

ALTERNATIVE WAYS TO ADDRESS YOUTH (AWAY) Project

Children in conflict with the law
Review of Diversion in the Juvenile Justice Systems of
Belgium, Bulgaria, Croatia, Hungary and Romania



RESEARCH SYNTHESIS REPORT

Terre des hommes Foundation 'Lausanne' in Hungary

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ABBREVIATIONS

ADCO - Act Deemed to Constitute an Offence (Belgium)

AWAY - Alternative Ways to Address Youth project

CEE - Central and Eastern Europe

CPO - Child Pedagogical Office (Bulgaria)

CBS - Correctional Boarding Schools (Bulgaria)

CPD - the Child Protection Department (Romania)

Directives - Three EU directives on justice: EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings; EU Directive 2012/13 on the rights to information in criminal proceedings; EU Directive 2012/29 on the rights, support and protection of victims of crime

ECtHR - European Court of Human Rights

ERAS - Educational and Restorative Actions Services (Belgium)

EU - European Union

FASBMUPA - Fighting against Anti-Social Behaviour of Minor and Underage Persons Act (Bulgaria)

GRC - Group Restorative Conferencing (Belgium)

IJJO - International Juvenile Justice Observatory (Belgium)

PDJS - Program for the Development of the Judicial System (Bulgaria)

SPBS - Socio-Pedagogical Boarding Schools (Bulgaria)

UNCRC - United Nations Convention on the Rights of the Child

EXECUTIVE SUMMARY

Juvenile justice systems in Europe have undergone considerable change over the past 20 years, particularly those in Central and Eastern Europe (CEE). These legal and structural changes concerned the implementation of alternative measures, diversion, victim-offender mediation and other restorative techniques in the majority of the countries in the CEE region. Judicial systems in the countries involved in this project (Belgium, Bulgaria, Croatia, Hungary, and Romania) widely vary; in some countries only specialized juvenile police, prosecutors and courts can take part in juvenile criminal cases, while in other countries there are no specialized departments or even trained juvenile police officers, or other juvenile professionals.

Each country has its own approach to juvenile offenders and for processing their cases. De-

spite an internationally accepted definition of diversion, there are few comparable data sets or practices in the four CEE countries. The expressions used to describe different methods of “diversion” can be confusing as they sometimes refer to actions which do not remove a child from criminal procedures for rehabilitation and restoring the child’s place in society. In fact, some of the “educational” measures described as “diversion” are not so different from detention in prison.

Despite statistical evidence to the contrary, the general perception in all five countries is that juvenile criminal behaviour is on the rise. This false image has brought about different standpoints; while in some countries it provides the basis for “moral panic”, in others it has encouraged a political rhetoric for law and order. It

has also led to some countries questioning the use of alternative measures when dealing with children at risk with the law and doubts concerning their benefits. Others, in practice, have simply started to dismiss the idea of providing child-friendly and respectful treatment in cases of juvenile offenders. Raising public and professional awareness through providing an analysis of the available data on diversion practices and results, and engaging communities and adequately training professionals in dealing with juvenile offenders, may go a long way to correct this false perception.

INTRODUCTION

The Alternative Ways to Address Youth¹ project (AWAY), co-financed by the REC programme of the European Commission, has been coordinated by Terre des hommes Foundation 'Lausanne' in Hungary. Throughout 2017–2018, actions (evidence-based research, capacity building, and information campaigns) have taken place in Bulgaria, Croatia, Hungary, Romania and Belgium, all of which are EU Member States. Actions have been implemented by the following organisations: Defence for Children International (DCI, Belgium), International Juvenile Justice Observatory (IJJO, Belgium), Program for the Development of the Judicial System in Bulgaria (PDJS, Bulgaria), Brave phone (Croatia), Terre des hommes Foundation 'Lausanne' in Hungary (Hungary), PILNET (Hungary), Pressley Ridge (Hungary) and Terre des hommes Fundatia Helvetia (Romania).

As part of the project, analyses have been conducted in these countries in order to identify the challenges and obstacles for the use of diversion and to map the existing measures that present an alternative to the traditional judicial systems for children in rural areas. AWAY pro-

Most of the country reports mention, in some context, children under the age of 12 in their juvenile justice system. Some countries have no clear minimum age of criminal responsibility, and children as young as eight years of age may end up being treated as criminals by social or correctional authorities, if not the judicial system. All of the reports call for a better set of standards, procedural rules, and training in children's rights and child-friendly practices for all professionals involved in the juvenile justice system.

ject, and specifically its national reports, may contribute not only to a better understanding of how judicial systems work with juvenile offenders, but also to better outcomes through the lessons learned from interviews and focus groups conducted in each country.

Country-specific analysis was based on desk research concerning the respective judicial system and its practical operation, as well as statistics and interviews with professional stakeholders and the children involved. This was the first comprehensive research carried out on diversion practices in most of the countries involved. Therefore, the conclusions and recommendations that were derived can lead to better practices in order to meet the three EU directives on justice and protect and enact the rights of children in conflict with the law.

"They (the police) did not say anything about my rights, they just took me to the police station. It was horrible. The officers blamed me and talked to me on a very humiliating and degrading way. It was obvious that they want me to remember that night till the end of my life. They also told me that

¹ The project aims to ensure that multidisciplinary professionals are more aware and better equipped concerning diversion for arrested/suspected children. There are available services and opportunities for diversion in the project countries, but current measures are not appropriate or effective. One of the core principles of the AWAY project is child participation. Thus, we aimed to involve children in every aspect of the project, and a Child Advisory Board – involving children who are at risk with the law— was established in Bulgaria, Croatia, Hungary and Romania.

² EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings
EU Directive 2012/13 on the rights to information in criminal proceedings
EU Directive 2012/29 on the rights, support and protection of victims of crime

diversion is nothing but I will never forget their face and what happened with me at the police station. I suppose they were right." (child, age 17, Hungary)
The research outcomes include five country reports and this synthesis report, which aims to highlight the research findings.

The main research questions were:

- What are the existing measures and processes for diversion that exist in the countries under study, and in what percentage of cases of children in conflict with the law are they used?
- What factors (existing needs, gaps and pitfalls) hinder better and more frequent use of diversion and child-friendly justice practices?
- What needs to be improved in the juvenile justice system to promote diversion and restorative justice using a child-friendly approach? Belgium serves as a positive example of diversion, and was added to the project in the form

of an in-depth description of the use and outcome of mediation and group restorative conferencing in the cases of youth under the age of 18 and in conflict with the law.

Child participation was a core element of the research; more than 30 children with experience with the juvenile justice system were interviewed, as were more than 100 professionals working with children at risk with the law. More than 55 institutions were approached and 12 focus groups were organized. Focus group interviews with professionals identified the obstacles to using alternative measures and diversion, gaps in knowledge and skills, needs for changing attitudes, as well as good practices and case studies.

