Gap Analysis of the Bulgarian Juvenile Justice System

3.07.2014
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### Abbreviations

#### Legislation

<table>
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<th>Abbreviation</th>
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<tr>
<td>JDA</td>
<td>Juvenile Delinquency Act, 1958 (ZBPPMN)</td>
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<tr>
<td>CC</td>
<td>Criminal Code, 1968 (NK)</td>
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<td>CCP</td>
<td>Code of Criminal Procedure, 2005 (NPK)</td>
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<tr>
<td>EPDCA</td>
<td>Execution of Penalties and Detention in Custody Act (ZINZS)</td>
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<tr>
<td>CPA</td>
<td>Child Protection Act (ZZD)</td>
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<td>APPTCP</td>
<td>Act Protecting Persons Threatened in Relation to a Criminal Procedure (ZZLZNP)</td>
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#### Institutions

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<th>Abbreviation</th>
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<tr>
<td>SACP</td>
<td>State Agency for Child Protection (DAZDet.)</td>
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<td>SAA</td>
<td>Social Assistance Agency (ASP)</td>
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<td>SAD</td>
<td>Social Assistance Directorates (DSP)</td>
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<td>CPD</td>
<td>Child Protection Departments (OZD) to the SAA</td>
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<tr>
<td>Central Commission</td>
<td>Central Juvenile Delinquency Combating Commission (CKBPPMN)</td>
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<tr>
<td>Local Commission</td>
<td>Local Juvenile Delinquency Combating Commission (MKBPPMN)</td>
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<tr>
<td>SPBS</td>
<td>Socio-pedagogical Boarding Schools (SPI), 8-18 y.o.</td>
</tr>
<tr>
<td>EBS</td>
<td>Educational Boarding Schools (VUI), 8-18 y.o. (corrective)</td>
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<tr>
<td>Reformatory</td>
<td>Reformatory (Poprivitelen Dom “Boychinovtsi”, juvenile offenders’ prison), 14-18 y.o.</td>
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<tr>
<td>HTAJ</td>
<td>Homes for Temporary Accommodation of Juveniles (DVNMN)</td>
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<tr>
<td>HNC</td>
<td>Homes for Neglected/Uncontrolled Children (DBD)</td>
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<tr>
<td>CPO</td>
<td>Child Pedagogical Office (DPS) (also referred as Child Counselling Service and Child Pedagogical Room)</td>
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<tr>
<td>CoM</td>
<td>Council of Ministers</td>
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<td>MOJ</td>
<td>Ministry of Justice</td>
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<td>MOI</td>
<td>Ministry of Interior</td>
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<td>MoES</td>
<td>Ministry of Education and Science</td>
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I) Introduction

A) The Context

Twenty-five years after the beginning of major political reforms in Bulgaria, symbolically concurring with the 25th anniversary of the CRC, the reform of the Bulgarian Juvenile Justice System is yet to be completed. Bulgaria has since 2007 been a member of the European Union, after closing a number of chapters to satisfy accession criteria. In this context, partial reforms were also made to Juvenile Justice. The Concept for the State policy in the field of justice for children was published in 2011 and it was succeeded by a Roadmap and a Plan of action in the following years. These documents proposed a considerable reorientation of the approach and comprehensive legislative reforms for the purpose of achieving international and European standards in responding to juvenile delinquency in Bulgaria.

In the context of the Framework Agreement between the Government of Bulgaria and the Swiss Federal Council concerning the implementation of the Bulgarian - Swiss cooperation programme to reduce economic and social disparities within the enlarged European Union, the Bulgarian Ministry of Justice and the International Institute on the Rights of the Child (IDE) have agreed a programme concerning the project “Strengthening the Legal and Institutional Capacity of the Judicial System in the Field of Juvenile Justice”.

The activities performed by IDE can be summarized as follows:

a) producing a Gap analysis of the existing legal framework in view of international standards,

b) providing 3 training modules (5 days each) for all professionals working with children in conflict with the law, and

c) organizing a study visit to Switzerland of Bulgarian judicial professionals working with children in conflict with the law.

B) The Gap Analysis

This document represents the Gap analysis and leans on:

- Review of the main texts of laws (normative frame) applicable in Juvenile Justice in Bulgaria
- The apprehension of the strategic plans set up by the Bulgarian Government
- The report on Juvenile Justice of the Ministry of Justice (MoJ) (2013)
- The report of the UNICEF expert, Mr O’ Donnell (May 2014)
- Various interviews and meetings with numerous actors of the Juvenile Justice (April and June 2014)
- The participation in the MoJ seminar (13-17 April 2014)
- The participation in the UNICEF seminar (10-11 June 2014)
- Review of several texts, articles or reports on Juvenile Justice System in Bulgaria.

The following persons participated in the editorial group, the review, the second review and editing of this analysis:

Mr Jean Zermatten, IDE, Director, Editor responsible;
Mrs Nevena Vuckovic Šahović, International Expert;
Mrs Radoslava Karabasheva, Scientific collaborator, IDE;
Mr Nikola Šahović (English editing).
C) The Plan of the presentation

The structure of the analysis is as follows:

I) Introduction
II) The UN Observations and Recommendations for Bulgaria
III) A question of age and of definition
IV) The normative framework
V) The institutional framework
VI) Coordination and data collection
VII) Training of professionals
VIII) Specialisation
IX) Conclusion and Recommendations

II) The UN Observations and Recommendations for Bulgaria

The Human Rights Treaty Bodies have examined Bulgaria several times and two Treaty Bodies have issued Concluding observations regarding the Juvenile Justice System.

A) The CRC Committee 2008

After its dialogue held with the State Party delegation, the CRC Committee expressed the following concerns and recommendations for Bulgaria in 2008:

Administration of juvenile justice

68. The Committee notes with appreciation the amendments to the Juvenile Delinquency Act, the introduction of measures regarding deprivation of liberty by courts and the adoption of the new Criminal Procedure Code in 2005. However, the Committee is concerned:
(a) That the State party has not established specialized juvenile courts or chambers within the existing settlements as recommended by the Committee in its previous concluding observations;
(b) At the definition of “anti-social behaviour” of juveniles which contradicts international standards;
(c) That despite the fact that the Juvenile Delinquency Act defines the minimum legal age for criminal responsibility at the age of 14, children at a very low age (8 years old) are considered by measures of prevention and re-education fixed envisaged by article 13 of the Juvenile Delinquency Act, and which may be decided by the local Commission, without adequate guarantees;
(d) That the deprivation of liberty is not used applied as a means of last resort;
(e) At the high percentage of children placed in correctional-educational institutions; and
(f) At the inadequate conditions prevailing in prisons and detention centres, including overpopulation and poor living conditions.

1 CRC/C/BGR/CO/2, 2008
69. The Committee recommends that the State party take prompt measures to fully bring the system of juvenile justice in line with the Convention, in particular articles 37(b), 40 and 39, as well as with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System and the recommendations of the Committee’s general comment No. 10 (CRC/C/GC/10) on children’s rights in juvenile justice. In this regard, the Committee recommends that the State party:

(a) Implement the Committee’s recommendations (CRC/C/15/Add.66) regarding juvenile justice;

(b) Reforms the Juvenile Delinquency Act and the Criminal Procedure Code with the a view to withdraw the notion of anti-social behaviour;

(c) Make a clear definition Clearly defines of the legal age of criminal responsibility in order to guarantee that children under the age of fourteen years are totally treated exclusively outside of the criminal justice system on the basis of social and protective measures;

(d) Set up an adequate system of juvenile justice, including juvenile courts with specialized judges for children, throughout the country;

(e) Uses deprivation of liberty, including placement in correctional-educational institutions, as a means of last resort and, when used, regularly monitors and reviews it taking into account the best interests of the child;

(f) Provides a set of alternative socio-educational measures to deprivation of liberty and a policy to effectively implement them;

(g) Ensures that children deprived of their liberty remain in contact with the wider community, in particular with their families, as well as friends and other persons or representatives of reputable outside organisations, and are given the opportunity to visit their homes and families;

(h) Focuses on strategies to prevent crimes in order to support children at risk at an early stage;

(i) Trains judges and all law enforcement personnel who come into contact with children from the moment of arrest to the implementation of administrative or judicial decisions taken against them;

(j) Ensures independent monitoring of detention conditions and access to effective complaints, investigation and enforcement mechanisms; and

(k) Seeks technical assistance from the United Nations Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.

70. The Committee also recommends that the State party ensures, through adequate legal provisions and regulations, that all children victims and/ or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking and witnesses of such crimes, are provided with the protection required by the Convention, and to take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).
B) The Human Rights Committee 2011

In 2011, the Human Rights Committee has also issued a recommendation on the same topic:

23. The Committee regrets the State party’s delay in reforming the juvenile justice system (see CRC/C/BGR/CO/2, paras. 6-7) (arts. 14 and 24).

The State party should consider, as a matter of priority, the adoption and implementation of the reform of the juvenile justice system in compliance with the rights protected under the Covenant.

C) The Human Rights Council 2011

In 2011, the Human Rights Council also issued recommendations to Bulgaria regarding the juvenile justice system, following the outcome of the Universal Periodic Review:

80.67. Create an effective juvenile justice system in order to defend children’s rights (Hungary);

80.113. Assess the recommendation made by the Committee on the Rights of the Child with regard to seeking technical assistance from the United Nations, in order to implement the recommendations of the study on violence against children and the establishment of a juvenile justice system (Chile).

The Human Rights Council also issued recommendations addressing the judicial reform and the capacity-building of professionals that are also relevant to juvenile justice:

80.62. Continue its judicial reforms in the form of amendments to the Judicial Systems Act, the Penal Code and the Penal Procedure Code, the Ministry of Interior Act and the Criminal Assets Forfeiture Act and the like; give attention to more training and professionalism within the judiciary as well as the enhancement of the appraisal and appointment systems, and strengthen the accountability and efficiency of the Supreme Judicial Council (Netherlands);

80.28. Develop and strengthen its human rights training programmes for police forces and the judiciary, addressing among others the appropriate use of force as well as issues relating to discrimination and profiling based on race (Canada);

80.75. Provide sufficient resources for the effective functioning of the child protection system, including through training of social workers, standards to limit the case load per social worker and their adequate remuneration (Austria).

III) A question of age and of definition

Bulgarian legislation has adopted the general definition of the child enshrined in the UN CRC "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

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2 CCPR/C/BGR/CO/3
3 A/HRC/16/9 : A/HRC/16/L.41
4 Article 2 of the Child Protection Act
With regard to Juvenile Justice, Bulgaria envisages a minimum age required to bear criminal liability and special rules governing "minors", in this context the category of children in conflict with the law who have attained the minimum age of criminal responsibility.

However, Bulgaria has also created a category of children who are under the minimum age of criminal responsibility, but who commit socially dangerous acts and who are called "underage children", who do not bear criminal liability, but who are subjected to provisions of a specific quasi criminal law: the Juvenile Delinquency Act = JDA (ZBPPMN), 1958.

A) The Minimum age of criminal responsibility

Children from 14 to 18 years of age who enter in conflict with the law are assumed to be criminally responsible only if they have the required maturity in that regard. These children are called "Minors".

"Minors" are divided in two groups: from 14 to 16 and from 16 to 18 years of age. If alleged as, accused of, or recognized as having infringed the penal law, they are subject to conduct in accordance provisions of the Criminal Code = CC (NK), and the Code of Criminal Procedure = CCP (NPK) and are summoned in front of the Prosecutor, and respectively the court. There are no specialised courts in Bulgaria for children in conflict with the law. Their criminal liability is mitigated compared to the adults’ criminal liability, as the degree of mitigation is lower in the 16-18 age category.

Another particularity: minors who have attained 16 years of age can bear not only criminal responsibility, but also administrative responsibility under the Administrative Offences and Punishments Act, the Act on Protection of Public Order upon Conduct of Sports Events (ZOORPSM), and the Decree on Combating Minor Hooliganism (UBDH). However, we will not examine these two texts in this analysis.

It is worth noting that criminal majority is fixed at 18 years of age, but that the Criminal Code provides for the category of "Young Adults" (persons from 18 to 21 who are subject to special cares), which is in conformity with the international standards (see CRC GC 10 para. 38). Bulgaria has to be commended for having established this category.

In the Bulgarian legislation, the age of the child at the moment of commission of the offence is the criterion to determine the category: underage child, minor, young adult. There are no exceptions in the legislation to this principle, even in cases of serious crimes or recidivism; this is to say that persons under 18 years of age may not be prosecuted as adults in any circumstances.

The international principle of prohibition of retroactive effect of criminal provisions is adhered to. Underage and minor children cannot bear criminal or administrative liability for acts or omissions that were not declared illegal at the time of commitment of the crime.

The Execution of Penalties and Detention in Custody Act (ZINZS) defines the execution of measures and, which provides for a mitigated procedure for execution of penalties for minors.

5 Article 32(1) of the Criminal Code
6 Article 31(2) of the Criminal Code
7 Article 40(3) of the Criminal Code
1) **Encouragement for the age of 14 in Bulgaria**

The age of criminal responsibility in Bulgaria is well in conformity with international standards. In particular, the CRC Committee has "... encouraged State parties to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.... At the same time, the Committee urges States parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child’s human rights and legal safeguards are fully respected."\(^8\)

2) **Underage children**

Persons under 14 years of age are called "underage children" and they are not considered as criminally responsible. Even if they do violate the provisions of the Criminal Code by committing offenses they are presumably criminally non-accountable and cannot be charged with and found guilty for the commitment of a crime. As regards this group of persons, article 32 (2) of the Criminal Code provides for the application of educative measures

\[
\text{Art. 32. (1) A juvenile who has not accomplished 14 years of age shall not be criminally responsible. (2) Applied, with respect of the juveniles [who have not accomplished 14 years of age] who have committed social dangerous acts, can be respective corrective\(^9\) measures.}
\]

Theoretically, underage children are children form 0 - 14 years of age; but in practice, it seems that the most common behavioural problems with children start at the age of 8 and not before. *De iure*, Bulgaria has legislated two categories of children: "underage children": from 0 to 7, and from 8 to 14. It's important to make this distinction, because the first category of underage children in case of behavioural problems will be subject to the Child Protection Act, while the second category is subject to the Juvenile Delinquency Act of 1958 through article 12 al. 1 of the JDA "... minors who are aged between 8 and 14 have committed anti-social acts."

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**Hungary\(^10\)**

The Hungarian juvenile justice system was, like the Bulgarian, aligned to the Soviet model of dealing with juvenile delinquency. Since the adoption of the Hungarian Child Welfare Act (Act XXXI, 1997) on the Child Welfare and Guardianship Administration (as amended by Act IX, 2002 and Act IV 2003), however, children under 14, which is the minimum age of criminal responsibility, are only treated by the child welfare system. According to the Child Welfare Act, the age below 14 represents an obstacle to justice and punishment.

