidence among the prosecutors in the way diversion measures are implemented. As we shall see in the next section of this report, once the waiving prosecution is ap-

plied, the prosecutor may also impose some obligations, such as to provide community service or undertaking psychological counseling. The way these obligations are implemented in practice is totally unsatisfactory, as we will develop later. This 'disappointment' among prosecutors was mentioned several times during the focus groups.

According to the prosecutor we interviewed, there was no training in last five years dedicated to working with juveniles.

RECOMMENDATION NO. 8

Based on the interviews with judges and prosecutors and also in the light of art. 20 of the Directive 2016/800 on the procedural safeguards for children who are suspects or accused person in criminal proceedings, prosecutors need to be specialized in dealing with juveniles in conflict with the law and attend specific training on subjects such as: appropriate questioning techniques, child psychology, communication etc.

Therefore, specialized prosecution offices or specialized prosecutors need to be trained and made available for cases involving juvenile offenders or victims. More training could lead to a better understanding of the developmental processes and how they could be disrupted by the deprivation of liberty. More training could also lead to a better understanding of diversion and its advantages.

As mentioned by the prosecutor interviewed the advantages of specialization are significant: ensures a fair trial for the juveniles, ensures

speedy process as the specialized prosecutors know the map of services available for children and are familiar with the special procedures etc.

PREVENTIVE MEASURES

During the criminal investigation the prosecutor may impose some preventive measures on the juvenile such as police holding or judicial control. Police holding may last up to 24 hours and can be imposed only when this measure is strictly justified (e.g. flagrant, very serious crime etc.).

The judicial control, like all the other preventive measures, may be imposed if there are solid reasons to believe that this is necessary for a good running of the trial or if there are reasons to believe that the juvenile will alter the evidence or is about to commit further crimes or there is a risk of absconding or running away from trial.

During the judicial control the juvenile have to observe different obligations such as: to visit the police center periodically, to inform the police about any change of domicile. In the same time the prosecutor may order other obligations such as: not to leave certain places, not to visit

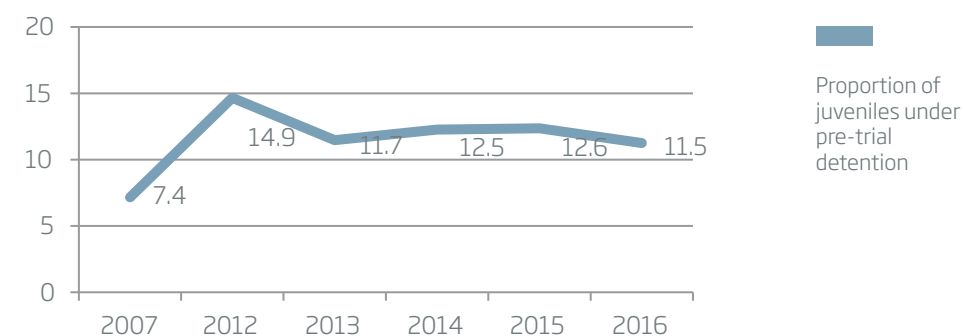
certain places, to wear electronic equipment for surveillance (not in place yet), not to meet certain people, not to undertake certain activities, to undertake medical or detox treatment etc.

The Police is responsible for implementing these obligations. These measures may be appealed against to a special judge called judge for rights and liberties. The measure can be imposed for maximum 30 days and can be prolonged if the grounds for imposing such a measure are still in place.

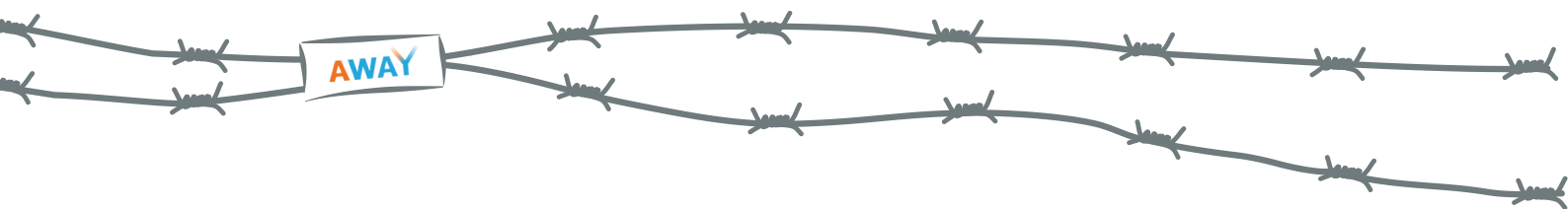
These measures may be imposed only on accused juveniles and only when a lawyer assists them. They can be imposed only when they are not affecting the personality or the development of the juvenile (art. 243 PPC). Apart from these preventive measures that can be imposed directly by the prosecutor, the prosecutor may ask the judge for rights and liberties to impose

Graph 8.

THE PROPORTION OF JUVENILES SENT TO COURT UNDER PRE-TRIAL DETENTION MEASURE - NATIONAL LEVEL



Source: SCM



more severe pre-trial preventive measures such as: pre-trial detention or house arrest. Both measures are exceptional and can be imposed only when certain conditions are met (e.g. the crime is severe enough, there were escape attempts in the past etc.).

When setting the duration of these measures the age of the juvenile has to be taken into consideration. Parents or tutors have to be informed about these measures taken against the juveniles. As in any court procedure, the juveniles are entitled to an interpreter (if needed) and a lawyer. The prosecutor has to be present in all these procedures. The juveniles have to be present and take active part in the procedures except when this is not possible for objective reasons (e.g. he/she is absconding). All measures could be appealed to a higher court.

As illustrated above, the trend in using pre-trial detention for juveniles is decreasing but is still quite high.

II.2 THE TRIAL STAGE

Once the criminal investigation is finished and the prosecutor decides to send the case to the court, a preliminary court judge will study the file and check that all the legal requirements are fulfilled.

A judge will be selected using the random system of case allocation. The criminal procedure has to run fast for the juvenile cases especially if the juvenile is under pre-trial detention. All the rights granted for the criminal investigation stage are in place for the trial stage of the

These more severe measures may be taken for up to 30 days and can be prolonged with maximum 30 days each time the measures are revised, but no longer than 180 days during the criminal investigation phase. The participants in this study suggested that these legal requirements are strictly followed in practice.

The preventive measures may be taken or prolonged also by the preliminary judge or the court during trial stage. In this case, pre-trial detention may be imposed for maximum half of the maximum punishment provided for that particular crime but no longer than five years.

Pre-trial detention has to be implemented in special sections of the arrest centers or penitentiaries.

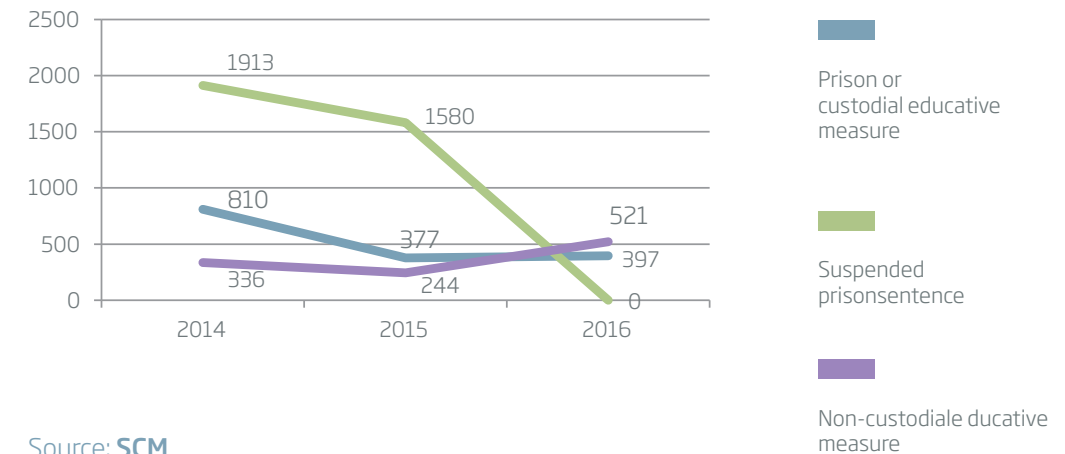
In cases with juveniles the prosecutor may require an evaluation report from the probation service. This stands for the individual assessment provided by the Directive 2016/800.

procedure. Furthermore, in case the prosecutor did not ask for an evaluation report, the court has to order one from the probation service. In this report, apart from the detailed evaluation of the person and the deed, the probation counselor has to recommend an educative measure and eventually some obligations that can facilitate the social reintegration of the person.

Statistics at the national level show also that priority is given to non-custodial sanctions and measures.

Graph 9.