CHILDREN IN JUVENILE JUSTICE

Children can, from a very early age, be in conflict with the law. While legislation conveys norms acceptable in a given society, it is acknowledged that laws are only to be applied to those who are fully able to understand the consequences of their actions.³ As a result, national legislation sets an age limit under which persons are not considered fully liable for their deeds, as their capacity is not at a level that justifies full legal responsibility. Throughout Europe, on the basis of the United Nations Convention on the Rights of the Child⁴ (UNCRC) definition, legislation establishes that individuals under the age of 18 are considered as children with limited legal capacity.

The scope of the research in this project does not extend to the moral question of who is responsible when a child is found guilty of having committed a criminally punishable act. It does, however, provide some information on the con-

sequences facing the child. Being referred to a specialized institution or the care of child protection services, or being held responsible for a criminal deed may determine the future of a child; corrective measures often separate a child from mainstream society and assigns him/her a place among the misfits. If someone does not "fit" as a child, if he or she is not found suitable for society, they will likely retain this stigma into adulthood and become criminally responsible. Diversion is seen as a way to lead children off of the path that criminal acts may otherwise force them onto, and to provide an alternative without the stigmatization of a criminal record or very harsh "preventive measures" like detention in a closed institution. Diversion may provide a fresh start or second chance for a child who is not yet fully responsible for his/her actions. It also provides an opportunity for society to take part in shaping the future with accepted members. Diversion, as understood and analysed in

³ Since criminal law attaches personal liability, there is an exemption for those who, for example, are not capable of understanding the consequences of their deeds, cannot be convicted.

⁴ Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

this report, is not a panacea for juvenile crime. To start with, while diversion is defined as an active method to prevent juvenile offenders from entering criminal justice proceedings, more often than not, diversion is first offered to a child in conflict with the law *during* these proceedings. Secondly, the available statistics do not provide enough information on the circumstances and reasons for choosing diversion. If we define diversion as a method that keeps a juvenile out of “further” procedures, or one that saves him or her from criminal prosecution, the statistics offer little information as to whether diversion is a result of false accusations, a lack of evidence, abandoned charges, if court procedures were replaced with other – sometimes equally trying – procedures, or how the final outcome may act as “diversion” from a possible criminal or stigmatized life.

Apart from the spirit and articles of the UNCRC requiring that a child should primarily remain a child — which all of the countries involved in the AWAY project signed and introduced into national legislation — it is in the interest of any society to do everything in its power to keep children out of conflict with the law. If children commit an act or deed that places them in conflict with the law, and if they remain there at length, it should be seen as a warning that something is not right in their care, and protective measures should be taken. However, these can only be effective if society is aware of its own responsibility towards children, and is supportive of *actions* rather than sanctions to help them.

THE PREVALENCE OF JUVENILE OFFENCES IN FOUR OF THE PROJECT COUNTRIES

While Eurostat requests the same type of data from each Member State, juvenile crime statistics are rarely comparable. For example, each of the research countries applies the UNCRC and considers anyone under 18 years of age a child. However, while most countries set the lower age limit of criminal responsibility at 14, in Hungary, for example, it is 12 for certain offences.⁵ Furthermore, the statistics provided in the Bulgarian and Romanian reports include perpetrators under the age of 14; the way the system deals with their offences are analysed and considered diversion. In Romania, children aged 14–16 who have committed a crime without competence also fall into this category. Therefore, it is difficult to determine who the national statistics represent, even in terms of the defining the age of a child. Most criminal offences for children under the age of 14 normally fall under the competence of child

protection authorities and services, and measures are applied. Measures for these children can include “placement” with foster families, or sometimes in homes that are closed institutions. Some “educative”, “re-educative” or “corrective” facilities for children are, or closely resemble, detention centres. Some countries provide criminal statistics for the number of children in these institutions, but whether a placement/detention in these institutions is considered a diversion practice or, on the contrary, a punitive action by law, differs from country to country.

The statistics quoted in the Bulgarian, Croatian, Hungarian and Romanian reports are, in some cases, the real number of juvenile offenders. In other cases, however, they reveal only the proportion of juveniles within a larger group of offenders. The Romanian report concludes that police statistics are recorded by type of crime

⁵ These crimes are: homicide, voluntary manslaughter, battery leading to death or resulting in life-threatening injuries, act of terrorism, robbery, and plundering. See: Section 16 of the Hungarian Criminal Code (Act C of 2012 on the Criminal Code, Hungary).

and not by the age of the offender (juvenile or adult). The general impression is that while the number of juvenile (14–18 year old) offenders is strongly or slightly decreasing in these countries, and diversion is expected to gain increasing relevance in legislation and in practice, a slight downturn in the actual use of diversion has been a tendency in 2015–2016 based on data.

While statistical evidence suggests the contrary, all of the researchers reported a general belief that juvenile crime was increasing in their respective countries. Researchers attribute this to the way the media reports on criminal cases, to populations increasingly hunger for law and order or setting examples by punishment, and

in some countries, to political rhetoric that responds to and feeds off of calls for increasingly punitive actions.

Statistics, and likewise comparative analysis, are further complicated by the fact that reform of criminal legislation and/or laws affecting juvenile offenders are ongoing in most countries. As a result, some of the years in the period under investigation fell under older legislation and others under a newer set of national laws and regulations. Hence, even the six-year statistics from a single country are incomparable, and trends are difficult to establish.

Table 1. Juvenile offenders 2011–2016

		2011		2012		2013		2014		2015		2016	
Age of children		8–13	14–18	8–13	14–18	8–13	14–18	8–13	14–18	8–13	14–18	8–13	14–18
Bulgaria				1475	4829	1457	4550	1434	3968	1322	4040	1168	3812
Croatia	Reported		3376		3113		2553		1952		1739		1532
	Accused		1084		778		637		626		492		422
Hungary			11034		10056		10211		8723		7788		7623
Romania*									7816		8437		7473

* Number of those at the prosecution level

In all four countries, petty crime, namely theft and other crimes against property, is the most common type of juvenile offence. The frequency of these and other types of crime is decreasing in Bulgaria and Croatia. In Hungary, while the total number of crimes committed by juveniles has been decreasing, the number of violent crimes and crimes against property are increasing. However, due to a change in legislation, new figures on juvenile crime are not necessarily comparable to older figures. There are no data available in the Romanian report for the type of crimes committed by juveniles (as previously mentioned, Romanian police don't track the age of the perpetrator), but in 2016, 305 out of a total 454 children placed under specialized supervision, and 54 children out of 100 under residential placement were sentenced for theft. Furthermore, the most common crimes among juveniles in educative or detention centres are theft and robbery.

Statistics on recidivism among juvenile offenders are available in the Croatia and Hungary reports, both of which indicate a relatively low rate of recidivism among juveniles. However,

the Hungarian data does not provide enough statistical evidence to determine whether or not the phenomenon is due to diversion and restorative justice. The Croatian statistics suggest that recidivism among children under the age of 18 decreased in 2011–2015, but in 2016, while the rate of recidivism for the same type of crime continued to fall, a sudden leap was noted in previous offenders committing a different type of offence.