This issue (age limit at 8 years) is also confirmed by a Study carried out by the Social Activities and Practice Institute\(^11\) in 2013: "From the perspective of development of the

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\(^{8}\) GC no 10 Children's Rights in Juvenile Justice, CRC/C/GC/10 (2007), par. 32-33

\(^{9}\) in the sense of "educative" measures

children mentality, the ages between 8 and 12 is the period when the moral standards of the child are formed; the child is learning of achievements and putting effort for achieving positive results. Introducing the education in a positive and reinforcing way helps the child to include himself into the social relationships constructively. Guarantee of the abilities for positive social inclusion of children, who are highly neglected and of lacking of stimulating environment, is most probably of the risk factors for unlocking problematic behaviour. Without a doubt these are children who most certainly are in need of support and protection, of a guarantee for opportunities and positive social inclusions, and of course, of putting boundaries and studying for responsible behaviour, but not only and mainly for restrictions and limitations."

The legislative approach of envisaging to have several categories of children in conflict with the law, with different standards set in national legislation, has been criticized, in particular by the CRC Committee: " The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices."

We will come back to this issue under legislative framework.

Switzerland

Prior to 2007, the Juvenile Justice System in Switzerland was regulated by the Criminal Code (articles 82-99 CC). Two categories of juveniles were defined in two separate chapters of the CC: “children” aged 7-15 and “adolescents” aged 15-18. This distinction allowed the development of different practices and was criticised as it could lead to confusion of responsibilities. In Geneva for instance, there were separate instances for each category of juvenile: a Child Judge (Juge des Enfants) and a Youth Court (Tribunal de la Jeunesse). The former was not part of the judicial body, but conducted by a jurist and public servant.

This distinction, considered relatively artificial, was abolished by the Swiss Juvenile Delinquency Act (JDA), where every person under the age of 18 is defined as a minor (Jugendliche in German). The new law also raised the MACR up to the age of 10 (art. 3 al.1 JDA), while keeping the age limit of 15 years for some sanctions (community service orders, fines and deprivation of liberty and 16 years for qualified deprivation of liberty for up to four years).

B) Child Victim / Child witness

The issue of the child as a victim is dealt with under two regimes – under the CCP\textsuperscript{14} and under the APPTCP\textsuperscript{15}. Therefore, the issue of child victims is not integrated in the Criminal Code as

\begin{itemize}
    \item The Social Activities and Practices Institute Association was established in 2001 by professionals working in the area of social work and social policy, who realised the need to organise the actual implementation of the concepts and ideas for introducing modern methods of social work in Bulgaria. The Institute works in partnership with a number of nongovernmental organisations in the country and abroad, as well as with the government. http://www.sapibg.org/en
    \item See also the Report: Analysis of juvenile justice system and child protection system in the regions of Sliven and Yambol – do they answer children’s needs?, p. 17
    \item CRC GC no 10, para. 30
    \item See Article 123 of the Code of Criminal Procedure
    \item Act Protecting Persons Threatened in Relation to a Criminal Procedure
\end{itemize}
an integral part of the juvenile justice system. To ensure that children’s human rights and legal safeguards are thereby fully respected and protected, it is of crucial importance to always take into account the ECOSOC Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime\textsuperscript{16}.

On the issue on child witnesses, the MoJ states: "Protection by appointment of personal physical guards and/or keeping secret the identity of the child is provided under CPP when a real danger for the life, health or property of the child or of his relatives, as listed in the Act, has arisen or may arise as a result from the child’s testimony. The protection in such cases is provided by a judicial authority, with the person’s consent or upon request of the person. However, as the child could not independently make such a request, the general rules for expression of will by juveniles should apply – respectively by a parent or guardian as a legal representative of the juvenile, with the knowledge and consent of the legal representative. Within up to 30 days from the application of the protective measure, the witness may, on proposal of the respective public prosecutor or judge-rapporteur, be included in a protection programme under the Act Protecting Persons Threatened in Relation to a Criminal Procedure."

\textbf{C) The children at risk or in danger : a question of protection}

The expression "Child at Risks" is used frequently in Bulgaria; but the definition of children at risk is not given in the penal legislation. It is only briefly mentioned in the Child Protection Act, art. 5.1.\textsuperscript{18}

The additional provisions to the Child Protection Act are more explicit. In §1 point 11 “child at risk” is defined as a child:

\begin{itemize}
  \item [a)] who has no parents or has been left durably without their care;
  \item [b)] who is a victim of misuse, violence, exploitation or any other not humane or humiliating attitude or punishment within or out of his family;
  \item [c)] for which there is a danger for impeding his physical, psychic, moral, intellectual or social development;
  \item [d)] who suffers from mental or physical damages as well as from difficult for healing diseases.
  \item [e)] who is at risk of dropping out of school or who has dropped out of school.
\end{itemize}

\textbf{Turkey}\textsuperscript{19}

In Turkey in 2006, the Social Services and Child Protection Agency established “protection, care and rehabilitation centres”. The majority of children are placed in centres for theft and for involvement with drugs (such as glue). Most of the children come from violent home environment and have poor social skills, and some are on medication for psychological problems. Staff of these centres includes social workers and educators. It is important to underline that these are not closed facilities and children actually attend school in the

\textsuperscript{16} ECOSOC Resolution 2005/20, July 20, 155
\textsuperscript{17} Ministry of Justice (MOJ), Juvenile Justice System in Bulgaria: Analysis of the effective legal and institutional framework, Report, 2013, p. 21
\textsuperscript{18} Draft Child Protection Act defines in art.3 §9: “a child at risk” is a child, who needs protection; and in §11 “Risk” is a set of circumstances that threaten or harm the life or the health or the development of the child”
\textsuperscript{19} UNICEF, Good Practices and Promising Initiatives in Juvenile Justice in the CEE/CIS region, 2010
community, they can benefit from remedial education and participate in cultural activities within the centre.

The “child at risk” can be attributed to several situations such as:
- to be victims of violence, negligence, physical and/or sexual violence,
- to have difficulty to form and sustain relationships,
- to have negative attitudes towards the personal identity and perception of self,
- to have difficulties in school and risk of dropping out of school,
- to have psychological difficulties...

In the Juvenile Delinquency Act 1958 we find numerous references to children that can be considered at risk, such as 20:

(1) Minors are placed in temporary housing when:
   a) their permanent or current address cannot be established
   b) they are captured in vagrancy, begging, prostitution, alcohol abuse, distribution or use of drugs or other intoxicating substances; [...]

In Juvenile Delinquency Act these references may open the door for confusion.

According to this and the consequent provisions, it is possible for a Prosecutor to authorize the confinement of children at risk up to 2 months21. In this Act we will also find the expression "children in need of help". Are they the same as children at risk, or are they different? We also find another expression: "children exposed to multiple risks factors" (JDA, Definitions, Section I).

If the expression "Children at Risks" is flexible, it still is important to have a standard or a reference point for clear communication between authorities in charge, service providers and policy makers, about what “at risk” means, having to be careful with the concept of ‘children at risk’ as it is often discriminatory and stigmatizing.

We can also find also in the JDA the terminology of "Deviant Children" when a behaviour by a child consistently and substantially deviates from what science deems normal for his/her age, and threatens or harms his/her development, whether the act is illegal or otherwise. The question "what science deems normal” could be subject of lots of expert discussions, and thus it is hard to endow it in a law.

Another category is "Uncontrolled Children", defined in the Juvenile Delinquency Act:

"Uncontrolled child" is a person under the age of 18 who has been left without parental care or the care of the persons substituting for the parents.22 A fact that the child is without adult care, does not make her/him “uncontrolled.”

The problem is that there is no clear definition of this expression and we have to condemn that absence, because there is a need to adopt minimum standards in terms of a common concept and methodology for working with children who demonstrate behavioural problems.

**Conclusion**

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20 Art. 35, JDA
21 Art. 35 (1), (2) and art. 37 (1), (2) of Title VI Temporary Homes for Uncontrolled Children, JDA
22 Art. 49 a. par. 3, JDA,
International standards require avoiding all stigmatization, arbitrary and discrimination and to use the terms:

- child for a person under 18 years of age
- child in conflict with the law for a child alleged as, accused of or adjudged as having committed a crime under the penal law
- child in contact with the law for a child victim of a crime or a child witness to a crime.

For children between the age of 14 and 18, it is extremely important that the evaluation of personal circumstances is made in order to understand to what extent the behaviour is in conflict with the law, and to what extent is it the result of traumatic experiences or of the so-called status violations. This is why every system, claiming to be oriented toward the best interests of the child, has to provide complex professional, and if possible by multidisciplinary teams, assessment of children entering the system.

**Recommendations**

a) it is important to harmonize the definitions and to make them compatible with the corresponding international standards

b) The categories of underage children from 8 to 14 should be abolished; and only one category for children below the age of 14 should be adopted.

**IV) The normative framework**

The Bulgarian *legislative framework* includes

- the Criminal Code,
- the Code of Criminal Procedure,
- the Juvenile Delinquency Act,
- the Child Protection Act,
- the Execution of Penalties and Detention in Custody Act,
- the Act on Protection of Public Order upon Conduct of Sports Events, and
- the Decree on Combating Minor Hooliganism.

The relevant *policy framework* includes:

- 2011 Concept for State Policy in the area of Child Justice

In this analysis, we will focus on the Criminal Code, the Code of Criminal Procedure and the Juvenile Delinquency Act.
A) The Criminal Code (CC)

The Criminal Code is not a specific penal instrument devoted to children in conflict with the law; it is the "ordinary" Criminal Code of Bulgaria which contains some rules for the category of children in conflict with the law, called the "minors" and aged 14 to 18.

Chapter 6 of the Criminal Code contains (General Part of the CC) special rules for sanctioning children in conflict with the law. The main objective of interventions towards minor offenders is to re-educate them and to get them ready for socially useful labour.

The possible penalties for minors are: deprivation of liberty, probation, public censure and deprivation of the right to exercise certain vocation or activity.

"A reduction of the penal sanction is also provided for depending on the age category of minors: (1) when a perpetrator is aged 14 – 16 (the most serious penalty is deprivation of liberty for up to ten years) and (2) when a perpetrator is aged 16 – 18 (the most serious penalty is deprivation of liberty for up to twelve years)."

From the point of view of the UN standards regarding deprivation of liberty (that has to be for the shortest period possible), the maximum of 10 and 12 years is very high (cf. CRC Art. 37 b). In this sense, the CC is clearly punitive and is based on serious forms of deprivation of liberty. It would be beneficial for the compliance of the CC with modern penal policy to plan a range of penal dispositions sui generis, along with other forms of penalties.

Switzerland

The maximum period of deprivation of liberty applicable to minors was a matter of numerous discussions during the adoption of the new Swiss Juvenile Criminal Law Act (JCLA).

The Swiss juvenile justice system is traditionally protective. However, in recent years, like other European countries, Switzerland has experienced generally negative public opinion towards young people, who are referred to as “violent” and “disrespectful”. This repressive tendency is reflected by the increase of the maximum term of deprivation of liberty applicable to minors, which increased from one to four years with the JCLA enforced in 2007. The new article 25 of the Swiss JCLA stipulates as follows:

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23 Articles 60 – 65 of the Criminal Code.
24 A public censure is a punishment provided in article 37 (1) 11 of the CC. Article 52 of the CC defines it as follows: “The punishment public reprobation shall consist in a public reprobation of the delinquent which shall be announced before the respective team, through the media or in other suitable way according to the instructions of the verdict.”
25 Article 62 of the Criminal Code
26 Article 63 (1) and (2), MOJ Report, 2013, p. 39
27 With respect to minors aged 14 – 16 the penal sanctions provided for in the Special Part of the Criminal Code are replaced, as follows in article 63 (1) of the Criminal Code: 1. life imprisonment without parole and life imprisonment – by deprivation of liberty from three to ten years; 2. deprivation of liberty for a period exceeding ten years – by deprivation of liberty for up to five years; 3. deprivation of liberty for a period exceeding five years – by deprivation of liberty for up to three years; 4. the imprisonment of up to five years including - by imprisonment of up to two years, but no longer than the stipulated by the law; 5. fine – by public censure; 6. probation – by public censure. With respect to minors aged 16 – 18 the penal sanctions provided for in the Special Part of the Criminal Code are replaced, as follows in article 63 (2): 1. life imprisonment without parole, life imprisonment and deprivation of liberty for a period exceeding fifteen years – by deprivation of liberty from five to twelve years; 2. deprivation of liberty for a period exceeding ten years – by deprivation of liberty from two to eight years.
“1. shall be liable to imprisonment for a period from one day to one year, a minor, who has committed a crime or an offence, and who is fifteen year old on the day of commitment.  
2. shall be sentenced to a deprivation of liberty up to four years at most, a minor, who was sixteen years old on the day of the offense: a. if he has committed a crime for which the criminal code provides custodial sentence of at least three years for adults; b. if he has committed an offense under s. 122, 140, al. 3 or 184 CC by demonstrating a particular ruthlessness, especially if his gestures, his behaviour or purpose to act reveal highly reprehensible state of mind.”

With regards to the Swiss experience, this represents a reinforcement of the severity toward minors. Nonetheless, a certain number of conditions should be met for the application this sanction and it should be invoked on the basis of objective criteria and after medical and psychological examination are carried by an expert. General Comment n°10 of the Committee on the Rights of the Child states: “The use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society.” Hopefully this position will be given sufficient attention in judicial decisions.

As for the application of the new JCLA, the deprivation of liberty remains an ultima ratio, and moreover, a reduction of its application is observed in favour of other sanctions or measures such as the community service orders (we will come back to it). For instance, in Geneva the recourse to this diversion measure resulted in decrease from 142 cases in 2000 to 82 in 2013; the result is even more eloquent in relative terms: the drop from 37% of all pronounces sanctions in 2000 to just 8% in 2013.

In addition to being an ultima ratio, deprivation of liberty, when imposed, is imposed for less then a month in three quarters of the cases in Switzerland.28

1) Art. 61 CC: release from penal liability

Here, it is interesting to mention CC Article 61 as it allows prosecutors and judges to terminate proceedings against minor suspects or minor offenders when it is established that he/she has committed a crime, under certain presumptions. The conditions are:

- that the crime does not constitute great social danger, and was committed for reasons of infatuation or because of thoughtlessness, or because the child was “carried away by circumstances”, and
- that the Prosecutor or Judge considers that the educational measures authorised by the Juvenile Delinquency Act can be applied successfully (measures applied by the court itself or sent for implementation to the Local Commission Combating Juvenile Delinquency). The Prosecutor has no power to impose such measures.

Redirection of minors from the criminal justice system to the administrative one is related to the application of educational measures29. The Criminal Code does not envisage

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implementation of specific measures when criminal offences are committed and as a result the measures set forth in Juvenile Delinquency Act for juveniles apply.

The fact that the cases can be diverted, in this case to the Local Commissions, can be very positive in essence. But the crucial issue is the fact that the case will be transferred to the Local Commissions where educational measures will be imposed and we know that all measures under Juvenile Delinquency Act contain more or less elements of coercion as it requires that the child perform or abstain of performing certain acts against his/her will. If the minor fails to respect the measures imposed, they will be enforced by the State. The law allows cumulative imposition of measures, other than the most serious two (accommodation in a Socio-Pedagogical Boarding School and the Educational Boarding School). If a minor does not comply with a measure imposed on him/her, a new educational case can be initiated and a more serious educational measure may be imposed.