THE SANCTIONS AND MEASURES IMPOSED ON JUVENILES IN CONFLICT WITH THE LAW



Source: SCM

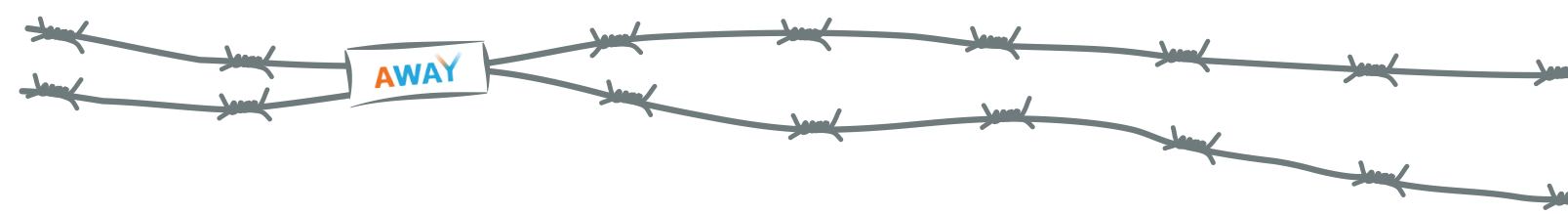
Under the old Penal Code both sanctions were possible: imprisonment and the educative measure. The prison sentence could have been also suspended with conditions and obligations or with no conditions and obligations.

Since February 2014 a new Penal Code is in force. Under this Penal Code only educative measures are available for juveniles in conflict with the law. Some educative measures are custodial but some are community based (more on this topic in the next section).

Based on this graph, we can assume that the previous prison sentences were transformed into custodial educative measures in the judicial practice.

It is not yet fully clear how the suspended sentences will be converted in practice under the new Penal Code.

Cases involving juveniles in conflict with the law are allocated to judges that are specialized through practice in this sort of cases. However, due to practical reasons they also deal with cases involving adults. There is only one Juveniles and Family Tribunal in Brasov that deals with more severe crimes committed by the juveniles in the Brasov County. The Tribunal also acts as an appeal court for cases tried at the local courts as first instances court. The Tribunal has three specialized judges that benefited from some training many years ago.



RECOMMENDATION NO. 9

The Juveniles and Family Tribunal may be considered as a good practice as it allows a special procedure for the cases involving juveniles and also a rigorous specialization of the judges involved. The competence of this court is, however, constructed in such a way to involve mainly juveniles who committed very serious crimes. It would be helpful to provide the same type of structure for the first instance court – ro. judecatoria. By doing so, all juveniles in conflict with the law in Brasov could follow a specialized process. The same should apply to the Prosecution Office. The Prosecution Office nearby the First instance court should also have a specialized branch for working with juveniles. More continuous training is needed in order to maintain the motivation and the professionalism of the existing magistrates. The same applies for the specialized judges and prosecutors at all levels of jurisdiction (ro. Judecatoria and parchet).

II. 3. ENFORCEMENT STAGE

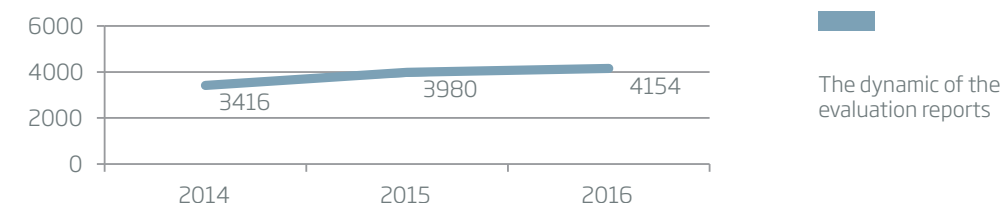
As far as juveniles are concerned, three types of institutions are involved at the enforcement stage: probation services, educative centers and detention centers.

PROBATION SERVICES

Probation services were set up in year 2000 (Governmental Decision 92/2000 on setting up the social reintegration and supervision services) and are organized in each county. They are responsible for implementing all non-custodial educative measures. Through a EU project – Phare 2003 on juvenile justice – some probation counselor were trained on working with juveniles. Another training was

organized in 2016 on implementing one of the educative measures – the civic traineeship. One probation counselor from each probation service was trained on this subject. There is no specialization on juveniles among the probation counselors as all probation staff work with all types of offenders. Apart from the requirement that juveniles have to come accompanied by their parents to the supervision sessions (at least for the first one), there are no other special procedures in place for working with juveniles. The main activities conducted with juveniles by the probation service are: submitting evaluation reports and supervision of the non-custodial educative measures. At the trial stage all juveniles must have an evaluation report.

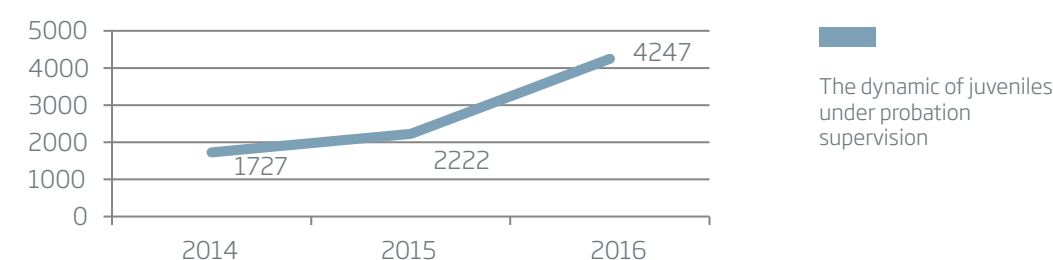
Graph 10.
THE DYNAMIC OF THE EVALUATION REPORTS



Source: NDP website³

The same ascending trend can be observed also for the supervision activity.

Graph 11.
THE NUMBER OF JUVENILES UNDER PROBATION SUPERVISION



Source: NDP website

Most of the juveniles under probation supervision are sentenced to supervision or daily assistance. Based on the interviews with the juveniles involved in these forms of educative measures, it can be inferred that they are well structured and meaningful. However, more effort should be put into explaining the juveniles the role and

the place of the probation service as an agency supporting desistance.

Some probation counselors argued that the six months limit provided in the law does not allow them to organize solid and sustainable interventions.

³ Available at: <http://www.just.ro/directia-nationala-de-probatiune/> (accessed at 30.08.2017)

RECOMMENDATION NO. 10

It may be useful that two or three probation counselors in each probation service to undertake a specialization in working with juveniles. Special training should be delivered to these probation counselors on how to engage with juveniles, how to motivate juveniles, how to promote change among juveniles and so on.

EDUCATIVE CENTERS

Educative centers are closed institutions and were set up based on Law no. 254/2013 regarding the enforcement of custodial punishments and measures. There are two such centers in Romania – Buzias and Tg Ocna – both of them under the authority of the National Administration of Penitentiaries (NAP).

The Buzias Educative Center is located in the West of Romania nearby Timisoara and has the capacity of 184 places. As it is a relatively new center (since 2004) the Center is organized in 19 small units that allow a family like atmosphere⁴.

By the time of the visit, the center hosted 154 children out of which 65 were young adults (up to 25 years old). Sixteen of them were girls. The main focus of the center is school. All children are obliged to attend school while in the center.

However, due to late check in or the lack of documents only 120 of them were in school. Apart from school, children are involved in vocational and cultural activities. The procedure is very clear and juveniles seem to be familiar with are their rights and obligations while in the Center.

The center can approve leaves for 24 hours, 48 hours, three days or five days. Due to the fact the these leaves are regulated as privileges and conditioned by good grades, only a few juveniles benefited from this schemes.

Another reason behind this underuse of leaves is the fact that for most families it is difficult to find the necessary resources to travel such long distances to visit their children. The leaves can be granted only if children are accompanied by their parents or tutors.

⁴For more details please visit:
<http://anp.gov.ro/centrul-educativ-buzias/>

RECOMMENDATION NO. 11

It is highly recommended that leaves are not regulated as rewards but as normal elements of regime. They should operate as tools to facilitate progressive release.

Arrangements with social services, child protection departments, NGOs could be in place to facilitate family visits. In case of family absence, these agencies could also be empowered to work with juveniles during the leaves.

During the visit at the Buzias Educative Center other issues were raised by staff that require immediate attention:

- the work is not deducted from the sentence for juveniles as it is for adults,
- the daily allowance for food is only 5.8 lei (1.2 Euro) which is totally insufficient for adolescents,
- the ex officio lawyers are most of the time unhelpful for the juveniles,

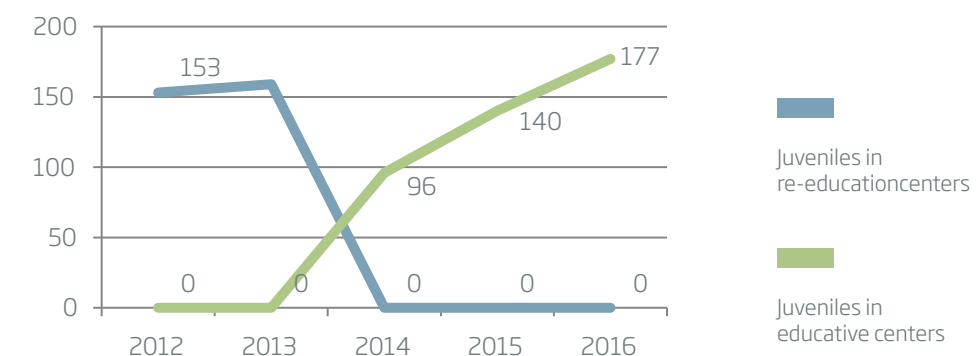
- the difficulty of externalizing some programs towards specialists from the open society.