Juvenile crime statistics for males and females are available in the Bulgarian, Croatian and Hungarian reports; male juvenile offenders outnumber females. The proportion of girls accused of criminal acts in Bulgaria is regularly around 20 percent of the total number of all of those accused. In Croatia, girls account for 7–12 percent of all juvenile crime reported annually, and 5–10 percent of accused juvenile offenders, with the proportion increasing yearly. In Hungary, suspected and accused girls annually account for 20–25 percent of all of the suspected and accused juveniles. The proportion of girls in educative and detention centres in Romania is 5–10 percent.

The Romanian report does not refer to the prevalence of juvenile crime as much as the ways of dealing with it — either via the judicial system or through specific bodies assigned to juvenile offenders. In Hungary, as previously mentioned, children can be considered criminally liable from the age of 12 for 6 specific crimes, but there has not been a significant change in juvenile crime

statistics since the introduction of this legislation. The Belgian report concentrates on one aspect of the project's covered topics, mediation and group restorative conferencing (GRC) as a means of diversion. Therefore, the report does not offer general statistics concerning criminal offences carried out by juveniles.

JUVENILE JUSTICE SYSTEMS

While both European and national legislation stipulate that children under the age of 18 who are in conflict with the law should be treated differently from adult offenders, the countries involved in this research vary in terms of the suitability of their judicial system in recognizing and acting upon this differentiation. In some countries there are juvenile courts and police units assigned to juvenile offenders, but only in rare cases has any effort been made at systematic, targeted training to deal with juveniles; a common complaint throughout the reports is the lack of minimum (or other professional) standards to carry out the spirit and word of the law. Even meeting the legal requirements in informing and handling a child in conflict with the law remains a formality without full understanding from those carrying out these duties and hence, with little benefit to those in need of special treatment due to their age and cognitive abilities.

"Researcher: Tudor⁶, what is measure about?

Tudor: I have no idea. My father knows it...

"(child, age 13, Romania)

Not surprisingly, with a lack of training or legislation that encompasses child perpetrators as well as victims and witnesses, professionals working with juveniles come upon a number of obstacles to child-friendly justice.

"I lost my family. I live residential homes since I was 5. I was under psychological treatment ... I took pills because I couldn't cope my aggressive intentions (...) I drop-out from school ... and yes. I hit

that bro' at the railway station because he called me a name...police did not protect me before but caught me at the very moment when I committed my first crime"

(child, age 16, Hungary)

Parallel with the integration of European directives into national legislation and the requirements to establish a judicial system that puts the best interest of the child first, there is an overall increasing tendency for countries to push for tougher, more punitive measures for juvenile offenders. This is likely the result of misconceptions among the general public and media coverage, which is less than supportive with children in conflict with the law. In this regard, a communication campaign would be much needed.⁷

In Bulgaria there are no specialized courts for children or juveniles; children in conflict with the law are tried by the general criminal court. In privately prosecuted criminal cases the victim refers directly to the criminal court and the police/public prosecutor is not involved. In publicly prosecuted cases there is a pre-trial hearing and a court procedure. The Code of Criminal Procedure requires that the investigative authorities (police officers and magistrates) undergo special legal training in cases involving juvenile offenders, but this does not apply to all cases involving children. At the court there is a tendency to assign juvenile cases to the same — therefore, somewhat experienced — judges, but they are

⁶ The name has been changed for protection purpose

⁷ The AWAY project includes public outreach which is dedicated to influencing public perceptions about juvenile offenders and promoting alternative sentencing as beneficial for children's development.

not required to undergo special training in juvenile justice or children's rights. The authority known as "The Central and Local Commissions for Combating Juvenile Delinquency" is tasked with cases of "anti-social behaviour" among children aged 8–17. Bulgarian analysts report: "The proceedings before such commissions are inquisitorial and do not guarantee 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 [...] and their right to have their best interest taken as primary consideration".⁸ These local commissions can decide what constitutes anti-social behaviour. Based on the data of the National Statistics Institute this includes: running away from home, wandering, drinking alcohol, drug abuse, prostitution, homosexuality, truancy, and begging. Within the Local Commissions there are also social supervisors (known as public educators), who are appointed by Local Commissions, based on, in the words of the Bulgarian law: "the necessary general education and experience"⁹. The Child Pedagogical Offices also play more of a sanctioning than nurturing role for children potentially or actually in conflict with the law.

As to the procedural rights of suspected or accused children, Bulgaria lacks a specific juvenile act, but there is specific legislation concerning children in conflict with the law in the general Criminal Code. The Code of Criminal Procedures contains a chapter devoted to the special rules for examining cases for crimes committed by juveniles, according to which, pre-trial proceedings may only be led by specially-trained investigators, but it falls short of establishing what can be considered "special training". The parents of the child are summoned as a mandatory requirement, but their presence at the child's hearing is optional. The Bulgarian report paints a picture of a formal and punitive approach to juvenile crime with, thus far, little room for diversion.

CROATIA

Croatia has established a Juvenile Courts Act that applies to anyone under 23 years of age, and other laws can only be applied to this age

group if the Juvenile Courts Act does not regulate the issue in question. Children under the age of 14 are referred to the centre for social welfare. Criminal procedures can only be instituted at the request of the public prosecutor. Cases involving juvenile criminal offenses can be dealt with by police officers, public prosecutors and juvenile judges specialized in juvenile delinquency. Croatian law stipulates that a juvenile offender will always be granted a defence counsel. Certain actions in the actual procedure take consideration of the child's best interest: a juvenile is always summoned through parents or a legal representative, if police are needed to transport them to the police station they must wear plain clothes as opposed to uniforms, the juvenile's privacy is protected in different phases of the criminal proceedings, and only approved parts of the procedures and the verdict may be disclosed. Analysis reveals that Croatia has adopted all international standards concerning the protection of children's rights in criminal proceedings. In practice, it is deemed necessary to speed up the procedures. As to diversion, the STOP program instituted in Zagreb has been quite successful. However, professionals who could promote or institute diversion need a better overall understanding of its benefits for juveniles and society, and training in its implementation.

HUNGARY

In Hungary a separate set of laws specific to juvenile justice does not exist. Legislation relevant to children and young people in conflict with the law can be found in the Fundamental Law¹⁰, the Criminal Code¹¹, the Criminal Procedure Act¹², the Misdemeanours Act¹³, and the Child Protection Act¹⁴. The Criminal Act defines who is a juvenile from a criminal perspective, the minimum age of criminal responsibility (14 or 12), and the applicable punishments. The Criminal Procedure Act lays down several safeguards for the juvenile in criminal procedures. There are no separate juvenile courts in Hungary, nor are there specially-trained prosecutors, judges or defence lawyers, although training on children's rights is available to family judges. Police officers may receive training related to legislation

⁸ Giteva, 2017, p.18.

⁹ Article 42 of the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act, Bulgaria

¹⁰ The Fundamental Law of Hungary.