The diversion from the Court to the Local Commission is not without risks and we cannot confirm that the Art. 61 CC is in full compliance with international standards. For example, Art. 40.3(b) CRC obliges States to “seek to establish” diversion. The Council of Europe recommendation on new ways of dealing with juvenile delinquency states:

"Expansion of the range of suitable alternatives to formal prosecution should continue. They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, apply only in cases where responsibility is freely accepted.\(^\text{30}\)"

In the case of article 61, the case is not closed, but just transferred to another authority, which also has quasi-judicial power. Here there is a big margin for improvement of this pseudo-diversion.

2) \textit{Alternatives}

\textbf{Mediation}

Mediation is provided for within the Mediation Act (art. 3) but was not foreseen in the CC as a specific answer to a conflict between a minor offender and a victim. This is a substantial gap in the law.

"On initiative of the Union of Bulgarian Jurists, a workgroup was set up in 2008 with the task to make a draft act amending and supplementing [CC] and [CCP] with the aim of introducing mediation on criminal matters but due to the traditional thinking and the public attitudes, regardless of the huge advantages offered by restorative justice, the draft act is still not moved to the parliament for consideration. During the discussion of the project the accent was exactly on the positive results from a similar procedure mostly on juvenile perpetrators of criminal offences, given the opportunity to assist for the establishment in the young offender of adequate self-assessment and assessment of the act and its outcomes in case of a face-to-face meeting with the victim and the negative consequences from the crime. There is a wider range of criminal offences, in which mediation procedure can be applied when they are committed by minors." \(^\text{31}\)

\(^{30}\) para.7 
\(^{31}\) Report MOJ, 2013, p.33
International standards advocate strongly for mediation. For example in the Commentary to the European Rules for juvenile offenders subject to sanctions or measures of Rule 12: "Mediation and other restorative justice measures have become important forms of intervention in juvenile welfare and justice systems. In many countries recent national legislation gives priority to mediation and restorative justice as methods of diversion from formal proceedings at various stages in the juvenile justice process. These strategies should be considered at all stages of dealing with juveniles and be given priority because of their special preventive advantages for the juvenile offenders as well as for the victims and the community".

The existing Bulgarian legislation provides that "diversion" necessarily involves the imposition of one of the educational measures recognised by article 13 of the Juvenile Delinquency Law, as mentioned above. Article 13 recognises compensation of the victim and the apology to the victim but they are imposed to the minor. Practice shows that these measures are more effective in preventing reoffending when they are voluntary and especially when they come during a restorative process, such as mediation. In our view, victim-offender mediation should be offered by such programmes for the prevention of reoffending. The possibility exists to amend the Criminal Code and the Code of Criminal Procedure by one or more articles in order to recognise such mediation.

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**Switzerland**

Mediation has a long history in Switzerland. Already in 1989, the Swiss Society of Juvenile Criminal Law dedicated its annual meeting to the topic “Mediation and the position of the injured party in the Juvenile Criminal Procedure”.

In 2007, the adoption of the Juvenile Criminal Law Act (JCLA) brought mediation into the federal legislation. The dispositions of the JCLA were replaces or complemented in 2011 by the new Code of Criminal Procedure (CCP) and the new Law of Juvenile Criminal Procedure (LJCP). Although elements of restorative justice, such as the penal mediation, were already applied de facto supported by some juvenile judges, the recognition de jure clarified its legal status and thus facilitates the dissemination of restorative practice in the Swiss justice system. The article 17 of the LJCP stipulates:

> “Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child’s best interests. The preliminary use of such alternatives should not be used as an obstacle to the child’s access to justice.”

art. 24, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice

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32 *75 ans Société Suisse de droit penal des mineurs 1931-2006, SSDPM, 2006*
Art. 17 Mediation

1 The investigating authority and the courts may at any time suspend the procedure and appoint a competent person or organization in the field of mediation to initiate a mediation procedure in the following cases: a. there is no need to take protective measures or civil authority already ordered the appropriate measures; [...] 

2 If the mediation agreement is reached, the procedure is closed.

As mentioned previously, the penal mediation was already practiced in Switzerland prior to the adoption of the JCLA. Among the precursors were associations and judges in Fribourg, Geneva and Valais, who took the initiative on the basis of the old Criminal Code’s articles 88 for children and articles 97-98 for adolescents.

In Fribourg, for example, the penal mediation was proposed through the creation of the Office for penal mediation for minors in 2004. The general practice was that once a criminal case was open, the judge could delegate the case to a mediator, when the feasibility criteria were established: existence of a victim, main facts established and overall recognition of the facts by the offender. Then the mediator contacted the parties to begin the mediation meetings and once an agreement was reached or was established that no agreement is possible, the result was returned to the competent judicial authority and the judge pronounced a decision on classification procedure. During the ten years of application in Fribourg, the penal mediation is referred to as a very positive experience.

Montenegro

Another example of mediation in Juvenile justice is present in the Act on Treatment of Juveniles in Criminal Proceedings. The provisions relative to mediation are under title six “Application of Attendance Orders” and it states:

Article 105 Victim-offender settlement

1 When the juvenile public prosecutor finds that conditions are met for the enforcement of the attendance order of victim-offender settlement, in order to remove the harmful consequences of the act by means of an apology, work, compensation for damages or otherwise, he shall refer by a decision the juvenile and the victim to the mediation procedure. [...] 

4 Data obtained in mediation procedure shall be regarded as confidential and shall not be used in any judicial proceedings possibly initiated against the juvenile.

Article 106 Mediation Procedure

1 Mediator shall initiate the mediation procedure within eight days from the date of the decision on referral to mediation which may not exceed 30 days.

2 The mediation procedure shall be terminated by concluding an agreement between the juvenile offender and the victim designating the subject-matter of settlement, duration of the attendance order or a confirmation that the juvenile has already complied with the obligation, which is confirmed by the signature of the mediator, victim, juvenile and juvenile’s legal custodian. [...] 

7 The decision under paragraph 4 above shall be submitted to the professional support service, which shall monitor the juvenile's fulfilment of obligations in cooperation with the mediator and the guardianship authority and report at least monthly thereof to the juvenile
public prosecutor who rendered that decision and submit the final report after the expiry of the attendance order. [...] 

Act on Treatment of Juveniles in Criminal Proceedings, Montenegro, adopted on December 20th, 2011

Serbia

Introduced as a pilot project, the Mediation Centre in Nis received cases mainly from the public prosecutor and has been given a positive feedback, considered as a “meaningful mechanism”. In 2006, Victim-Offenders Mediation was adopted in the JDA under the title “Diversion orders”. Its articles 5 and 7 provide that:

Article 5 One or more diversion orders may be applied to a juvenile offender for criminal offences punishable by a fine or imprisonment of up to five years. The relevant state prosecutor for juveniles or a Juvenile judge may apply a diversion order to a juvenile. The requirements to apply a diversion order are: juvenile’s confession of a criminal offence and his attitude towards the offence and the injured party.

Article 7 Diversion orders include:
Settlement with the injured party so that by compensating the damages, apology, work or otherwise, the detrimental consequences would be alleviated either in full or partly;
Regular attendance of classes or work;
Engagement, without remuneration, in the work of humanitarian organisations or community work (welfare, local or environmental); [...] 

The law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, in force since January 1st, 2006

Community service orders

The Bulgarian Criminal Code does not provide for Community service orders; but we can find such a "measure" in one of the 13 different measures recognised by article 13 of the Juvenile Delinquency Law:

"10. obligation of the underage to perform a definite job in favour of the public."

Once more, this alternative is in the hands of the Local Commissions and not in the hands of Prosecutors or Judges. It is also a lacuna from the point of view of international standards.

Community service orders and other non-custodial sentencing options offer significant benefits for young offenders in terms of rehabilitation and reintegration into society. Community service programs should not be so onerous that young people find it difficult to complete them. Courts must be aware of the problems children in difficult circumstances face in complying with orders. Community service programs should also be culturally appropriate, taking into account the particular needs and problems of children from different backgrounds and especially from minorities.
Effective supervision is vital to the effectiveness of Community service orders. Magistrates should give clear guidance on the respective roles of police, government agencies and community organizations in the supervision of these orders.

It is clear from the international standards that community based answers are recommended; for example, the European Rules for young offenders state:

23.1. A wide range of community sanctions and measures, adjusted to the different stages of development of juveniles, shall be provided at all stages of the process.

23.2. Priority shall be given to sanctions and measures that may have an educational impact as well as constituting a restorative response to the offences committed by juveniles.

**Switzerland: “Les prestations personnelles”**

Another good example of the Swiss Juvenile Criminal Law Act (JCLA) is the introduction of the Community service orders, with elements of restorative justice. The article 23 al. 1 stipulates that:

*The minor may be required to provide a personal service in favour of a social institution, a work of public utility, people who need help or injured, provided that the recipient of the personal services consents. The benefit must be adapted to the age and abilities of the child. It is not paid.*

This innovation in the Swiss juvenile justice system encompasses sanction, reparation, reintegration and finally education (art. 23 al. 2 proposed participation in classes). Therefore the minor can make amends to oneself and to the society. Additionally, this disposition provides a possibility to the judge not to condemn the minor to deprivation of liberty, thus being an alternative to short periods of confinement.

The Community service orders are imposed to the minor, his consent is not required, for a maximum period of ten days. However, if the minor was fifteen at the time he committed a crime or an offence, the judge can impose up to three months of community service order complemented by an obligation of residence (art. 23 al 3 JCLA). The community service is generally executed in public services and (e.g.: hospitals) and charity organisations (e.g.: Emmaus, Red Cross, etc.).

This disposition proved to be particularly successful and appreciated, as its application has continuously grown since the enforcement the JDA in 2007. It currently accounts for almost half of the sanctions pronounced in Switzerland.

Although considered as a very positive and creative measure, it turned out that new services still have to be developed, so that an individual programme adapted to their age and respectful for their development can be provided to minors. For instance, in 2009, a pilot-project was launched in the French speaking part of Switzerland under the name “No suspension of sanction for illiteracy” (“Pas de sursis pour l’illettrisme”). The programme proposes that writing is used as a prevention method from recidivism and can be combined with mediation, or as a replacement of a provisional detention for enquire.

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33 *lit.* personal activities
Diversion

The Bulgarian Juvenile Justice System includes the famous article 61, which allow for diversion. But the provisions of the Criminal Code concerning diversion should be amended in certain respects, in order to bring them into greater harmony with international standards.

Actually, article 61 authorizes diversion only when the person who committed an offence while under 18 years of age is still under the age of 18. International standards do not necessarily require that the procedures applied to juvenile offenders remain applicable in all respects, when the accused has reached 18 years of age. Diversion, however, should remain applicable even if the offender has reached the age of 18 before trial.

Diversion can't be applied on an arbitrary basis: the international standards require that:

- principles of diversion are enshrined in the law (legality)
- civil servants have limited powers and respect procedural rules
- the child and parents have the opportunity to refuse or to accept the measures
- the child or his/her representatives have the opportunity of complaint (avoid corruption)
- there is a provision stating clearly that the file is closed after using the diversion

In the case of Bulgaria and the transfer of cases to the Local Commissions, we are not convinced that the child has the possibility to accept or refuse the measure. "Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile." Diversion should not be based on a fear of conviction, because that could lead children to accept responsibility for offences they have not committed, or offences to which they have a valid defence.

There are two basic forms of diversion: simply closing the case with a warning of some kind, or referral of the offender to a community-based programme for the prevention of reoffending. In this respect, we think that the Police and the Prosecutor should have the competence to decide directly if the conditions for the diversion are met, and to divert the case without any referral to the Local Commissions, or to refer the case, in case of doubts, to the Court. The judge of the court must also have the possibility to divert the case, if he/she finds it appropriate.

**The Netherlands**

In the Netherlands, a case involving a child or a young person can be diverted at different levels of the criminal procedure, and even before the procedure is initiated. For instance, the police can stop any criminal proceedings and refer the case to support services, or only issue a verbal or written warning. If the case is related to theft, property damage or other similar offences the child can be referred to a bureau of the organisation HALT (the name means “stop”). In this case the agreement of the child is necessary as the programme is voluntary. If the programme is completed with positive results, the police inform the prosecutor’s office who then drops the charges against the minor. In the Netherlands, nearly half of the cases of minors who have committed an offence go to the HALT bureau.

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34 See e.g. European Rules for Juvenile Offenders, Rule 14
35 Ibidem, Rule 11.3 and Commentary to this Rule
36 Beijing Rules on diversion
37 www.halt.nl/english
Recommendations:

a) to develop the system of penal responses for children in conflict with the law, providing measures along with penalties

b) to open the CC to restorative justice (mediation, community service orders...)

c) to put in place a diversion system which is in conformity with international standards and in the hands of the police, the prosecutors and the judges.

**B) The Code of Criminal Procedure (CCP)**

In general, "...the procedures are characterized by lots of specific features. In some cases the court renders a final act. In other cases, the act of the court can be appealed against before the general court of higher instance. In a third group of cases (the procedures under the Administrative Offences and Punishments Act), its act is subject to appealing before an administrative court. Another procedural order applies, different measures are imposed..."\(^{38}\)

The specified special rules embedded in chapter 30 (Articles 385 – 395 of the Code of Criminal Procedure) are applicable as long as only a child (or several children) has been charged in the procedure. But in general, the procedural rules are more or less in conformity with international standards.

However, the Code of Penal Procedure contains some provisions that are not in harmony with evolving international standards on juvenile justice.

1) **Right to information**

CRC art. 40 gives some procedural guarantees related to the right to information: for example to be informed on the charges and on the possibility to get legal assistance; it's the same when a child is a victim or a witness, he/she has the right to learn what his/her rights are in the criminal procedure and to be informed for the course of the criminal procedure. In the Bulgarian legislation this right is guaranteed by general provisions\(^ {39}\) both for the child in conflict with the law and the child in contact with the law.

Nevertheless, it seems, according to our interviews that such information is not provided to children. The Minister of Justice also observed that: "...with respect to the specific environment they find themselves in, what the role and functions of the other participants are, what is the aim of their participation, what are the consequences from their acts, exercising or non-exercising of rights, the court judgment; they are not informed for the social services they can obtain either. The lack of information on the part of magistrates and policemen, as well as the poor coordination among the institutions are also relevant to the reasons for the latter."\(^ {40}\)

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\(^{38}\) MOJ Report, 203, p.19

\(^{39}\) See Article 55, Article 75 of the Code of Criminal Procedure

\(^{40}\) MOJ Report, p. 23
2) Right of defence

It is worth noting that the Bulgarian legislation provides the accused child with a right to compulsory participation of a defender – a licensed attorney-at-law\textsuperscript{41}. Furthermore, unlike other respective legal provisions, the compulsory defence in this case is not “conditional” as far as the accused party cannot waive it at the accused party’s own discretion. In this case the defender, as a party in the process, is bound to secure the accused child’s best interest and pursues this line of defence even when it differs from the one proposed by the accused until the attorney-at-law is duly released.