The Tg Ocna Center is situated in the East part of the country, in Bacau County and has a similar design and approach.

These educative centers were established under the new Penal Code and therefore statistics are relevant only after 2014. To some extent the educative centers are replacing the former re-education centers under the former Penal Code.

Graph 12.

THE DYNAMIC OF JUVENILES IN THE RE-EDUCATION CENTERS (2012-2013) AND EDUCATIVE CENTERS (2014-2016) (AT 31ST OF DECEMBER)



Source: NAP

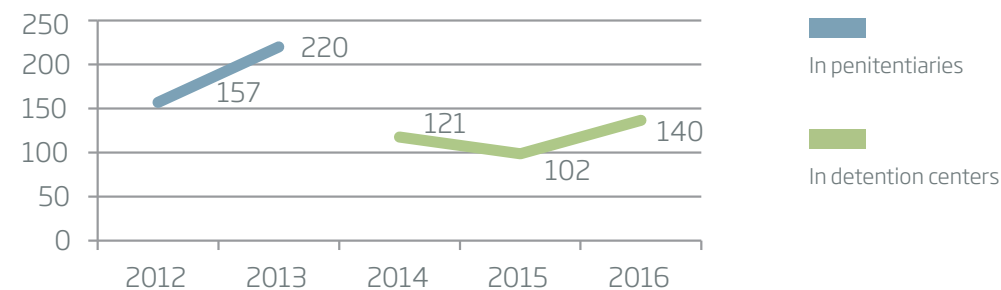
For more serious crimes or more persistent offenders, the court can also sentence juveniles to detention centers.

There are two detention centers in Romania: Detention Center in Craiova and Braila-Tichilesti Detention Center. One is in the South of Romania and one in the East side of Romania.

To a certain extent the detention centers may be considered the followers of the juvenile penitentiaries under the former Penal Code. Therefore, in this case the dynamic will follow the juveniles in the penitentiaries between 2012-2013 (under the former Penal Code) and the juveniles in the detention centers between 2014-2016 (under the new Penal Code).

Graph 13.

THE DYNAMIC OF JUVENILES IN THE PENITENTIARIES AND DETENTION CENTERS (AT 31ST OF DECEMBER)



Source: **NAP**

As it can be noted, with the exception of 2015, the constant trend is to increase the custodial measures imposed on the juveniles.

The fact that in 2016 the juvenile cases overcome the number of juveniles diverted from the conventional system and the number of juveniles sentenced to a custodial educative measure is growing may be explained as mentioned above by the concept of “moral panic” explained by Cohen (1972).

As nothing has changed significantly in the crime rate or the crime structure, the only explanation

is that judiciary acts as ‘moral entrepreneurs’ and become more severe with the juveniles in conflict with the law.

Most of the juveniles under custodial educative measures are male. Female are between 5 to 10 % of the total number of juveniles in custody. Unfortunately, no detailed statistics on gender are available.

Theft and robbery are the main crimes committed by juveniles in educative or detention centers.

A STUDY CASE

DETENTION CENTER CRAIOVA



During this investigation one detention center was visited: The Detention Center in Craiova. This Center was set up in 1992 as a special school for work and reeducation. Later it become a penitentiary for the juveniles and young offenders and, since 2014, it is a detention center under the Law no. 254/2013 regarding the enforcement of the custodial punishments and measures.

By the time of the visit, 250 people were held in custody, out of which 60 were juveniles. The others were young offenders up to 25 years old. Out of those 60 juveniles, 16 were girls.

As distinctive from the adult prisons, juveniles under the educative measure of detention center enjoy more rights such as: conditional release after serving one half of the sentence, more leaves in the community, closer relationships with the families etc.

However, based on the interviews with the juveniles and the Detention Center staff, it was concluded that conditional release after mid-point was an exception and the practice around this procedure is highly unpredictable and frustrating.

RECOMMENDATION NO. 12

It is recommended that the National Penitentiary Administration will start a dialog with the Superior Council of Magistracy in order to elaborate sentencing guidelines around the conditional release practice. It seems that the current regulatory mechanisms in place are not effective enough to ensure a reliable, predictable and understandable practice for juveniles.

The same goes for the leaves and other theoretical privileges. Regarding the number of leaves from the Center, the statistics show a modest use of them.

The main reason behind this practice is, according to the staff, the impossibility of the families to come and accompany the children during the leaves.

RECOMMENDATION NO. 13

The contact with the families should be one of the priorities of the reintegration staff. However, where the family is not available (e.g. emigrated parents), other mechanisms should be developed to allow these leaves to take place.

Child protection departments, social services or NGOs should be involved in this mechanism to ensure that all juveniles experience some leaves prior to release. This recommendation applies also to the educative centers.

As mentioned by one psychologist interviewed in Craiova Detention Center, between 20-25% of the juveniles held in the Center have been in contact with the child protection system. In spite of this reality, there is no communication between the Center and these child protection structures. Furthermore, once the child is interned in the Detention Center there is no contact between social services or child protection structures and the child or his/her family. This fracture has a negative impact on several processes, such as: the flow of information, the program of leaves, the preparation for release and so on. The most negative effect is no doubt the lack of any preparation of the family to receive the juvenile back into its framework.



“Child protection departments have many resources but they do not show any interest in the children held in our Center. I would put my trust more in the NGO sector ...”

Staff in Craiova Detention Center

RECOMMENDATION NO. 14

Children held in the educative or detention centers are still children. According to art. 5 alin. 3) of the Law no. 272/2004, ‘local authorities have the obligation to support the parents ... by developing diversified, accessible, and highly qualitative services that respond to the children’s needs’.

Local authorities, through child protection departments and public social services, together with the National Penitentiary Administration should develop clear mechanisms of cooperation to support the children and their families during the enforcement of the custodial educative measures and after release.

National Penitentiary Administration should also develop a written guideline on how to involve juveniles in the decision making process and also on how to engage with their families.

The working procedures and the methodologies employed by the Center seem to focus on both welfare and offending behavior. Once they are sentenced, the juveniles are included in an induction period (ro. carantina) when they are evaluated and informed about their rights. Both, the Ombudsman’s report of 2014 and the interviews with the juveniles, support the conclusion that juveniles are informed about their rights. However, for a more rigorous approach in this respect more could be done.

RECOMMENDATION NO. 15

It is recommended that during the induction juveniles will receive a letter of rights as mentioned in Directive 2012/13/EU and also in Directive 2016/800.

Juveniles are encouraged to attend school up to 11 grade and also to undertake vocational training. As resulted from the Ombudsman’s report (2014) but also from the APADOR-CH reports (2014a, 2014b), a significant proportion of juveniles are not able to continue school while in custody. This reality impacts on reconviction rates (see Motiuk, 1991; Proctor, 1994) and also on the future prospects of juveniles. The center is in the position to offer vocational training on different subjects such as: hairstyle, cooking, packing, hostess and so on. During the interviews with staff and juveniles it was mentioned that many times the lack of official papers attesting the education could prevent children register in school..

RECOMMENDATION NO. 16

It is recommended that the NPA will take an education first approach and update the existing protocol with the Ministry of Education and include fast and less bureaucratic procedures for registering children in school in case the official documents are not available.

More incentives should be invented for juveniles to actively participate in school (e.g. anticipated release for those who graduate 12 grades).

No juvenile should be left outside the education structure of the centers. This applies also to the educative centers.

During the interviews, staff mentioned they were trained and continue to be trained depending on the resources available. Once the Center was transformed into Detention center, the staff was supplemented: from one psychologist, one social worker and six educators in 2015 to five psychologists, five social workers and 18 educators.

RECOMMENDATION NO. 17

It is highly important that the new staff (and sometimes more experienced staff) is properly trained in working with juveniles and there is a mentoring or supervision scheme in place to ensure an adequate support for the staff.

More than one third of the juveniles in custody are never visited by their families (see Ombudsman and APADOR-CH reports). The causes behind this reality are many and complex (e.g. long geographic distances, poverty, dysfunctional families etc.). However, the juvenile's relationship with their families is crucial for the success of their return home.

RECOMMENDATION NO. 18

NAP together with NAPCRA, National Probation Directorate and the NGO sector should draft a realistic strategy for promoting family visits and leaves that would facilitate the relationship between juveniles and their families.