¹¹ Act C of 2012 on the Criminal Code, Hungary

¹² Act XIX of 1998 on Criminal Procedure, Hungary

¹³ Act II of 2012 on Petty Offences, Petty Offence Procedure and the Petty Offence Registry System, Hungary

¹⁴ Act XXXI of 1997 on Child Protection and Guardianship Administration, Hungary

on procedures in juvenile cases, but this is not compulsory for dealing with such cases. While there are legal safeguards ensuring the rights and best interests of an accused child, they are carried out, in most cases, as a formality, leaving the accused with less support than is due and possible by law. While criminal procedures against children under the age of 14 are not legal, and these cases are usually referred to the child protection system, there are certain exceptions for children as young as 12.

Child-friendly justice became a catchphrase in Hungarian legislation in 2012 and is defined, according to the Hungarian report, as “a justice system that promotes on the highest level the respect of the child’s rights, the child’s participation in every procedure and the best interest of the child”, but according to the Hungarian report, this only applies to child victims and witnesses.¹⁵ The new Criminal Procedure Act (in effect from 1 July 2018) will extend the concept of child-friendly justice to juvenile offenders.¹⁶ Independent international and domestic fora regularly criticise the Hungarian judicial system for its lack of separate legislation for juveniles¹⁷, lack or shortage of appropriately trained professionals¹⁸, lowering of age of criminal responsibility¹⁹ to 12 for some crimes, and for conditions which put children in detention at further risk of becoming a victim of or more involved in crime.

ROMANIA

Children under the age of 14 are not criminally liable in Romania. If there is evidence that the crime was committed with competence, then a child aged 14–16 can be held criminally liable, but “the procedure for the juvenile offenders is broadly speaking the same as for the adults with some derogation [...]”.²⁰ Children over 16 are criminally responsible. The Romanian report lists police, prosecution, courts, probation services and penitentiaries as relevant bodies in the criminal procedures against juvenile offenders. The Criminal Procedure Code provides guarantees to protect the rights of a juvenile during an investigation, which takes place at the police unit for criminal investigation. There is a police manual entitled, “Investigation guide

for working with juveniles”²¹, but there is no evidence of police branches or staff specialized in working with juveniles or young offenders. In the interviews conducted for this project there were some complaints that police interrogations took place without the presence of a lawyer or appropriate adult. However, the investigation must always be conducted under the supervision of a prosecutor.

The same prosecutors and courts work with both juvenile and adult offenders, but there is one specialized office in Romania, the Prosecution Office for Minors and Family, where two prosecutors are available. On average, more than 60 percent of cases against juveniles are discharged or waived by the prosecution while the rest are sent to court. However, according to the findings in the Romanian report, in 2016 a reverse tendency was seen with more cases sent to court than not. This trend is also visible in the number of children sent to court under preventive arrest, which fell until 2015 but was on the rise the following year. Prosecutors may impose “preventive measures” during criminal procedures against juveniles including: police holding for up to 24 hours, and judicial control for up to 30 days, the latter of which may include scheduled check-ins or reporting information to the police like change of domicile, and restraining orders from places, people, or activities. The prosecutor may also ask a judge to impose severe pre-trial preventive measures like detention or house arrest. These measures can only be imposed on accused juveniles who have legal assistance. The juvenile is entitled to a lawyer and, if necessary, an interpreter. For those whose case goes to court, all rights granted throughout the criminal investigation remain in place during the trial. Juvenile cases are allocated to judges specialized through practice. There are three judges trained in juvenile justice at the Juveniles and Family Tribunal in Brasov County, which is the country’s only specialized court, but which only deals with the more severe crimes committed by juveniles. Since the introduction of the new Penal Code in 2014, only educative measures are available for juveniles in conflict with the law. Some educative

¹⁵ According to the OBH (In Hungarian: Országos Bírósági Hivatal, the National Office for the Judiciary), In: Gyurkó (ed.) 2017, p.23.

¹⁶ Act XC of 2017 on Criminal Procedure, Hungary.

¹⁷ UNCRC Concluding Observations, 2014. <http://hrlibrary.umn.edu/crc/crchungary2014.html> (Last download: 30 September, 2017).

¹⁸ Vaskuti, A. et al.: Age and the capacity to understand the nature and consequences of one’s acts – Summary of the professional session of the Hungarian Society for Criminology. 26 January, 2007.

¹⁹ UNCRC Concluding Observations, 2014. <http://hrlibrary.umn.edu/crc/crchungary2014.html> (Last download: 30 September, 2017).

²⁰ Durnescu et al. 2017, p.50.

²¹ In Romanian: ‘Ghidul de audiere a copilului in procedurile judiciare’.

measures are custodial, but others are community based. In the enforcement stage of the judicial procedures, probation services, educative centres and detention centres are involved. In the past few years, some probation counsellors have received training. Educative Centres are under the authority of the National Administration of Penitentiaries.

BELGIAN

It is interesting to see the example of the Belgian juvenile justice system in comparison to the judicial systems of the four CEE countries. In Belgium, juvenile justice is called "protective justice". The law of 1965, largely modified in 2006,²² "relates to the protection of youth, to the care of minors who committed an act deemed to constitute an offence and to the reparation of the damage caused by this act".²³ Furthermore, according to the law, "[t]he goals of the juvenile justice administration are to educate the minor, make them aware of their responsibilities, allow social reinsertion and protect society".²⁴ Juvenile justice in Belgium means that criminal law is not applicable to a minor; a minor can only be subject to "custodial, preservative and educational measures".²⁵

The Belgian police usually, but do not always, have a department dedicated to minors. If a case is referred to the police, the police must notify the youth prosecutor's office, which is entitled to decide on any further steps. The police cannot act alone to close a case or use diversion

measures. The prosecutor's office can send the case to the juvenile court or take certain measures of diversion. Every prosecutor is supported by a criminologist whose role it is to meet the juvenile and their parents to inform them of the possibility of mediation, and to collaborate with schools in order to prevent child abuse.

If the case comes before an examining magistrate, which according to Belgian law should only happen in exceptional cases of absolute necessity, the examining magistrate can call for temporary childcare measures. However, the role of the magistrate is limited in cases of juvenile justice. Only the prosecutor can delegate a juvenile case to the juvenile court. The judge can apply provisional measures for a maximum duration of 6 months. Measures on merits are established by a judgement and can be imposed until the age of 20. There are measures that keep the juvenile in the family environment and others that take him/her out of it, but the latter can only be used for children over the age of 12. The implementation of all measures is monitored by the juvenile court's social service. When the juvenile judge considers taking one or several measures, an order of preference is established: first the possibility of mediation or group restorative conferencing should be considered, then the possibility of the juvenile offender offering a written project, next measures that allow the juvenile to stay in his/her environment, and lastly a placement, favouring an open environment to a closed one.

²² The Belgian laws of the 15th of May and the 13th of June 2006 that modify the law of the 8th of April 1965 about the protection of youth, the care of the minors that have committed an act deemed to constitute an offence and the reparation of the damage caused by this act. These laws have granted a space for "restorative offers", namely mediation and GRC.

²³ Mathieu, 2017, p.12.

²⁴ Law of the 8th of April 1965, Belgium that relates to the protection of youth, to the care of minors who committed an act deemed to constitute an offence and to the reparation of the damage caused by this act.