Unfortunately, the requirement for a specialised defence is only a requirement that the defender is a person practicing as an attorney-at-law. Such an attorney-at-law is not required to have received any special training in children's rights, or in Juvenile Justice cases, or in a restorative approach.

3) Hearing of the child

In general, children in conflict with the law or children in contact with the law are heard in private, and in court sessions which can only be attended by the parties, persons authorized to attend by the chairperson of the panel of judges and one person nominated by each of the accused parties. Cases must be heard under such procedures in all circumstances where morality must be preserved, and – at the court’s discretion – in order to prevent disclosure of facts about the intimate life of citizens. In the case of an accused child court hearings are private. The court can decide to derogate from this for public interest reasons. This flexibility is regrettable, because of the lack of criteria to justify the exceptions.

The CRC provides a clear provision in art. 40, that ensures the child the right:

"(vii) To have his or her privacy fully respected at all stages of the proceedings."

Here there is a margin for improvement in the legislation and in the practice.

4) Interrogation of a child victim or witness

According to the art. 140 of the CCP, in the pre-trial and trial phase the investigating body interviews children with the compulsory participation of a pedagogue or psychologist, and if necessary, in the presence of a parent or guardian too (at the discretion of the investigating body). When the latter does not have special training, the interview is conducted by an expert (a pedagogue or psychologist), at the respective Regional Directorate of the Ministry of Interior or at specialised social service provider such as a social service or even at a non-governmental organisation.

In this regard, it is worth mentioning the possibility of interrogating a child by a video recording for the proper documentation of these circumstances and later use, limiting the number of interviews. Interviews of a child can also take place by a videoconference\textsuperscript{42}. The big issue here is that "this requires the presence of the respective special equipment, which is

\textsuperscript{41} Article 94(1)(1) of the Code of Criminal Procedure

\textsuperscript{42} Article 140(5) of the Code of Criminal Procedure
available in a small number of courts. Unfortunately, practice shows that even when available, this option is rarely used".  

It is also interesting to note existence of the "Blue Room", which can be described as good practice: "... rooms for child-friendly hearing of children-witnesses in criminal process are made in the country with the support of NGOs. A part of the rooms are in complexes for social services for children and families. They are also referred to as “friendly” rooms for hearing of children and are conformed to the international requirements for child-friendly justice. In order to ensure a protected setting, the other participants in the process watch the process from a neighbouring room equipped with audio- and video-recording equipment and separated by a glass of a Venetian mirror type from the hearing room. The interrogation is conducted by the judge through the social worker by using headphones"...  

The problem: for the time being there are only 12 "Blue Rooms" in the country, and even where they are available, there are still interviewing bodies who do not accept to work in this manner, and continue interviewing the children in their court, or cabinet.

In this domain, there is thus a necessity to harmonize the methods for interrogations of children victims and witnesses, to systematize interviews by the audio and video devices and to expand the number of Blue Rooms throughout the country.

5) Detention up to 72 hours

Article 64 authorises prosecutors to order the detention of any person, child or adult, for 72 hours without a court order. The CRC does not provide any rule for the detention of a person, but the CRC Committee has indicated that “Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours”. Here, we can also rely on the International Covenant on Civil and Political Rights, article 9.3 stating that: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power...”. The Human Rights Committee considers that, where juveniles are concerned, the word ‘promptly’ should be interpreted to mean 24 hours.

We think that the Code of Criminal Procedure should be amended to require that juvenile suspects or accused juveniles may not be detained for more than 24 hours without a court order.

6) Pre-trial detention

The CCP provides that in the pre-trial proceeding, detention in custody may last from two months to two years, depending on the gravity of the crime. These limits seem to apply to children in conflict with the law and adults alike. International standards, as indicated above, provide that any deprivation of liberty should be for the shortest appropriate or shortest
possible period. The Council of Europe Recommendation on new ways of dealing with juvenile delinquency contains a more concrete standard:

"When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial." 49

The Committee on the Rights of the Child has not adopted any specific recommendation on the length of detention before and during trial, but it has indicated that the maximum length of proceedings against an accused children should be six months, whether the accused is detained or not. 50

The CCP here does not fit with the basic international standards and should be amended in the sense of limiting the possible detention of children in conflict with the law before and during trial. We could consider a maximum duration of six months, unless special circumstances justify an extension 51 (see below and example of the Serbian Juvenile Delinquency).

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<tr>
<th>Serbia</th>
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<tbody>
<tr>
<td><strong>Article 67 (JDA)</strong></td>
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<tr>
<td>Exceptionally, the Juvenile judge may remand the juvenile to detention when grounds exist specified under Article 142, paragraph 2 of the Criminal Procedure Code, if the purpose for ordering detention cannot be achieved by temporary placement measure specified in Article 66, paragraph 1 of hereof.</td>
</tr>
<tr>
<td>Time spent in detention, as well as any other deprivation of liberty, shall be counted as an integral part of the ordered educational measure of remand to an educational institution, correctional facility and juvenile prison pursuant to Article 63 of the Criminal Code.</td>
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<tr>
<td>On grounds of the detention order issued by the Juvenile judge, detention in preparatory proceedings may not exceed one month [emphasis by the author].</td>
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<tr>
<td>The juvenile Court bench of the same Court may, on justifiable grounds, extend detention for a maximum of one more month.</td>
</tr>
<tr>
<td>Following the conclusion of preparatory proceedings and from the moment of filing a motion for pronouncing of criminal sanction, detention of an elder juvenile may not exceed six months [emphasis by the author], and four months for a younger juvenile. [...]</td>
</tr>
<tr>
<td>Provision of Article 146 of the Criminal Procedure Code shall accordingly apply to all other issues relating to juvenile detention.</td>
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This limitation is also linked with the principle of celerity that obliges the authorities to deal with juvenile justice case quickly. "In practice, this causes serious problems in courts and prosecutor’s offices with higher caseloads, as cases against minor accused parties at the pre-trial or trial phase do not enjoy priority hearing. In turn, this creates definite uncertainty with

49 Para.16 of the Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice
50 General Comment No.10, supra, para.83
respect to the procedural situation of the minor accused party, which has a more intense impact on his/her mentality, than when an adult is concerned. This is particularly true of cases when the most severe measure of remand – detention in custody – has been imposed on an accused minor...

The Supreme Court has Instructions\textsuperscript{53} to speed up the proceedings, but have proven unsuccessful. The absence of specialized courts and judges who are dedicate exclusively to cases of children in conflict with the law makes difficult the respect for these instructions.

7) Alternatives

To come back to our remarks on mediation and community service orders, it would also be necessary to incorporate these alternatives in the CCP, because mediation can and should be pursued at an earlier stage of proceedings. In many countries, the beginning of trial can be postponed for a certain period, in order to provide an opportunity for the parties to explore the possibility of reaching an agreement to mediate. This is a valuable way of encouraging mediation, and the CCP should be amended by one or more articles to recognise such a procedure.

In doing so, it would also be necessary to conform the CCP with the Mediation Act and international instruments\textsuperscript{54}, in the perspective of mediation as a differentiated criminal procedure.

Recommendations

a) The right of the child to be informed about the charges and the way the pre-trial and the trial are conducted has to be respected not only on paper, but also in practice.

b) The hearing of the child in conflict or in contact with the law is of crucial importance, and the reason why the Bulgarian Justice system has developed the possibility of using technical devices and introduced the Blue Rooms; but this practices has to be systematized all over the country.

c) The Code of Criminal Procedure should be amended to require that juvenile suspects or accused juveniles may not be detained for more than 24 hours without a court order.

d) The CCP should be amended in the sense of limiting the possible detention of children in conflict with the law before and during trial to a maximum of six months, unless special circumstances justify the extension of this period.

e) The CCP has to introduce the possibilities of alternatives, along with the CC, and the CCP has to be harmonized with the Mediation Act and with international instruments.

\textsuperscript{52} MOJ Report, p. 28
\textsuperscript{53} Decree No.6/1975 of the Plenum of the Supreme Court
\textsuperscript{54} Recommendation N° R (99) 19 adopted by the Committee of Ministers of the Council of Europe concerning mediation in penal matters; The Basic guidelines of the Council of Europe of 2007 for a better implementation of the existing recommendation concerning mediation in penal matters; the UN resolutions; The EU Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.
C) The Juvenile Delinquency Act of 1958 (JDA)

The CC and the CCP regulate the judicial system for children in conflict with the law from 14 - 18 years of age (the so called “minors”).

But Bulgaria also has an administrative system which is regulated by the Juvenile Delinquency Act = JDA (ZBPPMN) which includes provisions for penalizing-correctional measures for children 8 to 14 years of age reportedly involved in criminal acts, children 8 to 18 years of age allegedly involved in anti-social behaviour or status offences^55, and minors 14 to 18 years of age diverted from prosecution.^56

Art. 1 of JDA States: "This law provides for the activities to prevent and combat anti-social acts of minors and to secure the normal development and nurture of the perpetrators of these acts."

The mandate given by this law is also to govern the activity of the Central juvenile delinquency combating Commission and of the Local juvenile delinquency combating Commissions; and to assume the functions of child counselling services, the Socio-pedagogical boarding schools, the Educational Boarding Schools, the Homes for temporary accommodation of juveniles and of the Homes for Neglected Children.

Since its adoption in 1958, this very old law experienced numerous modifications, but remains in force.

Bulgaria has two relatively separate systems working in parallel, which does not seems to be ideal. "The practice of their parallel enforcement gives an impression of arbitrariness and chaos and the institutional system is functioning amid shortages of expertise, of adequate statistical and analytical information, setbacks in the inter-institutional communication and in the cooperation with the nongovernment sector^57."

The numerous amendments to the Juvenile Delinquency Act made in recent years seem to have brought it into greater compliance with international standards. One example are the amendments introduced in 2004, which require the approval of a court for placement of children in specialized schools.^58

1) Definitions

The JDA defines an anti-social act as “an act that is publically dangerous and against the law or contradicts morality and good manners.”^59 This definition raises more problems than it solves, due to the objective difficulty in explaining what are acts that contradict morality and good manners, and leave the door wide open to the arbitrary power. According to the National Statistical Institute, the most numerous acts defined as antisocial between 1996 and 2006 were

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^55 status offences are actions which would not come under law if committed by an adult
^56 JDA Art.12
^57 A government policy concept in the area of justice For children, p.1
^58 JDA, Art.21, para.1 item 2 and 24a
^59 JDA, Art.49a, para 1

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The JDA also defines "educational measure" as an alternative to punishment. It is a measure for educational effect as regards a minor or an underage child who has committed an antisocial act, and an underage released from penal liability under art. 61 CC, and which is imposed to overcome the deviations in the conduct, to prevent future offence and integrate the child into the society. Furthermore, these definitions confirm the punitive orientation of the Act that is based not on the personality of the child, but on the nature of the "anti-social, anti-moral, anti-good manner." act.

Furthermore, as indicated earlier in this analysis, defining the term “uncontrolled child” as a person under the age of 18 “who has been left without parental care” and without care from “the person substituting the parents” is stigmatizing and implies that children are a threat against public security and that parents have failed.

It is interesting to note the MoJ’s concern with such definitions: "The definition of antisocial acts given in the additional provisions of ZBPPMN (JDA) is on the one hand not clear enough and on the other hand allows differences in the practice of imposition of criminal and educational measures since the evaluation of an act as contradictory to moral and good morals is not indisputable and largely depends on the perceptions of the law enforcement body.”

Another author quoted in the MOJ Report 2013 highlights that "... in a democratic society we do not have knowledge going beyond the law as to which morals and good and which are not. The issue is complex – there are no universal moral standards. The universal moral standard in a democratic society is the standard of the law. There is no other moral but the law, which is universal. Moral varies among the different social groups but when one says “it contradicts to the moral and good morals”, we immediately see a possibility of arbitrariness and discrimination. The discrimination is expressed in the fact that one an adult commits an antisocial act he is tried only on the grounds of the law but we try children, in addition to that, for things that contradict to good morals and to moral. i.e., they can be accommodated in reformatories and social-and-pedagogical boarding schools and other educational measures can be imposed on them under the law even if they have not committed unlawful acts.”

From the point of view of the international standards, General Comment no 10 of the CRC Committee is very clear:

"It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee

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60 Case A. and Others against Bulgaria, ECtHR, case n°517760/08. In the same case in paragraph 36, the ECtHR says: “The law does not enumerates the behaviors to be qualified as antisocial, but the judicial practice and criminology consider that the acts committed by minors and not criminalized under the penal law such as prostitution, the use of narcotic substances abuse alcohol, vagrancy, begging, truancy or repeated running away from the home or from the persons exercising the custody constitute antisocial behavior.”

61 JDA, Art. 49a, para 2

62 Art.49a para 3

63 MOJ Report, 2013, p. 7

64 Krasimir Kanev, Bulgarian Helsinki Committee
recommends that the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults."\textsuperscript{65}

The Riyadh Guidelines contain the same statement:

"In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person".\textsuperscript{66}

2) Dispositions or the punitive approach

Educational cases are initiated and heard by the Local Commission Combating Juvenile Delinquency, which can impose within the case one or more of the 11 types of education measures established in JDA\textsuperscript{67} or propose the court imposition of the two measures related to the restriction of liberty by placement in institutions of a closed type.

There is no educational case initiated if the committed act is obviously a very petty offence or if six months have expired from the commitment of the antisocial act or from the entry into force of the public prosecutor’s decree or the court ruling under Article 61 of the Criminal Code.

A procedure before a Local Commission resembles the administration of justice with a panel of 3 people (a lawyer, a pedagogue and a teacher) and is initiated after referral to the Commission, but not on the Commission’s own initiative.

Despite the improvements made, the orientation of the law remains essentially punitive and does not offer a protective approach, since child between 8 - 14 of age, or the minor referred to this law will be the object of measures of coercive and punitive character. This practically perpetuates the system’s conservative and repressive nature. If we read the 13 measures provided in art. 13 of the JDA, all contain the words obligation, prohibition or restriction. Only the first one (warning\textsuperscript{68}) does not contain this coercive dimension. In our view, the system of reformative measures of the JDA and the penalties applicable "minors" under the Criminal Code, are similar.

There is no clear distinction between punishment and "measures": the system of reformative measures provided in the JDA and the punishment applicable "minors" (14-18) under the Penal Code, are identical in substance. Furthermore, there are no guarantees that a reformative measure might not have objectives other than care. This gives an impression of a very repressive policy for Juvenile Justice.

One can say that there are no explicit measures and above all no services for supporting the child who is accused of antisocial acts; taking into account the restorative approach, it is difficult to see how the child is supposed to realize the meaning of his/her act and the consequences of his/her acts for the victim. Maybe, it is achieved through the obligations to

\textsuperscript{65} CRC/C/GC 10 (2007) para. 8
\textsuperscript{66} Riyadh Guidelines, adopted by General Assembly resolution 45/112 of 14 December 1990, Rule 56
\textsuperscript{67} JDA, Art. 13
\textsuperscript{68} JDA, Art. 13 ch. 1
offer an apology to the victim and to remedy the inflicted damages (such as, for example, through some kind of work for the victim), but they are only a part of the elements of the restorative approach in juvenile justice. Even if the possibilities of measures in the community such as reparation of damage exist, they are, according to the NGOs, rarely implemented due to the lack of professionals to implement them.