III. CHILDREN AND CRIMINAL JUSTICE. THE SUBSTANTIVE LAW

The legislation regulating the juvenile justice field consists of: Law no. 272/2004 regarding the child protection, Penal Code, Penal Procedure Code, Law no. 254/2013 regarding the enforcement of the custodial punishments and measures and Law no. 253/2013 regarding the non-custodial punishments and measures.

Subsequently, each law has subordinated governmental decisions, ministerial orders or stan-

dards. Each of them will be dealt with in the corresponding sections.

According to the Penal Code, juveniles under 14 years old are not criminally liable. The juvenile between 14 and 16 years of age is criminally liable only if proven he/she committed the act with competence. The juvenile who turned 16 shall have criminal liability (art. 113 PC).

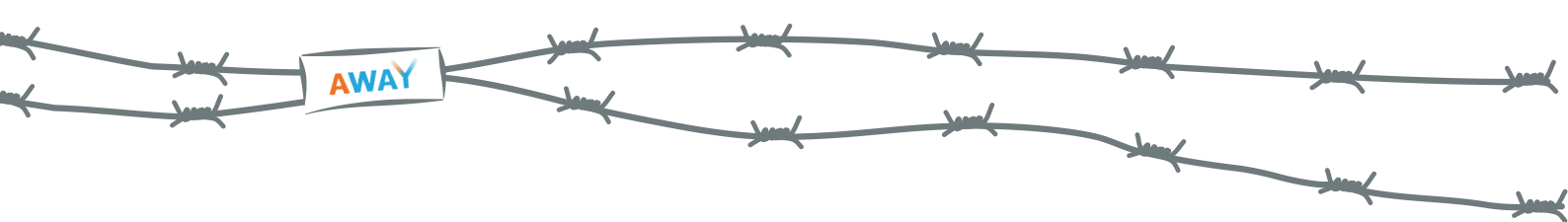
III. 1 UNDERAGE CHILDREN

The procedure with the underage children (under 14) is coordinated, according to Law no. 272/2004, by a local commission for child protection led by the secretary of the county council. Once the child protection department is informed by the police about a child in conflict with the law, this department conducts an evaluation and puts forward an individualized plan for protection that includes also a protective measure. This plan is then approved by the child protection commission. If the parent or the child's tutor does not agree with the measure then the court has to get involved and decide. The child protection departments or the social services will then become competent for enforcing the protection measures.

As mentioned above, the juveniles not criminally liable are dealt with by the Law no. 272/2004 on child protection.

According to this law, all the measures and the State interventions on children shall comply with the principle of best interest of the child promoted by the Universal Declaration of Children's Rights. Child is defined as any person under 18. In the light of art. 5 of this law, the parents are responsible for looking after the children. The local communities have the subsequent and complementary obligation to support the parents or the tutors in taking care of the children's best interest.

In doing so, the child protection commission or the court could may impose one of the following special protection measures: placement, emergency placement and specialized supervision. Child Protection Department in every county (ro. Directia generala de asistenta sociala si protectia copilului) and the public social service in every town or village are responsible for im-



plementing these measures. As far as the child in conflict with the law who is not criminally liable (ro. copilul care a comis fapte penale si nu raspunde penal) is concerned, only placement and specialized supervision may be imposed. The placement may be imposed in a family, in a foster family or in a residential facility. The specialized supervision involves maintaining the juvenile in his/her own family with the obligation to comply with one or more of the following ob-

ligations: to attend school, to attend a day center, to follow medical, therapeutic or counseling treatment, to avoid certain places and certain people. These two measures can be applied by the child protection commission set up in each county only if the consent of the parents exists. If this is not the case, only the court may apply the measures. Parents have the obligation to attend special counseling programs developed by the child protection agencies.

RECOMMENDATION NO. 19

During our investigation there was no evidence of any guidelines of such a counseling program to be coordinated by the child protection departments. It is of utmost importance that such guidelines are developed by the NAPCRA and proper training for those in charge of implementing it is in place.

The Child Protection Department shall also assist the juveniles towards their reintegration. Based on the law, the Governmental Decision no. 1439/2004 was adopted to regulate the services available for the children in conflict with the law. Thus, GD 1439/2004 states that residential and day centers should be available under the

child protection units. Staff working in these units should be trained on specific technics and approaches. The same applies to the families that receive children in conflict with the law in their placement. However, no specific and detailed standards exist for working with this group of beneficiaries.

RECOMMENDATION NO. 20

It is recommended that the new standards that will be developed by the NAPCRA will include detailed and specific standards for working with children in conflict with the law. These procedures could develop in partnership with the probation service which is already specialized in working with offenders.

Another procedural right that is regulated by this law is that the juveniles under 14 shall be accompanied by a social worker or a psychologist from the Child Protection Department during the penal investigation. All these regulations apply also

to the juveniles in conflict with the law between 14 to 16 but did not commit the crime with competence (ro. discernamant). The competence is decided by a special branch of the forensic medicine (ro. medicina legala).

III.2 JUVENILES CRIMINALLY LIABLE

The procedure for the juvenile offenders is broadly speaking the same as for the adults with some derogation that will be discussed mainly in the section dedicated to procedural rights. The police under the supervision of the prosecution conducts the criminal investigation. Once this stage is finished, the file goes to the prosecution that will prepare the charges for the court. When deciding on a case involving a juvenile offender, the prosecutor may:

- a) Suspend the penal investigation in case of serious illness (art. 312 of the Penal Procedure Code - PPC)
- b) Dismiss the case in case of not enough evidence (art. 315 PPC)
- c) Waive the prosecution (art. 318 PPC) or
- d) Press charges and send the case to the court.

Within the context of this report, the institution of waiving the prosecution is important in particular as it contains all the elements of diversion.

Waiving prosecution may be applied by the prosecutor in case there is no public interest in prosecuting a person and the punishment provided by the Penal Code for that offence is fine or imprisonment of less than seven years. When applying this measure, the prosecutor may also impose one or more of the following obligations (art. 318 alin. 3):

- a) to recover the damage for the victim,
- b) to publicly ask for apology from the victim,
- c) to deliver community work for 30 to 60 days,
- d) to undertake a counseling program.

These obligations shall be fulfilled within six to nine months from the decision. Although Romania has a fully-fledged probation service that oversees these measures when they are imposed by the court, the measures imposed by the prosecution are monitored by the prosecution clerk and the police (based on Governmental Decision no. 604/2016).

RECOMMENDATION NO. 21

It is recommended that Governmental Decision no. 604/2016 be amended and appoint the probation service or the child protection departments as responsible for implementing the obligations provided at art. 318 alin. 3 of the PPC. It is quite unusual to appoint a criminal investigation or an administrative unit to provide rehabilitation services to juveniles.

Once the juvenile offender reaches the court level, art 115 of the Penal Code (PC) provides for juveniles in conflict with the law who are criminally liable, four community based educative measures (civic traineeship, supervision, curfew on weekend and assistance on a daily basis) and two custodial educative measures (confinement in an educational centre and confinement in a detention centre). They can be imposed only by the court.

According to art. 117 of the Penal Code, 'The educational measure of civic traineeship consists of a juvenile's obligation to participate in a program not exceeding 4 months, which would help them understand the legal and social consequences they are exposed to when perpetrating offenses and would make them accountable for their future behavior.' As we have noted in the previous section, this program has been developed and is implemented by the Probation Services.

Supervision is an educative measure that consists of controlling and guiding a juvenile through their daily program, for a time between two to six months, under the supervision of the Probation Service.

Curfew on weekend consists of a juvenile's obligation not to leave their domicile on Saturdays and Sundays for a time between 4 to 12 weeks with some exceptions.

Assistance on a daily bases consists of the obligation of the juvenile to follow the schedule made up by the Probation Service for three to six months.

When imposing one of these measures, the court may also impose one or more of the following obligations (art. 121 PC):

- a) take classes in school or a vocational training;
- b) not to cross the territorial limit set by the Court, without the Probation Service's approval;
- c) not to be in certain places or at certain sporting cultural events or other public meetings indicated by the Court;
- d) to stay away from and not communicate with the victim or members of their family, the participants in the offense or other persons indicated by the Court;
- e) to report to the Probation Service on the dates set by the latter;
- f) to comply with medical control, treatment or care measures.

The Probation Service coordinates the implementation of these measures and obligations and has the obligation to notify the court if: there are reasons justifying either the change of the obligations imposed by the court or cessation of some of them appeared, or a supervised

person violates the conditions of the educational measure or fails to meet their obligations, under the established terms.

Internment in educational center is a custodial educative measure that can be imposed on a juvenile for one to three years. The enforcement may take place in one of the two educative centers under the Penitentiary Administration authority. The priority of this center is given to the educational and training programs and also to the social reintegration programs.