²⁵ Mathieu, 2017,, p.12

DIVERSION

DISPERSION IN ITS MEANINGS

For the purpose of this project diversion has been defined on the basis of UNICEF's definition as:

Channelling children in conflict with the law away from judicial proceedings towards a different way of resolving the issue that enables many — possibly most — to be dealt with by judicial or non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record. It can start before the arrest and proceed until the final disposition, and ideally should start as soon as possible depending on national legislation. Diversion can have restorative and welfare parts and may involve measures based on the principles of restorative justice, while diversion and restorative justice are two different concepts; diversion options do not necessarily “restore the harm caused”, i.e. warning can be taken as a diversion method as well.²⁶

Each research country has come up with a variation on this definition, starting with “Channelling children in conflict with the law away from judicial proceedings”. For example, in Romania, court proceedings for a very high proportion of the cases of child offenders are not initiated, but are dismissed or otherwise stopped by police or prosecutors. Yet, statistics do not reveal how many of these cases were dropped or ended due to a lack of proof or evidence attaching the crime to the accused juvenile. Statistics also fail to explain the factors deciding whether or not a juvenile's case goes to the court or not; there is an assumption that the personal character or training (or lack of training) of prosecutors or police officers plays a role in the decision. The police or prosecutor in the decision-making role may not be sufficiently aware of the methods at his/her disposal. Furthermore, they are not immune to public, media or political pressure, not necessarily in individual cases, but concerning the overall attitude towards juvenile offenders.

In some countries channelling children and young people away from judicial proceedings may forcefully drop them in an equally rigid “child protection”, “child welfare” system or other authority with correctional functions vis-à-vis

the child. In these situations, the aim to avoid the negative/stigmatizing effects is not always part of the way diversion is understood.

“Neither me, nor my father knew anything about procedural rights or diversion. I watch CSI on TV, so I tried to figure out what is happening because the police said nothing.”

(child, age 15, Hungary)

Using correctional custodial or non-custodial measures as a form of diversion is not rare in juvenile criminal cases, and they are enforced in conditions similar to those prevailing in a prison, with authorities, like prison officers, unaware of the rights of the child and the principles of child-friendly justice.

A comparison of diversion throughout the four CEE countries does not seem possible from the statistics provided; while these countries lack a clear, uniform definition of a child based on age, the grounds for using diversion are even less clear.

BULGARIA

In Bulgaria the prosecutor is authorized to divert young offenders from the criminal proceedings to the Commission for Combating Juvenile Delinquency. During the period of 2012–2016 the proportion of diverted juveniles increased roughly 15–16 percent. The measures

²⁶ Toolkit on Diversion and Alternatives to Detention

imposed under the Fighting Against Anti-Social Behaviour of Minors and Underage Persons Act, listed in the Bulgarian report, are considered as diversion-like measures.²⁷ The FASBMUPA procedures focus on punishment, prosecution and detention rather than protection, rehabilitation, diversion, restorative justice and alternatives within the community. The children involved in FASBMUPA procedures do not do so voluntarily, and the measures are imposed unilaterally by the Local Commission or the courts. FASBMUPA contains some measures with restorative elements, such as: an obligation to apologize to the victim; obligation to participate in counselling, training and programs to “overcome deviations in the behaviour”; obligation of the minor to remove the caused damage with his/her own labour, if possible, and community service. While these measures are similar to restorative measures, the procedure in which they are imposed is not restorative and has different aims — namely maintenance of public order and the fight against “anti-social behaviour of children”. Despite the Child Protection Act, this legislation and the measures imposed based upon it apply to children aged 8–17. The annual number of ordered educational measures exceeds the total number of diverted children, as well as those convicted. These measures may be imposed by the Central and Local Commissions for Combating Juvenile Delinquency, and one child may be given several measures. The situation is further complicated by the fact that the measures imposed by the Commission are for behaviour, which is not a crime, and a child cannot be diverted from the criminal justice system if he/she has not been involved²⁸. In 2016, for example, 2007 children received a warning and 1511 were placed under the correctional control of a public tutor, but only 369 children were diverted and 2413 convicted.

CROATIA

In 2011–2016, no further proceedings were initiated in Croatia for 1300–2200 reported juvenile offenders, and interlocutory proceedings were terminated in 48–220 reported cases annually. The reasons for this include: trivial offence, circumstances excluding guilt, no longer under suspicion, and acting in the interest of the defendant or society. It is not clear if all of these

cases are considered diversion. Similarly, over the same period for 10–25 percent of the 422–1084 total number of case proceedings against accused juvenile offenders were terminated annually. The reasons for this are not included in the report, therefore it is not clear if these young people were deemed guilty, however the court decided to use a diversion measures.

HUNGARY

In Hungary, children under the age 14 (or as previously mentioned, 12 for some offences) cannot be prosecuted. Their cases are referred to the relevant child protection services and/or authorities. In legal terminology, “diversion” appears only for drug-related offences in the Criminal Code. Fortunately, there are statistics available on diversion in broader terms that show that in 2011–2016, while more than 1000 children a year were diverted, there was an overall decrease in diversion for juvenile offenders aged 14–18. Hungarian statistics also report the type of crimes diverted juveniles were accused of; the number of diversions for drug-related crimes plummeted from 271 in 2011, to 7 in 2016, and from 462 in 2011, to 274 in 2016 for theft. The decline in diversion for other types of crime is visible as well. The gender ratio of juveniles offered diversion reflects the overall gender ratio among juvenile offenders; girls account for roughly 20–25 percent of all diverted youth annually.

ROMANIAN

The Romanian report reflects the difficulties of finding relevant data for diversion. To start with, the literature review was unsuccessful when searching for the word “diversion”. The main phrases that were useful when looking for alternative methods of dealing with juvenile offenders were juvenile delinquency and juvenile criminal justice. The report instead focuses on “educational measures” imposed on juvenile offenders, which include custodial measures. The report offers a thorough analysis of the socio-economic background of juvenile offenders in Romania. Children younger than 14 are not considered criminally liable, and competency must be proven for those under 16. In these cases, the Child Protection Department is informed and two main protection measures are applied:

²⁷ The measures imposed under FASBMUPA are considered diversion (or diversion-like measures), yet the terms “diversion” and “restorative justice” are not legal terms and cannot be found in Bulgarian national legislation concerning juvenile justice. FASBMUPA does not allow victims to participate in the proceedings before the Local Commissions for Combating Juvenile Delinquency or before the court.

²⁸ Such measures can be imposed on children, running from home, even if the children are running because they are victims or witnesses of violence.

placement in a residential centre, with a family or foster family, and specialized supervision. The number of children annually given residential placement in 2011–2016 fell between 70 and 120. Roughly half of these children were accused of theft. The same is true for those under specialized supervision. The number of children under specialized supervision in 2011–2016 dropped from 988 to 454. While children can receive post-measure support, no statistics were provided on the use these programs. The prosecutor can discharge or waive cases for ju-

venile offenders over the age of 14, and up until 2016 the number of such cases discontinued at the prosecution level exceeded those sent to the court. In 2016 this trend was reversed. That same year the proportion of juveniles sent to court under pre-trial detention also rose. In most cases, when custodial educative measures are applied the juvenile perpetrator is male. Girls account for only 5–10 percent of the total number of children in custody. The main crimes committed by juveniles in educative and detention centres are theft and robbery.