Even after the latest amendments of 2006, the educational measures referred to in Article 13 of JDA envisage the imposition of a sanction, restriction or prohibition rather than measures of support for the children and their families.

The reformative measures involving isolation (accommodation in the state boarding school system (SPBS and EBS)) meet the standards of imprisonment! The punitive character of these measures is publically recognised by the authorities: “The application of the "corrective measure" placing children in SPBS and EBS bears inherently the characteristics of a criminal procedure.”

From the point of view of international standards, the imposition of obligations and prohibitions are inappropriate for measures that are applied mainly to children who are not offenders. The aim of interventions with children who are not offenders should be to provide them with protection and with measures of assistance, which the recipients voluntarily agree to receive.

Such measures are imposed by the Local Commissions for combating anti-social acts, which are established and attached to the municipalities or districts (administrative authorities) and carry out some kind of quasi-judicial trials; these measures have to be fulfilled, and in case of non-fulfilment of a correctional measure under art. 13 of the JDA by the minor or underage child, a new correctional case may be opened (Art. 16 JDA) and may impose a more serious correctional measure; this demonstrates the penal and coercive aspect of the decisions taken by the Local Commissions.

The above mentioned solutions do not belong in the field of protection (or prevention, here secondary prevention) but in one which allows retributive "measures" proportionate to the act and not to the person of the child. They are more penal rules than administrative ones, despite the proclaimed will.

For Bulgaria, this Act "... stokes up repressive attitudes towards children in conflict with the law, has a counter-educational impact and a child victimizing effect that leads to loss of social skills, social exclusion and absorption by criminal communities. This legal inadequacy has condoned the uncontrollable spread of attitudes and practices, which drastically clash with both relevant international commitments and the national constitution.”

This is obviously contrary to international standards, since the CRC Committee has clearly indicated that “behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures...”; and the CoE Recommendation on the role of early psycho-social intervention in the prevention of criminality, which states that:

69 Official intervention by the President of the SACP, Ms Eva Zhecheva on 20th February 2014, http://sacp.government.bg
70 A government policy concept in the area of justice For children, p.2
71 General Comment No.10 (2007), Children’s Rights in Juvenile Justice, para.9
Participation in [prevention] programmes should be organized on a voluntary or contractual basis. Compulsory participation by holders of parental responsibilities should only be required when they are unwilling to fulfil their obligations and providing [that the imposition of measures not agreed to voluntarily] is in line with existing legal frameworks and does not invoke criminal law provisions.\textsuperscript{72}

3) Home for Temporary Accommodation of Juveniles

The JDA (art. 35) provides for temporary accommodation for Juveniles "when: (1) the permanent and present address of a juvenile cannot be established; (2) juveniles have been caught while committing vagrancy, begging, prostitution, abuse of alcohol, distribution or consumption of drugs or other intoxicating substances; (3) juveniles have wilfully deserted establishments for compulsory education or forcible medical treatment; (4) juveniles have committed an antisocial act and are neglected to such an extent that their remaining with their parents or with the persons substituting them becomes inexpedient, they will be accommodated in homes for temporary accommodation of juveniles created by the Ministry of Interior"\textsuperscript{73}.

The motives for which a child can be deprived of liberty according to art. 35 of the JDA, are not linked to crime, according to the Criminal Code; so why is deprivation of liberty used in these situations, when it is better to resort to other forms of intervention? Children who are not accused of an offence should not have less protection against arbitrary deprivation of liberty than criminal defendants, who may not be detained for more than 72 hours without judicial authorization.\textsuperscript{74}

Children may be placed in centres (closed facilities operated by the Ministry of Interior), which serve as a place for boys and girls of any age, and in which they are placed during the necessary period to establish a report about the reasons for their behaviour.

This decision is of administrative nature, but need an order of a Prosecutor\textsuperscript{75}, without any possibility of judicial control and can last up to two months; it clear that this decision is not in line with international standards with requires a decision by a court and the possibility of appeal. Art 37 CRC is clear:

"(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

According to this CRC provision, as a minimum a child placed in such facilities should have the right to ask a court to review the legality of their placement, which is seems not to be the case here.

This is confirmed in the case A. and Others against Bulgaria of the European Court of Human Rights: “two consecutive placements in a “home for temporary placement of minors” in 2008, respectively for seventeen and fourteen days, had violated Article 5 § 4 because the applicant

\textsuperscript{72} Recommendation 2000(20), para.17
\textsuperscript{73} MOJ Report, 2013, p. 37
\textsuperscript{74} Code of Criminal Procedure, Art.64(1)
\textsuperscript{75} Art.34 and 36(1) (Children may be placed by the police for 24 hours.)
did not have at her disposal a remedy which could allow her to challenge the legality of these placements before a judicial authority...” Furthermore, according to the opinion of the ECtHR, the placement in the Home, but also in the Crisis Centre and in the Educational Boarding-School, amount to deprivation of liberty because of the very restrictive regime, the constant surveillance and other limitations. Additionally, the Court noticed that the duration of all the measures applied, the shortest of which was six months, was long enough to inevitably cause negative impact on the child.

The effort made by the Bulgarian government in their response to the ECtHR on the measures taken as remedies are, however, appreciated.

The European Rules for Juvenile Offenders also confirm the principle that:

"10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention."

4) Proceedings

The system based on an administrative law (JDA), but a quasi-judicial body (Local Commissions) imposing measures of penal nature is dangerous and can favour the lead to children involved in "anti-social" acts to having fewer rights and less protection than older "minors" prosecuted for a criminal offence!

Although amendments made to the Act, in particular in 2004, have brought the procedures of the Local Commissions into greater compliance with international standards, in some respects existing procedures do not provide sufficient protection to the rights of children.

In particular, article 19 provides that in hearing correctional cases the rights of the child concerned “shall be defended by his confidential representative, who is not required to have any knowledge of the law or any particular skills, abilities or training or an attorney at-law, who does not have specific training in children's rights". Art. 40.2 (b) ii and iii of the CRC called for:

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.

and the European Rules 120.1:

120.1. Juveniles and their parents or legal guardians are entitled to legal advice and assistance in all matters related to the imposition and implementation of sanctions or measures.

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76 Chamber judgment A. and others v. Bulgaria, 29.11.2011, (application no. 51776/08), ECtHR, para.108
77 Idem., para.103, 62 and 94
78 Communication from Bulgaria concerning the case of A. and others against Bulgaria (Application No. 51776/08), Action plan (23/05/2013)
79 Art.19 (3) The “confidential representative”. Art.49(4)
In Bulgaria "[w]hen neither (confidential representative or attorney-at-law) is appointed, the rights and interests of the child shall be defended by a representative of the Directorate of Social Support."  

This is a lower standard than would apply in proceedings under the Child Protection Act, which recognizes the right of children to ‘legal assistance provided by the state.’

One could ask if the other guarantees generally applicable to children charged with criminal offenses are respected by the Local Commissions when they hear a child charged with antisocial behavior, since the Local Commissions have no professionals trained in Juvenile Justice and as the respect of procedural guarantees is not assured due to the different practices by the different local authorities. In particular in such an inquisitorial system, we can doubt that the different procedural guarantees are respected. As a minimum, the children heard before the Local Commissions should be granted the following guarantees:

(i) To be presumed innocent until proven guilty according to law;  
(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;  
(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;  
(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;  
(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;  
(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;  
(vii) To have his or her privacy fully respected at all stages of the proceedings.

Another shortcoming is that the decision of the Commission should be based, in part, on a report on the child, including health, psychological development and family relations. International standards call for such reports, when juveniles are accused of an offence, but their value depends on the knowledge, training or skills of the persons who prepare them.

Rule 16 of Beijing Rules asks for reports on the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed and the Commentary to this Rule "...requires that adequate social services should be available to deliver social inquiry reports of a qualified nature."  

The JDA contains no requirements of this kind and the professionals who prepare the reports are not trained specifically and do not work in multidisciplinary teams.

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80 Art.19(4)  
81 JDA, Art.4.11  
82 CRC, art. 40, b)  
83 Beijing Rules, Rule 16 and Commentary
Recommendations

a) The punitive orientation of the Juvenile Delinquency Act requires that it be thoroughly rewritten, or rather, that a new approach to the prevention of offending be adopted, and a new law be drafted to replace the existing JDA;

b) The practice of parallel application of the acts from both generations is full of contradictions and gives the impression of arbitrariness and chaos, especially persistent with the acts of the first generation; this requires thorough review of overlapping/contradictory legal provisions and subsequent harmonization of national legislation.

c) The minimal procedural guarantees have to be respected at all stages of the proceedings to ensure that the standards applied by the authorities, acting under the JDA, to children at risk or minors that have behaved “antisocially”, are not lower than the standards applied under the CCP;

d) The educational institutions (SPBS, EBS, Homes, etc.) have to be reformed according to the judgement of the ECtHR to allow challenging the legality of a placement before a judicial authority.

V) The Institutional framework

The relevant institutional framework can be summarized as follows:

A) Juvenile Justice

1) The Prosecutor office

The Prosecutor General at the Prosecutor’s Office of the Republic of Bulgaria is a unified and centralized structure; in principle there are no specialised Prosecutors for children in conflict or in contact with the law, but by an order of the Prosecutor General, an internal network of prosecutors covering all the levels within the system of the Prosecutor’s Office was set up in April 2012, which seems like a good initiative. In this network the interested prosecutors (at least one person in each prosecutor’s office) are dealing with cases involving children, as offenders, or as victims or witnesses. The prosecutors of this network are working on other cases and are not independent of hierarchy: the Supreme Cassation Prosecutor’s Office. In contrast, they are instructed to introduce and apply, at all stages of the process, equal standards and practices in the resolution of identical cases of crimes committed by children in conflict with the law and of offences against children. It is provided for that they will predominantly take part in training activities in matters related to the child justice, as well as that they will subsequently share their experience with the other prosecutors in the same unit.

The prosecutor’s office is acquainted with the standards and methods for interrogation of children in conflict with the law and of children victims and/or witnesses. It is important to say that they participate actively in the development of specific procedures (the Blue Room example), initiated by non-governmental organisations. "The team of the former Prosecutor General supported the regular conduction of expert discussions among the professional societies of the issues related to child justice and the initiatives in this aspect and a conclusion

84 The order was issued on the grounds of the powers provided for in Article 138(1) of the Judicial System Act.
can be made that the institution has a generally positive attitude to the specialisation in child justice.\textsuperscript{85}

The investigative authorities are subject to a legal requirement\textsuperscript{86} to have special training when the pre-trial procedure is about cases related to crimes committed by minors. Investigative authorities are investigators, who could be magistrates at the investigation departments of the respective district prosecutor’s offices and investigating police officers from the structures of the Ministry of Interior. However, there is no requirement for specialized training of the investigative authorities in relation to cases in which a child participates.

In practice, the case of the child in conflict with the law starts with the police, and is, as a rule, rather subject to individual conduct of an officer than based on the rights. The Police has a key role in the system for working with children in conflict with the law, even though it is formally under the supervised by the Prosecutor’s Offices.

2) The Court

There are no specialised courts for children in conflict or in contact with the law. In cases involving them, children are heard by any randomly assigned judge hearing such cases; some courts have adopted the practice to allocate cases involving minors to judges who usually do such cases, and the Supreme Court of Cassation considers this as a good practice. But it’s not always possible, particularly in courts where there is a very small number of judges. The judges are not required to have any special training.

In cases where there are jurors (lay magistrates) assisting the judge (in the hearing of the case before the first instance), according to the law, jurors must be teachers or educators\textsuperscript{87}. "However, in derogation from the general rule\textsuperscript{88} governing the participation of jurors in a panel of judges, jurors take part in all such cases\textsuperscript{89}.

The general (criminal) courts are the ones which will hear the children, on different grounds.

- Regarding the Juvenile Delinquency Act 1958:
  - for imposition of a “detention in custody” measure of remand;
  - in case of a proposal of the Local Commissions for the imposition of the most serious measures under the JDA (accommodation in specialised institutions);
  - in case of complaints against decisions of the Local Commissions for the imposition of other educational measures under the JDA, except for the lightest ones, the imposition of which cannot be appealed against.

In some cases the court will render a final decision. In other cases, the court's decision can be appealed against before the General Court of higher instance.

- Regarding the Criminal Code, the MOJ Report distinguishes two situations:

"Privately prosecuted criminal cases: They are heard by the general (criminal) court for a committed lighter criminal offence (insult, slander, light bodily injury, etc.). In such cases the victim directly refers to the court by a penal complaint (tazhba). Under

\textsuperscript{85} MOJ Report 2013, p. 4
\textsuperscript{86} Article 385 CCP
\textsuperscript{87} Article 390(2) of the CCP.
\textsuperscript{88} It is established in Article 28(1) of the CCP.
\textsuperscript{89} MOJ Report 2013, p. 5
such cases police authorities do not conduct investigations and a public prosecutor does not take part, as the charge is maintained by the victim. And, publicly prosecuted criminal cases: They are heard by the general (criminal) court and are initiated for a committed criminal offence. The procedure is implemented in two phases - pre-trial and court procedure. Pre-trial procedure authorities are the public prosecutor as a judicial authority and the investigation authorities subordinated to the public prosecutor. Court procedure develops in three instances. Court investigation is carried out only at the stage of the first two instances, i.e. only then is evidence collected and can the child be interrogated or may respective procedural actions be performed with respect to the child."

3) The Central and local Commissions

Primary responsibility for the prevention of offending by juveniles is bared to the Central and Local Commissions for Combating Juvenile Delinquency

The Central Juvenile Delinquency Combating Commission\(^{91}\), composed of representatives of different ministries’ agencies, develops, takes part in the development and proposes to the Council of Ministers, the ministries, and other departments and to non-profit legal entities programmes and activities for prevention and restriction of juvenile criminalisation.

The 296 Local Juvenile Delinquency Combating Commissions, composed of representatives and departments of municipal government, organise and coordinate the social-and-preventive activity locally.

The tasks of the Local Commissions cover children from 8 to 18 years of age. Although some interventions (e.g. placement in a specialised school) may be appropriate only for children over a certain age, appropriate interventions should be available for younger children who have been identified as being at risk of offending. Apparently this intervention is not made by the Local Commissions; during the interviews with the police, the prosecutors and the person in charge of Central Commission, it seemed extremely rare that the Local Commissions intervene for children below 8 years of age. The responsibility is then within the competence of the welfare system, and no more within the Juvenile Justice system. The next tricky issue is: what are the mechanisms for identifying such young children, and the type of assistance to which they and their families are entitled to, and the agencies responsible for providing it?

The Local Commissions cannot be qualified as an independent and impartial authorities since they carry out proceedings and exercise both guidance/resolution and charging/prosecution functions. A similar conclusion was made by the ECtHR in 2011.\(^{92}\) Proceedings before such Commissions is inquisitorial and offers weak guarantees that the process of gathering and presenting evidence will lead to the establishment of truth, fair justice and assuring the respect of the right of the child to be heard (Art. 12 CRC) and his/her rights to have his/her best interests taken as a primary consideration. Control and public security seem to be the priorities of the Local Commissions.