Internment in a detention center is the most severe educative measure that can be applied on a juvenile and consists of the internment of the juvenile for a period between two to five years in one of the two detention centers that operate under the authority of the National Administration of Penitentiaries. The difference between the detention center and a educative center is the mainly the level of security and the freedom of movement inside and outside the establishment. In both places the priority is given to educative and vocational activities. From the children perspective, the difference between these two structures are not so visible. They both involve deprivation of freedom and long distances from their families.

The detailed procedure of implementing all these educative measures are provided in two separate laws: Law no. 253/2013 regarding the non-custodial punishments and measures and Law no. 254/2013 regarding the enforcement of the custodial punishments and measures. The way the non-custodial punishments and measures are to be enforced is detailed in the Governmental Decision no. 606/2016 on the enforcement of the Law no. 253/2013. In principle, the Decision sets that the probation service plays a coordinating role for the court decisions and the police takes over the coordinating role for the measures imposed by the prosecution.

The details regarding the enforcement of the custodial educative measures are further described in the Governmental Decision no. 157/2016. More specifically Chapter III – art. 299- 341 of this Decision covers issues such as custodial regime (only close and open regime in the detention centers), types of activities that can be conducted inside and outside the establishments, rights and obligations of the juveniles, decision making process etc.

Departing from the general rules applies to adult prisoners, juveniles have more telephone conversations per day (max 10), they can communicate on-line if they are not visited by their families, enjoy more visits (unlimited if they are in the open regime in the detention centers or six if they are in close regime), have the right and the obligation to attend school up to ten grade, may attend vocational classes and attend work during internment. They can also enjoy more rewards than the adult prison population such as: taking part in trips, enjoying leaves for 24 hours, for the weekend or during the school holidays and so on.

If the juvenile shows obvious progress in view of social reintegration, the educational council of the educative center and the sentence planning commission of the detention center may recommend the court to replace the custodial measure with daily assistance for the time that remains unspent, but no more than six months, or, if the person is already 18 year of age can recommend release. In case the juveniles turning 18 are involved in some serious disciplinary events, the court may order the enforcement of the custodial educative measures in a penitentiary institution under special regime.

All this legislation emphasizes the best interest of the child and the importance of the educative, moral and vocational activities while under the educative measures.

III.3 PROCEDURAL RIGHTS FOR JUVENILES IN CONFLICT WITH THE LAW

Recognizing the special features of the juveniles and also in the light of the best interest of the child, Romanian legislation includes several special procedural rights for juveniles in conflict with the law.

In line with art. 88 alin 3. Of the Law no. 272/2004, all juveniles in conflict with the law under 14 years of age shall be accompanied by a psychologist or a social worker during the penal investigation stage.

The suspect or the defendant has the right to a lawyer. This lawyer can be an elected one by the party or can be an ex officio lawyer, paid by the State. All communications with the lawyer are confidential and the lawyer has the right to assist the client in almost all the procedures.

According to the Penal Procedure Code (art. 77 and art. 83) the following rights shall be observed for suspects and defendants: the right to remain silent, the right to be informed about the charges, the right to consult the file, the right to have a lawyer, the right to suggest evidence, the right to an interpreter, the right to formulate petitions or requests, the right to ask for a mediator and the right to be informed about the rights.

All the preventive measures (preventive arrest, house arrest, judicial control etc.) may be imposed by the court on both juveniles and adults. Section 8 of the PPC mentions once again the exceptional nature of any custodial measure

against the juveniles and provides that in case of preventive arrest or police holding the parents or the tutors shall be informed immediately.

Art. 116 of PC stipulates that, prior to imposing any educative measure, the court shall ask for a pre-sentence report from the Probation Service. This report shall include an evaluation of the person, the offence and also recommendations regarding the most appropriate sentence and obligations.

All procedures with juveniles are not public and video technology can be used in special cases.

Sentences imposed on a juvenile are not mentioned in the criminal registry and the regulations regarding recidivism do not apply for the offences committed while juvenile.

Based on Law no. 304/2004 on the judiciary organization, there is one Juveniles and Family Tribunal in Brasov with three judges. This Tribunal was one of the outcomes of a EU Phare projects and was intended to be only the first of many others. However, this is still the only one in the country. In all the other counties specialized judges deal with the juvenile cases. As an example of good practice, this court has also attached a specialized prosecution office and deal with all the juvenile and family issues, when juveniles are involved as witnesses, offenders or victims. This sort of specialization allows justice to better observe the best interest of the child by treating children with the due care and dignity.

IV. OVERVIEW OF DIVERSION IN ROMANIA

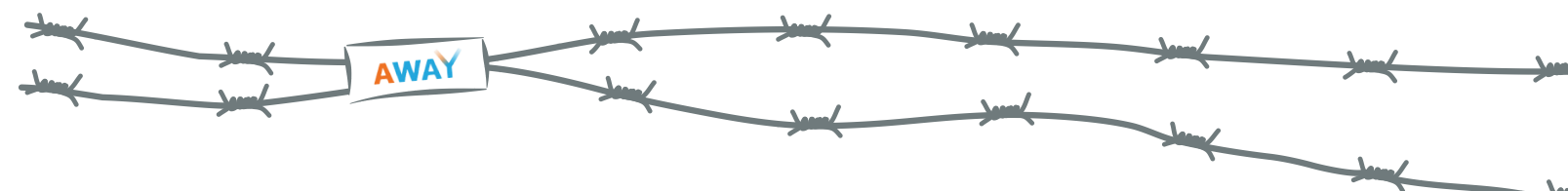
As the focus of this report is diversion, we will dedicate one chapter to this judicial technique. In order to substantiate the description and the interpretation, some repetition from the previous sections might occur. This is not an editorial error but an active decision that will help us illustrate how and to what extent diversion can be found in law and in practice.

By diversion we mean '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.' Fur-

thermore, '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 well'.

Taking these definitions as starting point, Romania has two main schemas for diverting juveniles from the conventional justice system:

1. Welfare based diversion for underage juveniles
2. Prosecution diversion for criminally responsible juveniles in conflict with the law.



IV. 1. DIVERSION FOR THE UNDERAGE JUVENILES IN CONFLICT WITH THE LAW

The law applicable to the juveniles under 14 years of age or between 14 to 16 years of age but with who commit crimes with no competence is Law no. 272/2004 on the child protection.

As discussed in the previous section, art. 2 of this law, any regulation or measure that involves children shall comply with the principle of the best interest of the child.

Chapter V of this law is dedicated to the children in conflict with the law. For the underage juvenile in conflict with the law, the child protection department could propose to the child protection commission two special protection measures (art.59):

- a) placement
- b) specialized supervision

The placement involve placing the juvenile in a special center. These centers are organized under the authority of the child protection departments in each county.

Once the crime was committed and the juvenile was identified as the potential author, the child protection department is informed. This department has the obligation to draw up a reintegration plan and put forward a protection proposal before the child protection committee. This committee is chaired by the county secretary and include as members representatives of: child protection department, education department, health department and so on. In order for this commission to apply any

of its measures, children and their parents/tutors need to give their consent. If they do not consent to these measures, the child protection department has to address the court. There is no need for a lawyer in front of the commission but there should be a lawyer present in front of the court. All the safeguards are in place when the case goes to the court: interpretation services, free legal aid, presence of an adult etc. The judges for cases with juveniles are appointed every year by the head of the court. There is not a large stability among this category of judges. Some of them stay for one-two years and move on. Some others stay for a longer period of time. There is only one dedicated Tribunal for family and juveniles – in Brasov – that deals only with cases coming from this county. There are two prosecutors attached to this special court who are specialized in working with juveniles. Apart from these two prosecutors there are no other prosecutors specialized in working with juveniles.

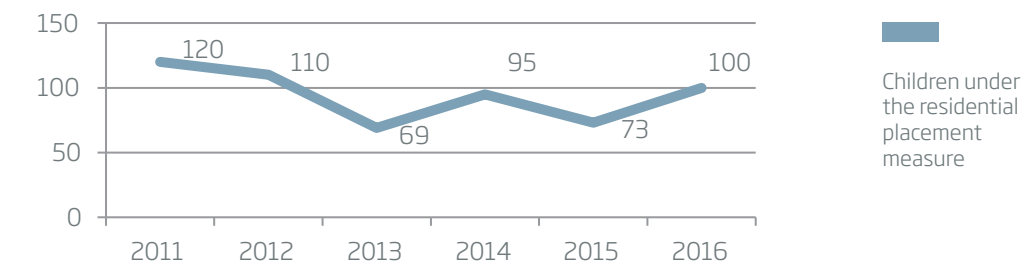
The procedure before the commission for child protection is more informal and these procedural rights of the juveniles are not regulated anywhere.

The measures imposed by the commission or the court are implemented by the child protection department.

Most of the children under the placement measure are sentenced for theft. For instance, 54 children out of 100 children under placement in 2016 were sentenced for theft.