Table 4
Types of diversion, restorative justice, or alternative solutions applied*

Types of diversion /alternative solutions/ restorative justice		Belgium	Bulgaria	Croatia ²⁹	Hungary	Romania
Warning		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		
Mediation		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Group Restorative Conferencing (GRC)		<input checked="" type="checkbox"/>				
Community work/service		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Educative and community service		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Written project		<input checked="" type="checkbox"/>				
Paid work	to compensate the victim	<input checked="" type="checkbox"/>				
	work performed in amends				<input checked="" type="checkbox"/>	
Training and awareness modules		<input checked="" type="checkbox"/>				
Treatment (e.g. for addiction)		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Stop program				<input checked="" type="checkbox"/>		
activities, services		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
recreation/counselling		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Workshops				<input checked="" type="checkbox"/>		
Community based programmes			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Obligation to	apologize to the victim		<input checked="" type="checkbox"/>			
	active repentance/public apology				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	participate in consultations,		<input checked="" type="checkbox"/>			
	participate in training and programmes	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Placement	under correctional supervision		<input checked="" type="checkbox"/>			
	with a person with parental responsibility	<input checked="" type="checkbox"/>				
	under correctional control	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
	with a public tutor/supervisor					<input checked="" type="checkbox"/>
Prohibition	to visit specific places, establishments	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
	to contact certain persons		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
	from changing address, prohibited from breaking curfew		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>

*As mentioned in the national reports

²⁹ Data for Croatia are incomplete; the report focused on diversion and didn't include methods of restorative justice.

Types of diversion /alternative solutions/ restorative justice		Belgium	Bulgaria	Croatia	Hungary	Romania
Obligation to remove the caused damage		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Probation with supervision				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Individual supervision		<input checked="" type="checkbox"/>				
Supervision with daily assistance					<input checked="" type="checkbox"/>	
Preventive probation				<input checked="" type="checkbox"/>		
Postponement of indictment				<input checked="" type="checkbox"/>		
Placement out of the family		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Placement in a Correctional Boarding School		<input checked="" type="checkbox"/>				
Placement and terminating criminal procedure				<input checked="" type="checkbox"/>		
Confinement in an educative centre		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Placement in a Socio-Pedagogical Boarding School		<input checked="" type="checkbox"/>				
Warning of placement in	a correctional boarding		<input checked="" type="checkbox"/>			
	a school with a probation period					<input checked="" type="checkbox"/>
	pre-trial detention or under house arrest					<input checked="" type="checkbox"/>

DIVERSION IN PRACTICE

There are good examples and practices of diversion and restorative justice in cases of juvenile offenders. Project partner DCI in Belgium aims to share these good practices with the four CEE partners who have demonstrated some elements of diversion, including some complex projects involving prevention as well as rehabilitation, and chances for young offenders to avoid further criminal activity and to return to mainstream society.

BELGIAN

The Belgian report mentions three main definitions of diversion: one that aims at avoiding the judicial sphere, one that aims to avoid the progression of the case or situation in the penal process, and one that aims to avoid the involvement of magistrates and courts, or at least to limit their intervention. It is clear that even though diversion may include some elements of restorative justice, its aim is not to repair damage or compensate the victim. According to the literature cited in the Belgian report, alterna-

tives to detention on their own do not constitute diversion as they often result from a criminal procedure.

Restorative justice first appeared in Belgium in the field of juvenile justice as “symbolic reparations” and later as “philanthropic and educational *services, and from the 1980s onward “using the legal space of services to initiate mediation processes between offenders and victims”*³⁰. It remained outside of any legal framework until 2006, when it was referred to as a “restorative offer”. Along with mediation, group restorative conferencing (GRC), a method based on a Maori practice of family group conference was introduced in Belgium. GRC can only be used if the people involved expressly agree to take part and stay involved throughout the entire process.

Mediation, in the Belgian practice of juvenile justice, *“is meant to allow the person suspected of having committed a crime, the people with the parental authority for that person, the people who*

³⁰ Mathieu, 2017, p.18.

*have in law of fact the custody, and the victim to consider, together, with the help of a neutral mediator*³¹, *the possibilities to meet the consequences, mainly the relational and material ones of a criminal action*".³² GRC is similar to mediation. The main difference is "the participation of the relatives of both the offender and the victim, as well as that of any other person useful for the conflict resolution process".³³ The added value is "the additional attention granted to the social consequences of the act allegedly committed by the minor".³⁴ Only the prosecutor's office can propose mediation, and in this way, it becomes part of the diversion process. In fact, the case can only be referred to the juvenile court if the prosecutor's office had previously examined the possibility of mediation. The offer of mediation has to be accepted or declined within a month, and the accused juvenile can rely on a lawyer for advice. Mediated agreements can be symbolic, financial and relational, and take the form of an apology letter, reparation in kind or material, or a commitment from the minor in relation to the victim. Although it is not legally compulsory to close the case at the prosecutor's office after an agreement has been reached and executed, this is normally what happens. If the mediation is not successful, the prosecutor's office may still refer the case to the juvenile court.

Mediation or GRC can be offered by a judge or juvenile court if a victim can be identified who expressly agrees to take part in the entire process. Mediation and GRC can be paired with other measures. The agreement born in mediation or GRC must be approved by the judge or court, and can only be refused if it goes against public order.

Belgium offers a novel restorative offer via a written project presented by the offender. This may include: apologies, repair of damages, taking part in mediation or GRC, taking part in school restorative programs, becoming involved in specific activities, and/or participation in outpatient treatment or a youth outreach program. The written project has the advantage of directly involving the juvenile offender, relying on his/her creativity and honest remorse. The court needs to approve the project, and the relevant social service monitors its implementa-

tion. While the written project looks like a very promising method of diversion, the Belgian report reveals that it is rarely used in practice due to the lack of information about this possibility on all sides.

Other forms of diversion include community service, and educational and community service. These cannot exceed 150 hours, and are conceived of as voluntary work. It should be "consistent and realistic, serve the public interest and be rewarding".³⁵ Paid work to compensate the victim also cannot exceed more than 150 hours, but it is a controversial measure which the Educational and Restorative Actions Services refuses, on the basis of the belief that compensation should be settled in mediation. Juvenile justice in Belgium also allows judges or juvenile courts to impose training and awareness modules (violence management, drug addiction, etc.). These modules, said to be both restorative and protective, include support groups, community projects, and meetings.

While these examples look very progressive and promising in solving juvenile delinquency, and show much independence from both the legal system and the courts, restorative justice is not utilized as often as it could be in Belgium. Most judges and public prosecutors are still reluctant to propose a restorative offer, as are the majority of victims to participate in such measures. The Belgian report concludes that raising awareness about the alternative ways of approaching and handling juvenile offenders is necessary.