\(^{90}\) MOJ Report 2013, p.19

\(^{91}\) Articles 8 and Article 10 of the Judicial Delinquency Act

\(^{92}\) Case A. and others v. Bulgaria, 29.11.2011, (application no. 51776/08), ECtHR, para.107
4) The Child Pedagogical Offices (CPO)

In accordance with article 2 al. 1 b of the Juvenile Delinquency Act (JDA) adopted in 1958, the Child Pedagogical Offices (CPO) are created in the Municipal councils for the purposes of this law. Their work is coordinated by Inspectors (referred to hereunder as Inspectors CPO) appointed by the Ministry of Interior in the 28 regional offices (at least one Inspector per 30’000 inhabitants). The CPO Inspectors are police officers and are required to have completed pedagogical education. These police officers have, in general, a university degree and also an internal postgraduate training. Their work is managed and controlled by the National Police. Additionally, they are also controlled by the Central Commission and the Local Commission and supervised by the Prosecutor's Office.

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

(a) tracing and finding out minor offenders and the reasons and conditions for their anti-social acts or crimes;
(b) tracing and finding out minors who are subject of criminal encroachment, maltreatment, or have been left uncontrolled;
(c) taking the appropriate measures under sect. (a) and (b) or notifying the competent bodies;
(d) notifying the bodies of prosecution in case they receive information about criminal conduct in relation to minors by the parents, the persons substituting for them, or third parties.
(e) to observe the fulfilment by the minor or under age of the imposed measures under art. 13, para 1, item 6, 7 and 8.

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

Regrettably, the mandate of the inspectors is quite unclear, expected to cover various functions from police officer to social worker, but they are at the same time neither and something in between. With regard to the performance of these tasks, they also render assistance to social workers, to the police and to the commissions, prosecutors and judges.

We have inquired whether inspectors are police officers or social workers; it seems that because of the general concern with control over this young population rather than with prevention of juvenile delinquency, it is more likely that they are police officers at the Prosecutor's Office than social workers who normally provide services to children and the families.

Recommendations

a) to clarify the status of the CPO inspectors, and social supervisors in order to prevent confusion of roles of the different persons who intervene;
b) to review their domain of intervention and the coordination between them;
c) to provide them with an appropriate training.
5) Social Supervisors

The second group of "professionals" active in the Local Commissions are the Social Supervisors, also known as Public Educators. These Social Supervisors are paraprofessionals appointed by Local Commissions: "Persons with the necessary general educational preparation and experience, with their consent, are appointed social supervisors." Here we offer a remark: for this difficult task, Bulgaria needs professionals, with a specific training!

The Act describes their mission as "... to assist parents or the persons substituting for them in correcting and reforming the characters of their children." The emphasis on assisting parents rather than children and their parents, and especially the use of the terms “correcting and reforming”, are further evidence of a correctional, rather than child-centred, approach.

The specific functions of the social supervisors are described in art. 43 JDA as follows:
The social supervisor is obliged:
(a) to assist parents or the persons substituting for them in bringing up the minors;
(b) to assist in the correct organization of the tuition, labor and rest of the minors;
(c) to keep abreast of the minors’ conduct and to take care of their correct guidance;
(d) to notify the competent bodies when there is some threat to the minor’s physical or psychical development;
(e) to table the minor’s social problems for consideration and solution before the respective directorate "Social support";
(f) to present information to the respective directorate "Social support" in relation to the solution of the minor’s social problems.

Some of these functions focus on assisting children and their families. In this sense, the statutory role of social supervisors appears to be complementary to that of child pedagogical inspectors. But in the practice, there is often a confusion of roles.

According to the UN standards (Riyadh Guidelines):
"For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control."

The role of these paraprofessionals is clearly contrary to this fundamental principle of prevention.

Another issue is found in the fact that there are no legally regulated obligations for the Local Commissions to ensure subsequent care for children having committed antisocial acts or for minors perpetrators of criminal offences released from criminal liability, after the expiry of the term of the educational measures under the JDA (the same is also valid for penal sanctions under the Criminal Code). The social supervisors, as well as the child pedagogical inspectors stop any intervention as soon as the measure was administered; no protection service takes over.

93 JDA, Art. 42
94 JDA, Art. 40
95 Riyadh Guidelines, Rule 3
6) Closed institutions under the JDA

The legislation, in particular the JDA, establishes three types of closed facilities for children involved in offending or anti-social behaviour. Two are "special" schools; and one is a prison.

Socio-Pedagogical Boarding Schools (SPBS)\textsuperscript{96}: these schools are for children 8 years of age or older involved in ‘anti-social’ activity or at risk of involvement in such activities.

Educational Boarding Schools (EBS)\textsuperscript{97}: these are schools for children 8 years of age or older found to have committed ‘anti-social’ acts, who lack an environment appropriate for normal upbringing.

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

For children in conflict with the law and having to serve a sentence, they are sent to a "Reformatory": there is one reformatory for boys convicted of offences committed while 14 to 18 years of age. It is part of the prison system. For girls 14 - 18, they serve their sentence in special units of prisons for women.

As of the end of December 2013, three SPBS and four EBS function in Bulgaria. Nearly 250 children between 8 and 18 years of age are housed in these special schools. "These are children who have committed so called “delinquency” or even crimes. Usually they are placed by the Court either in EBS, or in SPBS. Placement in these special schools is one of the worst punishments and it comes immediately before imprisonment in a penitentiary, so they are in fact prisons for children. Children go to these special schools for theft, prostitution, running away from home, truancy, and so on."\textsuperscript{98}

The remarks related to the use of these special boarding schools (interview with NGOs and Card 2014) show that such closed facilities, although having a power of administrative deprivation or at least restriction of liberty, do not always use deprivation of liberty as a last resort solution and for the shortest possible period of time. The European Court drew attention to the fact that the conditions of placement in these facilities fulfil the minimum criteria to be considered as places of deprivation of liberty. The Court also observed that the duration of placement was long enough to inevitably cause negative impact to the minors. Moreover, the Court notes that "the specialists make the point that the lack of subsequent monitoring and care after the expiration of the measure not only does not help the re-socialisation of the children but it also creates with respect to them a high risk of reoffending."\textsuperscript{99}

These boarding schools are operated under the Ministry of Education and Science (MoES). According to our discussion with NGOs, there are many reported cases of serious abuse and neglect of children in these boarding schools.

In fact, the Ministry seems aware of this worrisome situation and it "... adopted a document for reform of these boarding schools in the beginning of 2013. Yet progress in the planned reform is very weak and in spite of serial violations in the socio-educational boarding schools, public institutions are not ready to embark on real reform. The MoES stressed that successful

\textsuperscript{96} JDA, art. 28 para 1
\textsuperscript{97} JDA, Art. 28 para 2 (also known as correctional-educational boarding schools)
\textsuperscript{99} Ibidem
closure of special boarding schools depends on the change of legislation and the development of alternative services.”

**B) Protection**

The child protection system (under the Child Protection Law) offers limited opportunities for support and re-socialisation of children who have committed antisocial acts and criminal offences, because all "measures" for this population of children from 8 to 18 years of age, are considered under the JDA or under the Criminal Code. This is a serious impediment to achieving the reintegration of children in conflict with the law. For the time being, there is no possibility for the Child Protection Departments to direct children-perpetrators to programmes and services offered by social service providers.

The report of the Ministry of Justice related to the possibility to involve the protective agencies in the future is without ambiguity: "The Crime Prevention Strategy does not provide for the creation of measures and services for juveniles-perpetrators of antisocial acts, other than the options for educational measures under JDA for the purpose of secondary prevention [...]. The documentation does not express either stated readiness to set aside financial resource for the creation and piloting of services directed towards assisting children and their re-socialisation, and instead the achievement of the objectives of the execution of the penalty under the Criminal Code and the educational measures under [JDA] is relied upon."  

The institutional framework of the child welfare/child protection system – which is indirectly involved in Juvenile Justice – includes:

1) **The State Agency for Child Protection**

Under the Ministry of Labour and Social Policy, the State Agency for Child Protection manages, coordinates and controls the implementation of the state policy in the area of child protection. The Chairperson of the State Agency for Child Protection organises the development and controls the implementation of national and regional programmes intended to decrease child victimization. He/she organises the process of monitoring and analysis of the state policy for child protection. A key principle of activity is the preventive measures for child security and protection. They are implemented by assistance, support and performance of services with respect to children at risk of abandonment, as well as in support for families (financial and by social services).

But to be concrete, the State Agency does not have a very important role on the ground, because it lacks the professionals (social workers) to intervene directly. Its power is limited and the role is more in control, supervision, monitoring and guidance than in direct intervention.

2) **The National Council of Child Protection**

The National Council of Child Protection (NCCP) is an organ of the State Agency for Child Protection (art. 18 CPA) with advisory and coordination functions. Its Rules of procedure were adopted by a Decree of the Council of Ministers in 2001 and entered into force in 2006. This organ has a very important role since twelve non-profit organisations are elected as its...
members. The key functions of the NCCP include: consulting the Chairman of the State Agency for Child Protection on the National Strategy for Children and the National Programme for Child Protection, the program policy and the legislation in the field of child protection; proposing, discussing and coordinating strategic priorities of the state policy for child protection and coordinating financial resources; facilitating cooperation with the non-profit purpose of forming and carrying out state policy on child protection; monitoring the implementation of national, regional and international programs for child protection.

During the last sessions in 2013, the National Council for Child Protection discussed the consolidated third, fourth and fifth report of the Republic of Bulgaria for the implementation of the UN Convention on the Rights of the Child as well as the mechanism for dealing with unaccompanied refugee children.

3) National Council for Crime Prevention

This is the body which will replace the State and Social Consultative Crime Prevention Commission (a collective body closed down by the Decree of the Council of Ministers creating the National Council for Crime Prevention in September 2012). The Decree of the Council of Ministers provides in article 5 § 13 that this Council is supposed to coordinate the policies related to children in conflict with the law, and eventually the activities of the State Agency for Child Protection with those of certain Ministries (including education, health, justice, interior, culture, and youth and sport), agencies, institutions and councils, including the Central Commission on Combating Juvenile Delinquency. The powers and functions of the Council are important for the pursuit and coordination of the national crime prevention policy, but for the time being\(^{102}\), the newly created Council still does not have rules for organisation of its activity, did not have meetings, nor has it taken over the strategy implementation functions of the State and Social Consultative Crime Prevention Commission.

4) The Social Assistance Agency

This is an executive agency under the Minister of Labour and Social Policy, whose role is to implement the social assistance state policy. Social assistance is based on social work as an individual approach, and evaluation of the specific needs of the persons and families are applied. Social assistance is implemented by the granting of financial aid and by social services. A part of the activities performed by the Social Assistance Agency play an important supplementing role to the crime prevention policies.

5) Child Protection Departments (CPD)

Under the responsibility of the Social Assistance Agency, the Child Protection Departments are established at the municipal level (264 municipalities) in the 28 regions of the country and they are part of municipal Social Assistance Directorates (SAD).

They have professional social workers, who are general practitioners and who take care of all the local social problems. In principle they have a university degree in Education, Psychology or Social work, but no specific training for the protection and for the socio-educational intervention towards children, and they are considerably burdened by their various activities.

Throughout country, there would be no more than 220 social workers connected with 171 Child Protection Departments.

\(^{102}\) End of June 2014
6) Non-governmental organisations

There are a lot of NGOs in Bulgaria that provide different activities and services for the children in general, for prevention and qualified intervention in Juvenile Justice in particular. A national network of these NGOs exist as well (National Network for Children). The National Network for Children - Bulgaria (NNC) is a consortium of 122 organisations from across the country working in the field of children and families. The organisation's mission is to strengthen and facilitate cooperation between NGOs and all stakeholders, and to ensure the rights and welfare of children.

"The non-governmental sector is an important part of the crime prevention system. Non-governmental organisations implement civil monitoring over the critical social spheres, which are relevant to crime prevention. The cooperation of state institutions with civil associations is expressed in the implementation of joint projects, plans and programmes in the area of prevention, the use of the expert potential of the organisations and the popularisation of the benefits from the preventive activity."

The question is whether and to what extents is NGOs sector consulted. Bulgaria is facing different reforms and it would be important to provide an opportunity for NGO sector to use its experience and expertise in the planning and implementation of new policies, services, and authorities.

Recommendation

a) It would also be important that the National Council of Child Protection include representatives of all stakeholders (State and non-State actors) in the future work and to involve them in all the legislative reforms.

VI) Coordination and data collection

A) Coordination

Each generation of legal instruments (the JDA 1958, the CC, the CCP and the Child Protection Law) introduced its own system and institutions, without worrying about a common vision and about coordinated actions; there are a lot of discrepancies between them: problems of communication, of coordination and of cooperation. It is also not surprising to encounter institutional conflicts.

The JDA works with “children in need of help” and enforces measures for “social defence and development”\textsuperscript{104}; but the Local Commissions enforce principally educational (reformative) measures and do not provide for protection. Through this legislative division of the tasks of the commissions, the children, accused of anti-social acts are de facto excluded from the category “children in need of help”.

"Statistics shown that the Local Commissions for Counteracting Juvenile Delinquency have acted primarily as institutions to punish criminal behaviour, although their main intention had been to respond to non-criminal antisocial acts among children. The so-called “Child

\textsuperscript{103} MOJ Report 2013, p.16
\textsuperscript{104} JDA, Art. 10, para 1
pedagogical offices” (counselling facilities) perform a mix of functions that stand in the way of identifying unequivocally the identity and role of these facilities in the justice for children system.\footnote{A government policy concept in the area of justice For children, p. 5, 1.6}

It is often very difficult to clearly determine in which capacities the child participate in the official and public intervention: as an offender? then he/she will be heard by the Justice system (JDA and CC) or as a child at risk? or as a victim? In which cases he/she will need the intervention of the protection bodies according the Child Protection Act. In some cases there is an overlap of interventions.

In our view, it is obvious that the main obstacle is not the Child Protection Act, but the nature and definition of anti-social acts and of status offences which causes professionals to misinterpret notions such as runaway, escape from home, truancy, alcohol consumption, vagrancy and to find pretexts for quasi-penal intervention, where there must be welfare answers. These behavioural issues indicate problems in relation to the care for the child and are often conditioned by grave problems in family, in schools, at work, and the environment in which the child is growing-up. Confusing them with delinquency, as already discussed, does not provide solutions, but rather creates new problems.

"The interaction and coordination of action in cases of children suspected for, accused of and found guilty of committing crimes and antisocial acts are formally regulated, but the actual interaction and coordination of the efforts of the state institutions in the best interests of the child and society are insufficient. One of the key reasons for this is that in the legislation and in the practice a child-offender, a child-victim and a child that has committed a crime or an anti-social act but is at the same time a victim or a child at risk within the meaning of Child Protection Act.\footnote{MOJ Report 2013, p. 9}"

Furthermore, it must be noted, with regard to the effective legal (definitions) and institutional activities, bodies and (professionals) framework, that there is no relation between the educational - reformative measures under the JDA and the provision of social services for children by the State, as well as with the measures of protection as envisaged in the Child Protection Act. One impressive fact is that the opportunities provided by the Regional Social Assistance Directorate, the Child Protection Departments and the providers of services, which have a serious potential for local pursuit of the preventive policy, are not taken into account by the Juvenile Justice System!