Graph 1.

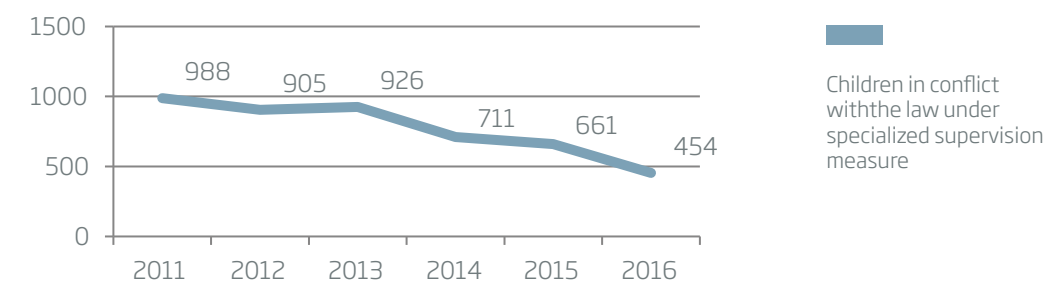
CHILDREN UNDER THE RESIDENTIAL PLACEMENT MEASURE AT THE NATIONAL LEVEL



Source: **National Authority for the Protection of Children's Rights and Adoption (NAPCRA)**

Graph 2.

CHILDREN IN CONFLICT WITH THE LAW UNDER SPECIALIZED SUPERVISION MEASURE AT THE NATIONAL LEVEL



Source: **NAPCRA**

As in the case of placement, most of the children under this measure were sentenced for theft. In 2016, 305 children out of 454 were sentenced to specialized supervision for theft. During the specialized supervision, the commission or the court could impose the following obligations (art. 85 of the Law no. 272/2004):

- a) to attend school,
- b) to attend day centers,

- c) to undertake medical, psychotherapy or counseling
- d) not to visit certain places or meet certain people.

There is no victim-offender mediation available in the Romanian legislation. Moreover, there are no restorative justice practices involved in working with juveniles in conflict with the law. However, these practices are considered as diversion

because they involve extra-judicial tools that avoid the stigmatization effects of the criminal justice system.

The child protection departments employ mainly social workers and psychologists. Most of the departments have also dedicated units for juveniles in conflict with the law. However, based on the interviews, there are no standards and procedures dedicated to working with this vulnera-

ble group. More over, staff is not always trained in special methods of working with juvenile delinquency.

The measures applied to the juveniles are re-evaluated every six months by the child protection departments. If they are not justified anymore, the child protection departments shall inform the child protection commission or the court (art. 72 of the Law no. 272/2004).

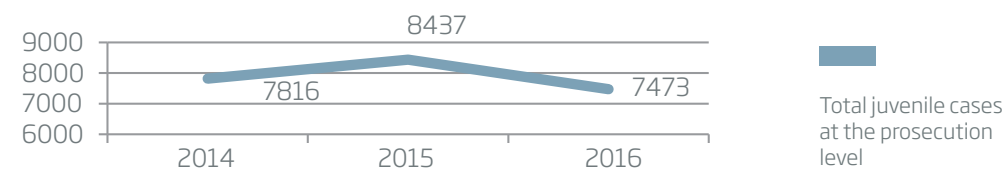
IV.2. ERSION FOR CRIMINALLY RESPONSIBLE JUVENILES

Juveniles between 14-16 who act with competence and those over 16 years of age are considered by law as criminally responsible. The deci-

sion on whether those between 14-16 act with competence is taken by the forensic medicine laboratory which exists in all counties.

Graph 4.

TOTAL JUVENILES DEALT WITH AT THE PROSECUTION LEVEL - NATIONAL



Source: SCM

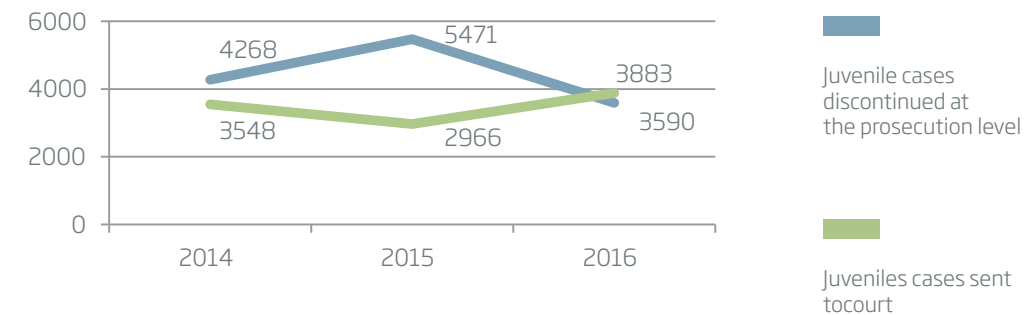
Criminally responsible juveniles may benefit from diversion at the prosecution level.

Article 318 of the Criminal Procedure Code (CPC) provides that if the person commits an offence punishable with fine or up to seven years

of imprisonment, the prosecutor may defer prosecution (ro. renuntarea la urmarirea penala). Before applying this measure, the prosecutor needs to ensure that there is no public interest in convicting that person and the concrete circumstances of crime are not very serious.

Graph 5.

THE PROPORTION OF CASES DISCONTINUED AT THE PROSECUTION LEVEL - NATIONAL



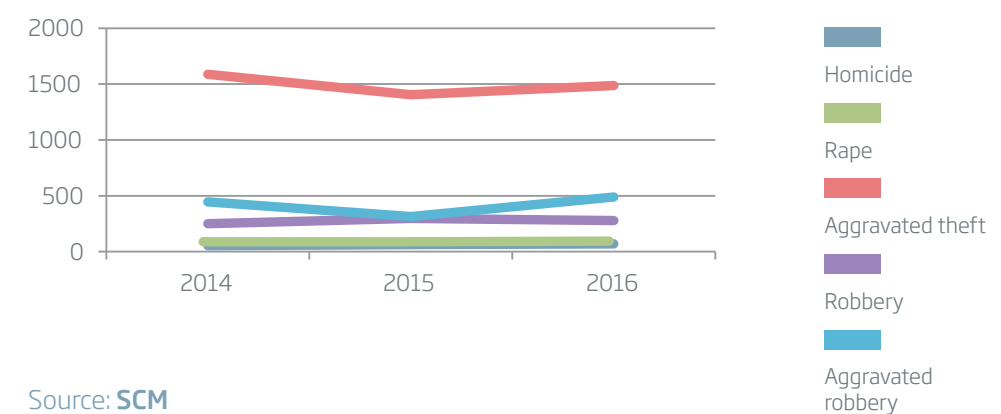
Source SCM

As it can be noted from the graph above, a large proportion of juvenile's cases are discontinued at the prosecution level. However, 2016 was the first year when more juveniles were sent to

court than were discontinued at the prosecution level. This in spite the fact that the structure of the serious crimes committed by juveniles is quite constant:

Graph 6.

THE DYNAMIC OF THE MOST SERIOUS CRIMES COMMITTED BY JUVENILES



Source: SCM

One possible explanation for this reverse trend was offered by the interviewed prosecutors who stated that they are not that confident that deferred prosecution could contribute to crime reduction. Especially they are not confident that the obligations imposed once the conviction is deferred are implemented effectively.

After “consulting with the defendant” (art. 318 alin. 3 CPC), the prosecutor may apply one or more of the following obligations once the conviction is deferred:

- a) to compensate or restore the goods for the victim,
- b) to apologize in public to the victim,
- c) community service for 30-60 days,
- d) to undertake a counseling program.

The expression ‘after consulting with the defendant’ is not very clear. Is it about the consent? Is it about the informed consent?

In practice, the prosecutors interpret it as consent but more clarity could enhance the procedural rights of the juveniles in the criminal procedure.

The obligations have to be fulfilled within six to nine months.

The obligation to compensate or restore the goods to the victim is implemented by the defendant after consulting with the victim. Although there are mediation offices in Romania, the parties are not encouraged or obliged by law to access a mediator for this kind of obligations. If the parties do not agree on the content of compensation, they could address the civil court. This will not trigger the revocation of the deferred prosecution. The same goes also if the defendant produces the evidence that he/she was not able to compensate the victim.

There is no concrete procedure for the implementation of this obligation and no special regulations in case the defendant is a juvenile.

The public apology may be published in a newspaper or presented directly to the victim when there are at least other two people and a representative of the police present. Again, there is no special procedure for juveniles.

Community service is directly supervised by the police after the prosecutor decides what is the place for implementing the obligation.

The obligation to undertake a counseling program is implemented directly by the defendant, on his/her own costs, and a proof of finishing the program is submitted to the clerk of the prosecution office.

Neither the Law 253/2013 on sanctions and measures execution or the Governmental Decision no. 604/2016 on enforcing the Law no. 253/2013 provide any specific regulations for the juveniles involved in the diversion procedure.