BULGARIA

In Bulgaria, local commissions decide on educative measures to impose on children aged 8-17 for "anti-social behaviour". These measures include: warning, obligation to offer an apology to the victim; participation in consultation, training and programmes; placement under the correctional supervision of a person with parental responsibility; placement under correctional control of the public tutor; prohibition to visit places or establishments, or to be in contact with certain persons; prohibition to leave permanent address; obligation to repair or reimburse the

³¹ The mediator has a hybrid position: they belong to an independent service, not attached to the Federal Public Service Justice, but they are appointed by a magistrate they report to and are also tasked with making sure that the agreement reached is respected.

³² Mathieu 2017, p 21.

³³ *Ibid.* p.21.

³⁴ *Ibid.* p 22.

³⁵ *Ibid.* p 31.

caused damage; carry out public works; placement in a Socio-Pedagogical Boarding School; warning for placement in a correctional boarding school with a probation period of up to 6 months; and placement in a correctional boarding school.

CROATIAN

Traditionally, Croatian criminal legislation has not provided for diversion in general procedures, but it has a more relaxed attitude in the field of juvenile law. The actors involved in juvenile diversion can include juvenile police officers, juvenile public prosecutors, juvenile judges and child welfare officers. They all have access to information on the juvenile offender and are trained in diversionary processes and programs, children's rights and the applicable international standards. While procedures are followed according to European directives and are governed by the best interest of the child, professionals are ambiguous about diversion; new forms of diversion, ones which do not require judicial approval, have been introduced, but professionals are not wholly convinced that they are in the best interest of the juvenile offender. The Croatian report gives a theoretical overview of the benefits of diversion and reinforces this with the experience of Croatian juveniles in the diversion program.

Community based programs are seen as essential in diverting children, but in Croatia they are strictly available in urban areas. Croatia has adapted a Dutch diversion program, the "STOP Program", and instituted it in Zagreb. The program places special emphasis on positive experience with the police, their efficiency and expertise, ability to discuss and distribute information and, most importantly, understanding. Juveniles and parents recounted their satisfaction with participating in the program. Parents particularly appreciated clear instructions and information, kindness and care from the police, understanding, discussion, advice and recommendations from child-protection professionals, and the responsibility juveniles learn through working with NGOs. One of the recommendations of the Croatia report is to include more NGOs in and sensitizing and educating police on the STOP program.

HUNGARY

In Hungary, the child protection system decides the legal consequences in cases of a reported deviance for children under the age of 14 (or

12). These legal consequences may include: placement outside of the family, types of family support, setting rules concerning behaviour, and, as a new legal institution since 2015, preventive probation. While in legal terms the power of the child protection system is extended to prevention and aftercare, in reality the lack of financial, human and physical resources hinders the effective use of this legislation. Diversion is still underutilized in dealing with juvenile criminal behaviour. There is no specific training for professionals who have the ability to decide if diversion should be used and in what form. Some training on child-friendly justice is available for judges working on family-law cases. But in general, there is very little knowledge among professionals about the possible use and benefits of diversion, including those existing in Hungarian law: postponement of the indictment, postponement of the indictment and termination of criminal procedures, mediation, active repentance, work performed in amends, probation with supervision, warning, and drug-related diversion.

ROMANIA

In Romania, children under 14 are referred to the Child Protection Department if they are found in conflict with the law. The measures imposed may include placement in institutional care or with a family or foster family, or specialized supervision. Those over the age of 14 who have allegedly committed a criminal offence may have their case sent by the prosecution to the criminal court, or discontinued by discharge or waiving of the prosecution. If the prosecution is waived, the prosecutor may impose some obligations, like taking part in community service or psychological counselling. During the criminal investigation the prosecutor may impose some preventive measures, such as police holding or judicial control. The prosecutor may impose further obligations, like prohibition of visiting certain places, contacting certain people, and taking part in certain activities, or he/she may require them to undertake medical or rehabilitation treatments. All of these measures can be applied to accused juveniles and their implementation is monitored by the police. According to the new Penal Code, in place since 2014, only educative measures can be imposed upon juveniles in conflict with the law. These can be custodial or community based. Non-custodial educative measures have become the most frequent outcome of juvenile trials since 2014, and it is assumed that the relatively high number of

prison sentences for juveniles in the preceding years will dramatically drop as new trials will end in custodial educational measures. It is not clear yet how suspended prison sentences will be converted under the new Penal Code. Social reintegration and supervision is assisted by probation services, which are responsible for

implementing non-custodial educative measures. Probation service officers submit evaluation reports and provide supervision. Custodial educative measures are either implemented in Educative Centres where all children are obliged to attend school or, for more serious crimes, in detention centres.

CONCLUSION AND RECOMMENDATIONS

While child-friendly justice is a catchphrase throughout Europe, and there is no statistical evidence that juvenile crime is increasing, there is a growing tendency in all of the countries involved in this project to consider juvenile offenders as young criminals who need to be taught a lesson. Support for a punitive approach from the public, media and even professionals working with juvenile offenders within the judicial system or outside of it is not uncommon. Political rhetoric in some countries does not shy away from using tough language when mentioning juvenile crime. At the same time, there is increasing evidence that diversion rather than punishment helps juvenile offenders re-establish their ties with society, and hence is better for society considering the long-term costs and benefits. European directives help to establish how, under what principles, and in what ways it is possible for everyone to benefit from a child-friendly approach and justice system. In the countries participating in this project, there is a wish to improve the situation and prospects of young offenders, but some systems can more easily adapt new ways and standards than others. Therefore, the national reports contain both general and specific conclusions and recommendations.

All of the national reports found that greater awareness of alternative ways to deal with juvenile offenders and of diversion is desirable and necessary not only for the general public, but also among the professionals working with juvenile offenders. In most of the reports, low rates of diversion are at least partially attributed to a lack of sufficient knowledge about it. Some countries have started promising projects that have proven successful in terms of divert-

ing juvenile offenders. The existence of some projects depends on funding – when the initial project financing runs out the central or local governments do not offer their support. In most countries, stakeholders lack sufficient training, especially the police and those within the judicial system, as well as those in the social sphere: child protection and care. Clear professional standards, even minimum standards, are very much missing in areas where juvenile offenders are expected to be treated in accordance with the rights of the child and the principles of child-friendly justice. Preventing juveniles from entering into conflict with the law is a primary goal in most countries, but there are questions as to the suitability of entrusting this to law enforcement officials. Legal professionals in some countries question if diversion is indeed the right way to represent the best interest of juvenile offenders. There are many questions and fewer clear answers. Diversion and juvenile crime are not in the centre of the public or media's attention save for a few sensational cases. It is often forgotten that children's lives and futures are at stake.