The Concept for state policy in the area of child justice provides for the development of new services or for increasing the capacity of the existing services in the community with respect to children with “behavioural deviations”. One can plead for having specialised professional foster care differentiated in accordance with the types of risks the child is exposed to and the peculiarities of the child’s educational, instructional, health and other needs, and programs for intensive treatment in the community (educational, professional and other consultation and direction, educational services, etc.), in closed-type and simulated isolation centres, etc.
Early intervention and special cooperation between the Police and the Social Services was developed in the cases of minor criminal offences. When a minor is arrested, a quick cooperation is established between the police, the family of the child and the Social Services, who provide counselling independently from the legal procedures.

**B) Concrete obligations?**

The Code of Criminal Procedure does not contain regulation of compulsory participation of the Social Assistance Directorate at any stage of either the pre-trial or trial proceedings. Article 387 of CCP establishes only an obligation for the investigation bodies to collect personal data on the child's circumstances, but there is no established obligation for notifying the Social Assistance Directorate or requirement to draw up and submit a social report for the purposes of the investigation. The practice shows that the body leading the investigation (in general the Prosecutor) requires a report from the so called Child Pedagogical Inspectors under the Local Commissions but it rarely requires specialised evaluation for the child.

*Local Commissions:* there is also no obligation for a representative of the Social Assistance Directorate to attend the hearing of an educational case by a Local Commission. When the case is scheduled, the Social Assistance Directorate is to be notified, but participation in the very procedure is not compulsory. The participation of a representative of the Social Assistance Directorate in the educational case is only compulsory in cases when no trustee or attorney-at-law is specified and in these cases only, the child’s rights and legal interests are defended by a representative of the Social Assistance Directorate\(^{108}\).

*Courts:* compulsory participation of a representative of the Social Assistance Directorate is missing at the stage of court procedure too. It is at the discretion of the court to invite a Child pedagogical Inspector or a teacher from the school where the child studies to participate, but there is no requirement for the preparation of a specialised social report\(^{109}\). Specialisation and capacity are not observed in the child protection system and the social assistance system with respect to juvenile perpetrators of antisocial acts and crimes. These children almost always fall into the group of children at risk within the meaning of Child Protection Act, but are not perceived as clients of the protection system on the part of the Child Protection Departments.

*Subsequent care:* the same is valid for the follow up of the cases after completion of the measures: there are no obligation for the Local Commissions (and theirs inspectors and/or social supervisors), nor for the protection bodies to ensure subsequent care for children perpetrators after the expiry of the term of the "educational" measures under the JDA and the penal sanctions under the Criminal Code.

At the local level, there are many examples of good local initiatives but good practices do not have high visibility and information is not collected for them nationally, which prevents their wider distribution, adaptation and inclusion in the national prevention policy.

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\(^{108}\) Art. 19, para 4 JDA

\(^{109}\) Art. 391(2) CCP
C) Data collection

International standards urge States to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC, such as due respect for their privacy and other safeguards.\(^{110}\) This can be realised through the establishment of a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.\(^{111}\)

The current institutional system seems to function under the conditions of lack of adequate statistical and analytical information, disruptions of the inter-institutional communication and the child policies.\(^{112}\)

According to the consolidated periodic report to the CRC Committee, Bulgaria has made a considerable progress regarding the recommendation on data collection.\(^{113}\) The Chairperson of the State Agency for Child Protection has the prerogative to create and maintain a National Information System (NIS) that collects information from the Child Protection Departments about children victims of violence and about the cases of children at risk on which they work.

The SACP prepares an annual National Report on the state of children in Bulgaria, which incorporates data from the National Statistical Institute (NSI), from NGOs, from research institutions and ministries, etc., with which SACP has signed agreements for the exchange of general and specialized information for the purposes of the state policy in the area of child protection.\(^{114}\) However, the databases of various institutions involved in policies and activities related to the rights and welfare of children still “rest on” a multitude of diverse indicators, insofar as the collection of the data and their publication is done according to different methods and for different purposes.\(^{115}\)

**Recommendations**

a) The function of coordination could be assigned to the National Crime Prevention Council, once it is active.

b) Nation-wide programmes for monitoring and support of juvenile perpetrators of antisocial acts and minor perpetrators of criminal offences must be initiated. If there are any mechanisms and projects they are local and last for a limited period of time; they are not popularized and hence they cover a small number of juveniles and do not have a big effect on the risk of recidivism or victimization.

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\(^{110}\) Committee on the Rights of the Child, General Comment No. 10, “Children’s rights in Juvenile Justice”, 2007, CRC/C/GC/10., para 98; also Beijing Rule 8

\(^{111}\) Beijing Rule 30.3

\(^{112}\) Ministry of Justice (MOJ), Juvenile Justice System in Bulgaria: Analysis of the effective legal and institutional framework, Report, 2013

\(^{113}\) Consolidated Report: Third, Fourth and Fifth Periodic Review Republic of Bulgaria 2008-2012, CRC_C_BGR_3-5_6635_E, para. 28

\(^{114}\) Idem, paras. 29-31

\(^{115}\) Idem., para. 32
c) Coordination between the Juvenile Justice System and the Protection System should be established in order to ensure that the best interests of the child are respected when dealing with children in conflict/contact with the law and children at risk;

d) The presentation of specialised social reports on personal circumstances of the child has to be mandatory before the courts, in order to distinguish behavioural issues from traumatic experiences; the CPD/Social Assistance Directorates have to be notified of the case.

e) The follow-up of measures and criminal interventions has to be organised, implemented and monitored.

f) A data management system and indicators relevant to juvenile justice should be developed in order to support informed decision making and future reforms.

VII) Training of professionals

The international standards encourage States to promote a specialised preparation of professional working with children. It is essential for the quality of the administration of Juvenile Justice that all the professionals involved in law enforcement and the judiciary receive appropriate training organized in a systematic and ongoing manner. Such training should include presentation of the content and meaning of the provisions of the Convention on the Rights of the Child and other relevant international standards and practices, as well as information on the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities, the culture and trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings.

The 1985 Beijing Rules provide in rule 22.1 that “Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases”. The commentary to the Beijing Rules further specifies that the authorities in the juvenile justice system may come from different background, but that a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required for all of them. This is considered as important in terms of the organizational specialization and independence of the competent authority. The “qualities of character and the professional qualifications necessary to work with juveniles and their families” should also be taken into consideration during the recruitment process.


117 General Comment No.10 (2007), p. 97

118 http://www.un.org/documents/ga/res/40/a40r033.htm

119 Rule 128.1 of the CoE Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures European Rules for Juvenile Offenders
In Bulgaria, the Code of Criminal Procedure requires that investigative authorities have special training when they are investigating a case where the offender is a minor. There is no such requirement in the CCP with regards to children, who participate in another capacity.

Following the 2011 amendment of the Law on Judiciary, the National Institute of Justice adopted a new programme of compulsory training for young magistrates. This programme announced in 2012 covers, among others, hearing of minors, mediation and building a European judicial area reform. Nevertheless, according to a study released in Bulgaria in 2013, including interviews with magistrates enrolled into these programmes, the scope was broader and juvenile justice was not part of it.

Concerns of insufficient training in order to meet the needs of a child in conflict with law are also pointed out by social workers and psychologists from Child Protection Departments (CPD). The work-load and frequent change of staff in the institutions (especially in CPD) are additional difficulties in the work process with parents and children, and a fragmentation of the activities.

With regards to the other institutions involved in cases with children, systematic training is missing as well, but only occasionally professionals participate in trainings. At the Police, the Child Pedagogical Offices’ (CPO) inspectors, who are police officers with a background in pedagogy, are usually the interlocutors in cases related to children. Despite their specialised education as pedagogues, their attitude towards children is not necessarily based on the best interests of the child. At the Local Commissions, responsible for imposing and implementing educational measures, there is no obligation either for a specific training on juvenile justice or child-friendly justice skills. The absence of such trainings may lead to the conduct of conversations that are moralizing and condemning.

Basically, all specialists in the system require some intensive training, clarification of their job profile and competencies that are required for work with children in conflict with law.

**Turkey**

There is a Children’s Police in Turkey and its staff includes social workers, psychologists and internet technicians as well as police officers, who have all received an intensive in-service training. A psychological questionnaire for the evaluation of candidates has been developed and was used to screen the entire staff of the Children’s Police.

Last but not least, the States that have ratified the CRC undertake obligations and thus have duties to develop training and capacity building for all those working with children. Such trainings contribute to developing attitudes and practices that actively promote realization of

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120 Code of Criminal Procedure, art. 385
121 MOJ Report, 2013, p. 5
123 Report: Analysis of juvenile justice system and child protection system in the regions of Sliven and Yambol – do they answer children’s needs?, p. 15
124 Idem., p. 27
125 Idem., p. 52
127 UN Committee on the Rights of the Child, General Comment n°5 (2003), CRC/GC/2003/5, para. 53-55
the rights of the child. While relevant to all areas of work for or with children, this obligation is particularly important in the context of Juvenile Justice where the long-term impacts on child development are significant.

**Recommendations**

a) Programmes should be developed for initial and follow-up multidisciplinary trainings for professional (current and future) involved in cases with children.

b) Appropriate training should be required and access to these trainings should be provided to all professional working with children in conflict/contact with the law. This may require amendments of the CCP and the Law on Judiciary. Alternatively, provisions should be adopted in a new criminal law for minors replacing the 1958 Juvenile Delinquency Act.

c) The Code of Criminal Procedure should be amended to ensure that all children, regardless of their legal status (offenders, victims or witnesses) be addressed by a trained person when involved in legal proceedings.

**VIII) Specialisation**

Training and specialisation go hand in hand, are mutually reinforcing, and may be a good opportunity for improving coordination between the different institutions. While most of the international texts on Juvenile Justice recognise the importance of specialisation, they do not prescribe a unique model to follow in all contexts; it is at the discretion of the State.

The Convention on the Rights of the Child stipulates that the States should “seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law…”. On one hand, this implies the establishment of specialised laws and procedures for children in conflict with the law. On the other hand, the creation of specialised authorities and institutions is encouraged. The specialisation derives from the protection model of Juvenile Justice stating that children need particular protection because of their vulnerability and need for education. A specialised system should be engaged as of the first contact of children with the justice system and throughout the whole process regardless of the nature of the offence.

**A) Specific Juvenile Criminal Law**

The dispositions specifically applicable to children in conflict with the law can “be laid down in special chapters of the general criminal and procedural law, or be brought together in a separate act or law on juvenile justice.” An argument justifying separate a law or act is that Juvenile Justice has a different purpose in comparison with criminal justice for adults.

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128 CCPR art. 14 (4)
129 art.40 (3) of the Convention on the Rights of the Child
130 Beijing Rules, Rule 4
131 General Comment No. 10 on Children's rights in juvenile justice, CRC/C/GC/10, p.91
separate law allows spelling it out clearly. References can be made to the general criminal law or all the relevant dispositions can be contained into the specific law.

**Switzerland**

For instance, in the new Swiss Juvenile Criminal Law Act (JCLA) and the Juvenile Criminal Procedure Law (JCPL) enforced in 2007 and 2011 respectively, a reference is made to a number of relevant articles of the Criminal Code and the Code of Criminal Procedure. On the one hand, article 1 of the JCLA makes reference to articles of the CC applicable to children in conflict with the law, but underlining the importance to consider the principles provided in its article 2, such as the consideration of age and development of the child. On the other hand, the JCPL stipulates that the CPP is applicable, except for some articles noted in article 3.2 of the JCPL; and again when applying this articles to children, the court should interpret them in the light of the principles noted in JCLA; article 4.

However, in a number of European countries, the main regulations for juvenile offenders are still found in a general criminal code, while a specific civil law regulates juvenile offenders and juveniles in danger or showing antisocial behaviour. This is also the case in Bulgaria. The main provisions on Juvenile Justice can be found in the Criminal Code, in the Code of Criminal Procedure and in the Juvenile Delinquency Act (Law on combating antisocial behaviours of juveniles and minors).

While the first two are relatively new, the third is considerably outdated and its abolition and replacement is largely promoted by professionals and civil society in Bulgaria and endorsed by the authorities in the Concept for State policy in the field of juvenile justice.

Actually, there is no consensus in Europe in terms of the best way to follow in Juvenile Justice, but it can be noted that the states having recently modified their Juvenile Justice system tend to adopt a separate law, with a few exceptions (Romania, Hungary). Therefore, the current reform of the Bulgarian juvenile justice system is an opportunity for Bulgaria to adopt a separate criminal law for minors and thus ensure coherence and regulate the field comprehensively and in a child-friendly manner. Here, there are two possible ways to legislate: justice for children or juvenile justice. The first covers children in conflict with the law, children who are victims or witnesses of crimes, and children who may be in contact with the justice system for other reasons such as custody, protection or inheritance (child parties to a justice process). It includes aspects such as prevention, diversion, rehabilitation, assistance services and protection measures. While the Juvenile Justices approach only covers children that came into conflict with the law. Considering the urgent need for reform in the Bulgarian legal and institutional framework dealing with juvenile delinquency, in order to

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132 A study on the juvenile justice systems in Europe shows that half of the European counties adopted in recent reforms separate juvenile criminal laws and two countries have their main regulations for juvenile offenders in a youth welfare law (Poland and Belgium).

133 There was a strong will for the adoption of a special separate juvenile delinquency act and the concept of the new Code of Juvenile Criminal Justice was developed in 2006. Unfortunately, it seems it was not adopted.

ensure conformity with international standards and the respect of children’s rights, the latter seems to be more appropriate approach.

In the following text boxes we propose a few examples of laws specific to juveniles and separate from the general (“adult”) Criminal Code.