There are no statistics available on how many juveniles have received one or more of these obligations attached to the deferred prosecution.

Once the obligations are fulfilled the case is considered close and no mention is made in the criminal record of the person.

Overall, more than 4,000 children were diverted from the conventional judicial proceedings in 2016 (including the numbers for the underage) while only 3,883 children were sent before a criminal court. This means, in Romania, diversion is the rule in dealing with juveniles in conflict with the law.

However, more attention should be paid to diversion and how it is conducted in practice before it gets discredited.

It is highly recommended that Governmental Decision no. 604/2016 is amended to ensure the protection of the juveniles involved in the deferred prosecution.

Although the obligations imposed once the prosecution is deferred are not very punitive, their implementation may provide opportunities when the juvenile’s rights may be abused.

At least when juveniles are involved (both as victims and offenders) the professional mediator should be involved to ensure the right balance and a good observance of the human rights.

All the procedural rights and guarantees should be also ensured for juveniles in the pre-trial diversion and its implementation.

Probation services may be involved in the implementation of the obligations provided for the deferred prosecution. They have the right philosophy and expertise in dealing with offenders. However, this change should come together with training and human resources allocated to working with juveniles in conflict with the law.

More training should be also provided to police staff, prosecutors and judges in issues such as: interviewing the juveniles, building up a good relationship with juveniles and children’s rights.

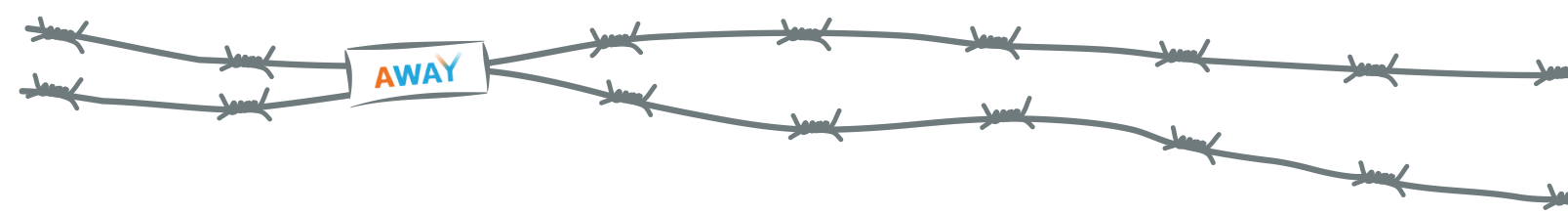
V. CONDITIONS OF FACTORS CONTRIBUTING TO THE ENJOYMENT OF DIVERSION

The main factor contributing to the wide use of diversion in Romania is the progressive legislation. Both laws – Law no. 272/2004 and the new Penal Procedure Code – favor diversion before other ways of dealing with juveniles in conflict with the law.

The second important factor in the success of diversion in Romania is the dedication of the local communities – via child protection units – to develop structures to support this scheme.

Adding to that, the professionalism and the openness of central authorities such as NAPCRA and NAP can only act towards fostering good practices and progress.

The existence of many and influential monitoring bodies such as the Ombudsman and APADOR-CH could also be considered as a facilitator factor in the process of improving diversion and therefore the juvenile justice system in Romania.



VI. LIMITATIONS HAMPERING CHILDREN'S ACCESS TO DIVERSION

The main obstacles hampering the children's access to diversion are two folded: first, police and judiciary are not always fully aware of the risks of juvenile incarceration and the benefits of diversion. The lack of systematic training on these subjects was not facilitating a deep understanding of the importance of diversion for juveniles. The second set of obstacles is the ones related to the sub-standard manner of implementing the existing diversion scheme. Calling at police or civil clerks to implement community service or psychological counseling is not convincing for judiciary that their decisions are properly implemented and juveniles will be assisted in the process of desistance.

Based on this observations, there are some improvements that need to take place in order to promote juvenile access to diversion.

The first improvement the authors would suggest is to reform the way the obligations provided under the waiving prosecution are implemented. Calling at civil clerks and police to implement or monitor counseling programs or community service with juveniles in conflict with the law will never send the right message to the public and the judiciary. In spite their willingness to contribute to juvenile's rehabilitation, these professionals cannot hold the right philosophy and training to develop constructive relationships with juveniles based on trust and openness, to motivate and support juveniles through the program, to work with them and their families in a holistic manner and so on. Therefore, the risk is that prosecutors will not be confident that their decisions will be implemented effectively

and thus will avoid using them in the future. This risk was emphasized by judiciary during the focus groups. Such experiences were observed at the beginning of 2000 in jurisdictions like Czech Republic where clerks were called to implement probation measures and obligations.

The second improvement the authors suggest is to develop specialized standards and procedures to work with underage juveniles in conflict with the law. More structure and specialization should be brought into the child protection units in order to work more effectively with this group of beneficiaries.

In the same time, more training should be delivered to the professionals working with juveniles in order to ensure a better involvement of juveniles in the decision-making process and engage more effectively with the juvenile's families and local communities.

All these recommendations aim at improving the quality of interventions with juveniles in conflict with the law and therefore make them more appealing to the decision-makers.

Apart from these recommendations, the authors suggest stakeholders to pay more attention to the so-called 'moral panic' (Cohen, 1972). Late indications show a slightly more severe social reaction to juvenile delinquency although objective data does not show a significant change in the crime rates or crime structure. More workshops, trainings and conferences with police, prosecutors, judges, opinion leaders and other 'moral entrepreneurs' could reverse this public feeling.

VII. NOTEWORTHY PRACTICES

Apart from the deficits in the juvenile justice system in Romania, we have also identified good practices. One of the most obvious one is the Brasov Tribunal for Minors and Family. This specialized court deals with all cases that involve juveniles: offenders, victims, involved in divorce cases etc.

The major advantage of this court is that it created special and child-friendly procedures. In the same time judges involved are specialized in working with juveniles. In the same time, a special unit in the prosecution office in Brasov is specialized in working with juveniles. Therefore the whole chain of judiciary is specialized in working with juveniles.

A second good practice is the creation of dedicated units within the child protection departments to deal with juveniles in conflict with the law. Once these structures are created, the next steps are to develop standards and procedures and provide the adequate training. It is worth

mentioning here that the specialized units are working already based on the best interest of the child focusing more on the children's welfare rather than on their past behaviour.

The current normative context in Romania can be considered a good practice that promotes diversion and rehabilitation-based interventions for juveniles.

Although some juveniles end up in custody, there are good examples in Buzias educative center of how work with juveniles in detention can be delivered. In this context, it is worth mentioning the institutional architecture that favors autonomy and self efficacy. In the same time, most children in Buzias center are involved in the school activities.

Of course, all these practices can be further enhanced and some suggestions of this kind can be found in the sections above.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Conclusions and recommendations were tested during three focus groups organized in Timisoara (seven participants), Brasov (11 participants) and Craiova (16 participants). Most of the participants were representing child protection departments, police, probation service, educative or detention centers and judiciary. Children were also asked whether they consider the recommendations as useful or not. Each focus group was divided into three parts: presenting the initial conclusions based on documentation and interviews, presenting the interim conclusions and recommendations and discussions. The recommendations presented in the report were agreed in these focus groups.

The general conclusion of this report is that, broadly speaking, Romania complies with the European standards in the field of juvenile justice, especially with the principles of a child-friendly justice formulated in the Directive 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings. However, more can be done for strengthening the inter-agency cooperation that would respond better to the complexity of the juvenile offending. Institutions working in isolation and avoiding looking at the juveniles in a holistic manner were the most important deficits that this report identified.

A national strategy for juvenile justice is highly recommended. This document could clarify mutual expectations and coordination among institutions involved.

In order for all institutions involved in juvenile justice to share information a national registry or databases with juveniles in conflict with the

law could be instrumental. NAPCR could be a good home for this registry as this institution is representing and promoting the children's rights in Romania.

Juveniles in conflict with the law should be empowered to participate more in the decision-making process. Children's councils or other consultative bodies should be formalized in order to create the right structure to allow this active participation.

Families and communities should be involved in the juvenile's rehabilitation process. Positive and constructive incentives should be in place to support this involvement.

Standards, procedures and the right working methodologies should be developed for working with this special group.

Staff working with juveniles in police, prosecution, courts, probation services, educative centers and detention centers should be regularly trained. Ideally, the training should be provided in such a manner to facilitate cooperation between these independent and often isolated agencies. Lawyers should also enjoy a special attention as they are rarely benefiting of any training on juvenile justice. This conclusion was fully supported by the representatives of NAP-CRA, NDP and NAP.

As far as diversion is concerned, Romania enjoys a progressive legislation that prioritize the children first, offender second approach (Haines and Case, 2015). By promoting social inclusion and extra-judicial ways to dealing with juveniles in conflict with the law, Romania is placed among the most advanced countries in Europe as far as

juvenile justice is concerned. Romania still registers more juveniles diverted than sent to court. However, recent signs indicate a slight change in the prosecutor's practice that can reverse this trend if urgent improvements will not take place. One of the most important changes that need to happen is in the normative framework that regulates the implementation of waiving prosecution. With civil clerks and police responsible for delivering or monitoring counseling programs or community service for juveniles, waiving prosecution will lose its credibility and effectiveness in the eye of prosecutors. A direct consequence of this lost confidence may be more juveniles sent to court rather than diverted. Child protection and probation services should be brought back on the scene.

Standards and procedures should be produced in order to enhance the daily practice of the child protection units. To the same aim, training should be delivered to professionals working with juveniles in conflict with the law to address offending behaviour, family interventions, youth participation and empowerment.

Some of these recommendations were also mentioned in other assessment reports such as the Report of the UN Committee on the Rights of the Child (2017), the Ombudsman Report (2014) or UNICEF and APADOR-CH reports (2014). However, this is the first report on juvenile justice in Romania focusing on diversion.

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RECOMMENDATION NO. 1

We recommend Police to take these observations seriously and conduct its own investigations to ensure that juveniles are treated in the Police establishments according to the highest children's rights standards.

As mentioned above, police stations in the rural areas seem to struggle with the procedural requirements.

RECOMMENDATION NO. 2

In order to better measure, monitor and compare the juvenile delinquency phenomenon at the national level, it could be useful for the Police to record also juvenile offenders following a structure such as: age, gender, level of education etc.

RECOMMENDATION NO. 3

As for other groups of people in conflict with the law, it may be important that the court has the possibility to set a maximum limit of time that the juvenile has to spend in the center (e.g. one year). This could create more predictability.

The internal review procedure of the Center needs to be standardized and written down. This procedure should clarify at least: when the review should take place, who sits in the commission, what sort of decision can be made, what is the position of the juvenile in front of this commission, is there an appeal to these decisions etc.

Children should have clear role and should be involved as much as possible in the decisions. Collectively, children could participate more in the Center's processes and decisions through children's board or council. This could provide a structured way of ensuring children's participation.

RECOMMENDATION NO. 4

Special procedures of how to work with juvenile in conflict with the law should be developed and staff should be trained in order to become more effective in working with this group. The procedures should cover all stages of intervention: risk/needs assessment, planning, intervention, referral, working with families, preparation for release/freedom, review and report writing to the court.

RECOMMENDATION NO. 5

Although the residential placement should not be encouraged as a main way to deal with juveniles in conflict with the law, it may be useful for two-three neighboring counties to set up such a center in order to reduce the geographical distances and facilitate family relationships.

RECOMMENDATION NO. 6

This is the first opportunity of the State through the local communities to deal with the juvenile in conflict with the law. It is known from the literature that early intervention is a paramount for the effectiveness. Therefore, this is a unique opportunity to deal with juveniles in conflict with the law in a manner that ensures effectiveness and care in the same time.

In this context, it is essential that special procedures and dedicated training will be developed for working with this group of juveniles. These procedures should be as close as possible to the procedures developed for the juveniles placed in residential centers. The tools, the approach, the forms and so on should be as similar as possible as this information might have to travel later to the residential centers, probation services or even educative or detention centers.

RECOMMENDATION NO. 7

More training should be provided to staff on subjects such as dangerous visits, working with families, working with cultural diversity etc.

Juveniles may be more involved in the running of their own 'protection measure' by helping them to organize themselves in self-help groups or street councils. Leisure, sport, art-based or cultural activities may be used as starting point for more involvement of the juveniles (see also Kwauk, 2011; Nenga, 2012; Batsleer, 2011 etc.).

Working with families should be further strengthened. The obligation of parents to undertake parenting classes should be mentioned in the court decision and followed by the Child Protection Department. Clear and constructive consequences of breach should be mentioned in the law. When working with the families, a more positive approach should be undertaken. Families should see what are the benefits of working alongside the local authorities: social benefits that are available to support the disadvantaged families, benefits to support the juvenile reintegration, respite care for very young juveniles in the household, counseling, job seeking advice and other services that can support a good parenting.

RECOMMENDATION NO. 8

Based on the interviews with judges and prosecutors and also in the light of art. 20 of the Directive 2016/800 on the procedural safeguards for children who are suspects or accused person in criminal proceedings, prosecutors need to be specialized in dealing with juveniles in conflict with the law and attend specific training on subjects such as: appropriate questioning techniques, child psychology, communication etc.

Therefore, specialized prosecution offices or specialized prosecutors need to be trained and made available for cases involving juvenile offenders or victims.

RECOMMENDATION NO. 9

The Juveniles and Family Tribunal may be considered as a good practice as it allows a special procedure for the cases involving juveniles and also a rigorous specialization of the judges involved. The competence of this court is, however, constructed in such a way to involve mainly juveniles who committed very serious crimes. It would be helpful to provide the same type of structure for the first instance court - ro. judecatoria. By doing so, all juveniles in conflict with the law in Brasov could follow a specialized process. The same should apply to the Prosecution Office. The Prosecution Office nearby the First instance court should also have a specialized branch for working with juveniles.

More continuous training is needed in order to maintain the motivation and the professionalism of the existing magistrates. The same applies for the specialized judges and prosecutors at the level of jurisdiction (ro. Judecatoria and parchet).

RECOMMENDATION NO. 10

It may be useful that two or three probation counselors in each probation service to undertake a specialization in working with juveniles. Special training should be delivered to these probation counselors on how to engage with juveniles, how to motivate juveniles, how to promote change among juveniles and so on.

RECOMMENDATION NO. 11

It is highly recommended that leaves are not regulated as rewards but as normal elements of regime. They should operate as tools to facilitate progressive release.

Arrangements with social services, child protection departments, NGOs could be in place to facilitate family visits. In case of family absence, these agencies could also be empowered to work with juveniles during the leaves.

RECOMMENDATION NO. 12

It is recommended that the National Penitentiary Administration will start a dialog with the Superior Council of Magistracy in order to elaborate sentencing guidelines around the conditional release practice. It seems that the current regulatory mechanisms in place are not effective enough to ensure a reliable, predictable and understandable practice for juveniles.

RECOMMENDATION NO. 13

The contact with the families should be one of the priorities of the reintegration staff. However, where the family is not available (e.g. emigrated parents), other mechanisms should be developed to allow these leaves to take place. Child protection departments, social services or NGOs should be involved in this mechanism to ensure that all juveniles experience some leaves prior to release. This recommendation applies also to the educative centers.

RECOMMENDATION NO. 14

Children held in the educative or detention centers are still ... children. According to art. 5 alin. 3) of the Law no. 272/2004, 'local authorities have the obligation to support the parents ... by developing diversified, accessible, and highly qualitative services that respond to the children's needs'.

Local authorities, through child protection departments and public social services, together with the National Penitentiary Administration should develop clear mechanisms of cooperation to support the children and their families during the enforcement of the custodial educative measures and after release.

National Penitentiary Administration should also develop a written guideline on how to involve juveniles in the decision making process and also on how to engage with their families.

RECOMMENDATION NO. 15

It is recommended that during the induction juveniles will receive a letter of rights as mentioned in Directive 2012/13/EU and also in Directive 2016/800.

RECOMMENDATION NO. 16

It is recommended that the NPA will take an education first approach and update the existing protocol with the Ministry of Education and include fast and less bureaucratic procedures for registering children in school in case the official documents are not available. More incentives should be invented for juveniles to actively participate in school (e.g. anticipated release for those who graduate 12 grades). No juvenile should be left outside the education structure of the centers. This applies also to the educative centers.

RECOMMENDATION NO. 17

It is highly important that the new staff (and sometimes more experienced staff) is properly trained in working with juveniles and there is a mentoring or supervision scheme in place to ensure an adequate support for the staff.

RECOMMENDATION NO. 18

NAP together with NAPCRA, National Probation Directorate and the NGO sector should draft a realistic strategy for promoting family visits and leaves that would facilitate the relationship between juveniles and their families.

RECOMMENDATION NO. 19

During our investigation there was no evidence of any guidelines of such a counseling program to be coordinated by the child protection departments. It is of utmost importance that such guidelines are developed by the NAPCRA and proper training for those in charge of implementing it is in place.

RECOMMENDATION NO. 20

It is recommended that the new standards that will be developed by the NAPCRA will include detailed and specific standards for working with children in conflict with the law. These procedures could develop in partnership with the probation service, which is already specialized in working with offenders.

RECOMMENDATION NO. 21

It is recommended that Governmental Decision no. 604/2016 shall be amended and appoint the probation service or the child protection departments as responsible for implementing the obligations provided at art. 318 alin. 3 of the PPC. It is quite unusual to appoint a criminal investigation or an administrative unit to provide rehabilitation services to juveniles.