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**THE MODEL LAW ON JUVENILE JUSTICE**

**Part I: General provisions**
Chapter 1: Preliminary provisions: purpose and definitions
Chapter 2: Competences: specialized authorities
Chapter 3: Criminal responsibility: age, assessment and status offences

**Part II: Juvenile Justice Proceedings**
Chapter 1: Juvenile justice principles and procedural rights
Chapter 2: Alternative measures to judicial proceedings (diversionary measures)
Chapter 3: Pre-trial proceedings: rights, prohibition of the use of force, intimate search of a child, application of alternative measures and pre-trial detention, review
Chapter 4: Trial: rights
- to fair and speedy trial,
- to information,
- to legal aid,
- to an interpreter during trial
- to privacy during trial
- to participation during trial
- to hear evidence
- not to be compelled to give testimony or confess guilt
- to appeal
Chapter 5: Sentencing: purpose, principles, social enquiry report, non-custodial and custodial sentences, implementation, criminal record
Chapter 6: Children under custodial sentence: purpose, principles and conditions of detention, children with special needs, education, work, recreation, non-discrimination, staffing, disciplinary measures, complaint and requests, transfer
Chapter 7: Aftercare and reintegration: preparation for and conditions of release, support and supervision after release

*Justice in Matters Involving Children in Conflict with the Law Model Law on Juvenile Justice and Related Commentary, UN, UNODC, 2013*

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**SERBIA: THE LAW ON JUVENILE CRIMINAL OFFENDERS AND CRIMINAL PROTECTION OF JUVENILES, January 1st, 2006**

**Part One - Basic provisions:** Application of the Law (Art. 1), Exclusion of Criminal Sanctions Against Children (Art. 2), Age of Offender (Art. 3), Application of General Provisions of the Criminal Law (Art. 4)

**Part Two - Criminal provisions on juveniles**

1. **Provisions of substantive criminal law**
   Diversion orders (Articles 5-8): General Rules, Purpose, Type, Choice
   1. Types of Criminal sanctions (Article 9)
   2. Purpose of Educational Measures and Juvenile Prison Sentences (Art.10)
   3. Educational Measures (Articles 11-27): Types, Choice, Admonition by the Court, Alternative Sanctioning, Increased Supervision by Parent, Adoptive Parent or Guardian, in Foster Family, by Guardianship Authority, with Daily Attendance in Relevant Juvenile, Rehabilitation and Educational Institution, Alternative Sanctioning with Increased Supervision Measures, Remand to an Educational...
Institution, Remand to a Correctional Institution, Probation on Remand, Remand to Special Institution for Medical Treatment and Acquiring Social Skills, Suspension of Enforcement and Substitution of the Ordered, Reconsideration of Educational Measures, Ordering of Educational Measure for Joinder of Criminal Offences, Disclosing information on Ordered Educational Measures;

4. Juvenile Prison Sentence (Articles 28-38): Punishment of Elder Juveniles, Juvenile Prison, Length, Release on Probation and Limitations on Enforcement of Juvenile Prison Sentence, Disclosing Information, Suspension of Educational Measure Due to Conviction to Juvenile, Detention or Prison, effect of Educational Measures and Juvenile Prison Sentence, Records, Rehabilitation

5. Application of Security Measures (Article 39)

6. Application of Provisions on Juveniles to Adults: Ordering of Criminal Sanctions to Adults for Acts Committed as Juveniles (Art. 40), Ordering of Educational Measures to Young Adults (Art. 41)

II. Judicial authorities and juvenile criminal proceedings

Competent authorities for adjudication (Articles 42-45)

Juvenile criminal proceedings: General Provisions (Articles 46-56), Initiating of Proceedings (Articles 57-62), Preparatory Proceedings (Articles 63-72), Procedure before the Juvenile Court Bench (Articles 73-79), Legal Remedies (Articles 80-83), Court Supervision Over Enforcement of Measures (Article 84), Suspension of Enforcement and Varying of the Order on Educational Measures (Article 85)

III. Application of diversion orders and enforcement of criminal sanctions

1. Application of diversion orders (Article 86)

2. Basic provisions on enforcement of criminal sanctions (Articles 87-97)

3. Enforcement of educational measures
   1. General Provisions (Articles 98-100)
   2. Enforcement of Alternative Sanctioning Measures (Article 101)
   3. Enforcement of Increased Supervision Measures (Articles 102-112)
   4. Enforcement of Institutional Measures (Articles 113-136)

4. Enforcement of juvenile prison sentence (Articles 137-145)

5. Special provisions on enforcement of security measures (Article 146)

6. Assistance after enforcement of institutional educational measures and juvenile prison (Art. 147-149)

Part Three - Special provisions on protection of juveniles as victims in criminal proceedings (Articles 150-157)

Part Four – Penal provisions (Article 158)

Part Five - Transitional and Final Provisions (Articles 159-169)

MONTENEGRO: ACT OF TREATMENT OF JUVENILES IN CRIMINAL PROCEEDINGS, 20 December 2011

Title One - General provisions (Articles 1-8)

Title Two - Criminal justice provisions on juveniles as criminal offenders

I. Diversion measures (Articles 9-13)

II. Criminal sanctions (Articles 14-39)

III. Application of juvenile justice provisions to adults (Articles 40-41)

Title Three - Judicial authorities and juvenile criminal proceedings

I. Jurisdiction over juvenile proceedings (Articles 42-46)

II. Procedural Rules for juvenile proceedings (Articles 47-63)

III. Course of proceedings (Articles 64-86)

IV. Legal Remedies (Articles 87-89)

Title Four - Special provisions on the protection of juveniles as participants in criminal proceedings (Articles 90-97)

Title Five - Control of criminal sanctions enforcement (Articles 98-104)


B) Special Institutions

The main purpose of the specialisation of institutions is to “avoid harm to [the child] with due regard to the circumstances of the case”\(^{135}\). This means that the use of “harsh language, physical violence or exposure to the environment” should be prevented\(^{136}\).

At European level, the Council of Europe recommends that the Juvenile Justice system establish youth courts, “official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services and non-governmental bodies, such as victim and witness support.”\(^{137}\)

Additionally, the Committee on the Rights of the Child explains that “a comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor’s office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.”\(^{138}\)

In the case of Bulgaria, there is currently no specialisation in the area of child justice in general courts of justice, and the law allows the allocation of judges to civil and criminal divisions within regional and district courts only\(^{139}\), where the staffing is sufficient to guarantee the principle of random allocation of cases. Moreover, the law does not rule out the setting-up of specialised panels within these divisions and the allocation of specific cases, including children, only to the judges of the relevant panel. This practice in some courts was considered by the Supreme Court of Cassation as a prerequisite for the improvement of justice administration activity\(^{140}\). This approach to specialisation of justice is among the approaches recommended by the Committee. The “appointment of specialized judges or magistrates for dealing with cases of juvenile justice” is another hypothesis where the creation of specialised courts in not “immediately feasible for practical reasons”.\(^{141}\) Nonetheless, the lack of any requirement for specialised training of the judges working with children is not in conformity with international and European standards on juvenile justice.

In February 2012, a specialized Department “Combating crimes committed by minors and offenses against minors” was set up within the Supreme Prosecutor's Office of Cassation by an order of the Prosecutor General\(^{142}\). This Department is supported by an internal network of

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\(^{135}\) Beijing Rule 10(3)
\(^{136}\) Commentary to the Beijing Rule 10(3)
\(^{137}\) CoE Recommendation Rec (2003) 20
\(^{138}\) CRC General Comment n°10 (2007), CRC/C/GC/10, para. 92
\(^{139}\) Article 77 (2) and Article 84(2) of the Judicial System Act
\(^{140}\) Decree No.6 of the Plenum of the Supreme Court of 30 October 1975
\(^{141}\) CRC General Comment n°10 (2007), CRC/C/GC/10, para. 93
\(^{142}\) The order was issued on the grounds of the powers provided for in Article 138(1) of the Judicial System Act.
prosecutors covering all the levels within the system of the Prosecutor’s Office. There is an approved list of at least one representative of each prosecutor’s office\textsuperscript{143} and these specialized prosecutors are instructed to introduce and apply at all stages of the process equal standards and practices in the resolution of identical cases of crimes committed by minors and of offences against minors.\textsuperscript{144} Even though there is no requirement for the specialised prosecutors to have completed specific training prior to their appointment, it is provided for that they will predominantly take part in training activities in matters related to child justice, as well as that they will subsequently share their experience with other prosecutors of the same unit. The positive attitude of prosecutors to the specialisation in child justice and the initiated reorganisation to meet the international requirements is an important step forward for providing child-friendly justice to children.

With respect to the Police, an inspector at the Child Pedagogical Office deals with the cases of juvenile offenders. However, as previously discuss their preparation for handling child cases may be questioned.

As for the defender, the Code of Criminal Procedure provides for the compulsory participation of a defender, but the only requirement is that this person is a licensed attorney-at-law\textsuperscript{145}. Unfortunately, this person is not required to have any special training.\textsuperscript{146}

**IX) Conclusion and Recommendations**

The present report reviews the main normative and institutional framework of the current Bulgarian Juvenile Justice system and where possible the judicial practice with regards to children in conflict with the law and children in contact with the law.

A certain number of positive findings can be pointed out and we encourage their preservation and further development. First, the minimum age of criminal responsibility set at 14 and the special consideration of the age group of young adults according to provisions in the Criminal Code are strongly encouraged and in full respect with international standard on Juvenile Justice. We also commend the establishment of rooms adapted for child-friendly hearing of child-witnesses in criminal process, the so-called “Blue Rooms”. However, they should be more widely spread through the country and more actively employed by the interviewing bodies.

Furthermore, we acknowledge the efforts made in Bulgaria to improve services and policies relevant for children in conflict or contact with the law.\textsuperscript{147} The adoption of the Concept for Juvenile Justice (adopted on 3 August 2011) and of the Road Map on the implementation of the Policy Concept for Juvenile Justice (approved on 1 March 2013) represent very positive steps for the improvement of the Juvenile Justice System. These two documents, but not limited to, propose a relatively comprehensive vision of the reforms that urge to be undertaken in order to reach better compliance with international standards on children’s rights and

\textsuperscript{143} According to 2013 mid-term report of the Supreme Prosecutor’s Office of Cassation, there were 194 specialised prosecutors in Bulgaria that were allocated to cases involving children. http://www.prb.bg/main/bg/Information/3878/

\textsuperscript{144} MOJ Report, 2013, p. 5

\textsuperscript{145} Article 94(1)(1) of the Code of Criminal Procedure

\textsuperscript{146} MOJ Report, 2013, p. 25: cf. part II.B of the present report

\textsuperscript{147} Consolidated Report: Third, Fourth and Fifth Periodic Review Republic of Bulgaria 2008–2012, CRC_C_BGR_3-5_6635_E
juvenile justice. The objectives that the Road Map seek to achieve are strongly encouraged, such as:

- comprehensive juvenile justice policy;
- legislative amendments are envisaged in this respect (CC, CPC, the MoI Act, the Legal Aid Act, etc.), including the drafting of new legislation with respect to children in conflict with the law;\(^{148}\);
- administrative reform ensuring a holistic and multidisciplinary approach and improvement of the efficiency and effectiveness of the policies;
- establishment of services in family environment and community;
- specialisation in the institutional system and improvement of capacities of all professionals.

Additionally, the organisation of seminars, conferences and the consultations on national and international level are a good method for sharing and exchanging best practices at nationally and with international partners.

However, there are still a number of shortcomings that need to be addressed in the Juvenile Justice reforms currently underway. If a hierarchy can be set, a critical limit is that the spirit of the current Juvenile Justice framework is predominantly paternalistic and punitive. The educational measures are retributive with resort to deprivation of liberty more often than the principle of last resort would require and a little or no space at all is given to diversion and alternative measures such as mediation, community service orders and other restorative practices.

Another important shortcoming is the existence of a category of underage children between 8 and 14 that can be treated in similar manner as the children over the minimum age of criminal responsibility. The creation of specialised units, judges and more generally professionals specifically trained to deal with juvenile delinquency is still not achieved as well. The consideration of the best interests of the child and the determination of his/her personal situation is still not a clear mandatory step in many proceedings, considering different status for child without the necessary expertise. Other procedural guarantees are also poorly defined, namely with regards to administrative procedures.

These are some of the main issues that need further improvement. The main recommendations are drawn below.

We do hope that this analysis and its conclusions will be useful for Bulgaria and will serve the steps led in the country to adapt its system to the international standards and will result in the creation of courts specialized for the children in conflict and in contact with the law in a near future.

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\(^{148}\) *Idem.* para. 362-366
**Final Recommendations**

**Definitions**

1) harmonize definitions to make them compatible with the international standards;

2) abolish the categories of underage children from 8 to 14 and adopt only one category for children below the age of 14;

**Normative framework**

3) develop the system of penal responses for children in conflict with the law, providing measures along with penalties;

4) open the Criminal Code and the Code of Criminal Procedure to restorative justice (mediation, community service orders...);

5) put in place a diversion system which is in conformity with the international standards and in the hands of the police, the prosecutors and the judges;

6) respect the right of the child to be informed about the charges and the way the pre-trial and the trial is conducted not only on paper, but also in practice;

7) introduce, as a crucially important, all over the country child friendly spaces for hearing the child in conflict or in contact with the law (Blue rooms);

8) amend the CCP to require that juvenile suspects or accused juveniles may not be detained for more than 24 hours without a court order;

9) amend the CCP in the sense of limiting the possible detention of children in conflict with the law before and during trial to a maximum of six months, unless special circumstances justify the extension of this period;

10) adopt new approach to the prevention of offending, to overcome the punitive orientation of the Juvenile Delinquency Act and eventually replace the existing JDA with a new law;

11) ensure that the minimal procedural guarantees are respected at all stages of the proceedings to prevent that lower standards are applied by the authorities acting under the JDA to children at risk or “minors” that have behaved “antisocially” than the standards applied under the CCP;

12) reform the educational institutions (SPBS, EBS, Homes, etc.) according to the judgement of the ECtHR to allow challenging the legality of a placement before a judicial authority;

**Institutional framework**

13) clarify the status of the CPO Inspector, and social supervisors in order to prevent confusion of roles of the different persons who intervene;

14) review their domain of intervention and the coordination between them;

15) ensure that the National Council of Child Protection include representatives of all stakeholders in the future work, involving them in all the legislative reforms;

16) adopt rules for the National Council for Crime Prevention to ensure that its coordination function in the field of juvenile justice is fulfilled;
**Coordination and data collection**

17) The function of coordination could be assigned to the National Crime Prevention Council, once it is active;

18) develop a nation-wide programmes for monitoring and support of juvenile perpetrators of antisocial acts and minor perpetrators of criminal offences;

19) establish coordination between the Juvenile Justice System and the Child Protection System in order to ensure that the best interests of the child are respected when dealing with children in conflict/contact with the law and children at risk;

20) enforce mandatory presentation of specialised social reports on the personal circumstances of the child before the courts to distinguish behavioural issues form traumatic experiences;

21) organise, implement and monitor the follow-up of measures and criminal interventions;

22) develop a data management system and indicators relevant to juvenile justice to support informed policy-making and future reforms.

**Training**

23) develop programmes for initial and follow-up multidisciplinary trainings for professional (current and future) involved in cases with children;

24) Appropriate training should be required and access to these trainings should be provided to all professional working with children in conflict/contact with the law. This may require amendments of the CCP and the Law on Judiciary; alternatively, provisions should be adopted in a new criminal law for minors replacing the 1958 Juvenile Delinquency Act;

25) amend the relevant legislation to ensure that all children, regardless of their legal status (offenders, victims or witnesses) be addressed by a trained person when involved in legal proceedings;

**Specialisation**

26) adopt new specialised criminal law for minors to replace the current juvenile justice normative and institutional framework in order to ensure conformity with international standards and children’s rights;

27) establish specialised units of trained juvenile judges within the court system throughout the whole country;

28) strengthen the specialisation of prosecutors dealing with cases of juvenile justice and make training on children’s rights, child-friendly justice and how to communicate with minors mandatory;

29) support the setting-up of specialised defenders, social workers, and other professional working with children in conflict or in contact with the law.