BELGIAN

As previously mentioned, the Belgian juvenile justice system views restorative justice as educational and therefore complimentary to the aims of the traditional justice system. However, restorative offers are underused in Belgium and rely on the personality, knowledge and workload of the prosecutor or judge. Furthermore, the juvenile justice system has a protective/educative focus on the child, to the detriment of the victim; those trained in restorative offers remain reluctant to use them or misunderstand their aim. Additionally, due to public opinion about

these measures, victims are reluctant to take part. To this end, ERAS professionals should receive specialized training to ensure the implementation of the restorative offer measures to their fullest, an awareness raising campaign should be aimed at people working in the field, and outreach to the victim should be personalized, clear and understandable for them to make a decision as to whether or not to take part. Additionally, the stage at which restorative processes like mediation are offered could be reconsidered to make the service available at all stages of the proceedings, including, and importantly for diversion, at the police. The mediation process may also be revised to include more people impacted by the term “act deemed to constitute an offence” (ADCO), and this can be led by the ERAS.

BULGARIAN

The Bulgarian report ends with recommendations to improve the use of diversion and to guarantee the rights of children in conflict with the law. Most of the recommendations relate to legislation, such as the need for a new, specialized law for minors, or to create clear definitions for the minimum age of criminal responsibility, “anti-social behaviour”, etc., that meet international standards. These are found absolutely necessary in order to avoid children under the age of 14 from entering the criminal justice system. International standards should also be adopted in the work of police, prosecutors and judges concerning diversion. It would help to ensure that deprivation of liberty was a last resort, used only for the shortest period possible. European directives that have already been transposed to national law should be visible in practice, not only in legislation.

CROATIA

Diversion is well legislated in Croatia, institutions are well appointed, and legal and non-legal professionals are well-trained. The Croatian Juvenile Court Act and other legislation fall in line with international standards. However, some professionals wonder if diversion indeed serves the best interest of juvenile offenders. The Croatian report also concludes that community-based programs that constitute the base for diversion programs are not sufficiently accessible to children as they are limited to ur-

ban areas. While there is general a satisfaction concerning the diversion methods used in Croatia, it is recommended that the police are sensitized and educated concerning the STOP program. The report also concludes that this highly successful but geographically limited program be implemented across the country, and that all the stakeholders, not just juvenile justice professionals, but those working with juveniles at the community level and within NGOs, receive training.

HUNGARIAN

The Hungarian report recognizes that Hungarian legislation is mostly in harmony with the basic principles of European law. However, practice does not always follow legislation. This may be caused by lack of funding, facilities, training, or by an overall shortage of professionals. Cooperation amongst stakeholders that could shorten procedures and ease the burden on juvenile offenders is rare. Protocols and standards are also missing for consistent and reliable work in this field. On the personal level, lack of sensitivity vis-à-vis children’s rights and diversion, and juvenile offenders in particular are also factors that hinder better and wider use of diversion in the Hungarian system. The new Criminal Procedure Code coming into effect in 2018 offers some hope in relation to children’s rights and procedural safeguards in cases of juvenile offenders.

ROMANIA

Professionals working in juvenile justice, as well as juveniles in conflict with the law, have agreed with the conclusions of the Romania report, namely that while Romania’s legislation complies with European and international standards, “[o]ne of the most important changes that needs to happen is in the normative framework that regulates the implementation of waiving prosecution”³⁶, thereby returning this task to child protection and probation services. Additionally, for the sake of a holistic approach to the issue, cooperation between institutions needs to improve. A national strategy on juvenile justice is highly recommended, as well as a national registry and databases of juveniles in conflict with the law. The institutions and professionals therein must clearly know their roles and responsibilities. To this end, specialized standards, procedures, and training must be put in place and carried out. Juveniles in conflict

³⁶ Durnescu et al. 2017, p.61.

with the law should be better empowered to participate in the procedures. Children's councils and other consultative bodies need to be formulated. The rehabilitation process of juvenile offenders should better rely on their families and communities, and this process should be supported by positive incentives, along with standards, procedures and methodologies. Any professional working with juveniles at the police, prosecution, probation services, educative

centres, as well as lawyers should be regularly trained. Concerning legislation, the implementation of waiving prosecution should be better regulated in a normative framework. Child protection and probation services should be included in this process. Standards and procedures are needed concerning the everyday functioning of child protection units, and employees must be sufficiently trained.

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APPENDIX

COUNTRY REPORT SUMMARIES

BELGIUM

OVERVIEW

This report aims to show Belgium's history and experience with restorative justice — specifically mediation and group restorative conferencing (GRC), and diversion. The juvenile justice system in Belgium is based on laws put in place in 1965 that emphasize the need for protecting youth, caring for minors and repairing the damage inflicted by their offence. The practice of restorative justice began in 1959 with a Brussels-based judge who, rather than imposing only strict punitive measures, offered accused juveniles the opportunity to carry out service. Despite the inclusion of "philanthropic and educational services" in Belgium's legal frameworks, such measures are not commonly used, or if they are, they are used in parallel with the more traditional methods of the justice system. As in most of the CEE countries in this study, the use of restorative measures is hindered by the public's perceptions of such restorative measures being too weak on juveniles accused of criminal offences (which also impacts the victim's willingness to participate in restorative justice), the workload or personality of judges and prosecutors, and a lack of understanding of restorative justice and diversion, as well as training, among the professionals involved.

CHILDREN AND JUVENILE JUSTICE

While Belgian law defines a minor as anyone under the age of 18, it is not clear on the minimum age of criminal responsibility. An accused or suspected child under the age of 12 is considered in need of protection and is thereby given measures such as supervision (educational, social services, etc.) and reprimands that would allow them to stay in their living environment. Children aged 12–14 can be placed in an institute of public protection for juveniles with an "open education regime" for offences including: reoffending, committing an act for which an adult would receive a three-year prison sentence, or having failed to fulfil a previous puni-

tive measure. These children, and children over the age of 14, can be placed in institutions with a "closed education regime" for graver offences. In some instances of serious offences, children 16 or older may be tried as adults and kept in separate units of adult detention centres, which goes against international conventions, including the Convention on the Rights of the Child.

JUVENILE JUSTICE SYSTEM

The protective laws from 1965 that established the foundation for juvenile justice in Belgium were modified in 2006, and include the term "act deemed to constitute an offence" (ADCO) to reinforce that a child cannot fully understand the criminal nature of their actions, and therefore should not receive criminal punishments. Both federal and community legal decrees and rulings apply to juveniles in Belgium. A child suspected of an ADCO will meet first with the police and be informed of their rights. While the police may "direct" a child and their legal guardian towards social services, they cannot take direct action to divert the case and must report the offence to the prosecutor's office. The prosecutor then has the choice to refer the case to the juvenile court or to use a diversion measure such as taking no action, issuing a warning, or — when the victim has been identified — suggesting mediation. A criminologist works with the prosecutor to support the child and its parents if there is a question of child abuse or truancy, or to encourage mediation. Furthermore, when a case is referred to a juvenile judge, that judge can issue several measures primarily aimed at allowing the child to remain with their family/legal guardian, such as: issuing a warning, an order to take on a written project (does not always involve the victim and is rarely used), outpatient therapy, community/educational services, restorative offers (mediation/GRC), or for the child to undergo surveillance. As a last resort the judge can place the child with a temporary guardian, or in an institution for psychiatric, therapeutic, or educational services.

RESTORATIVE JUSTICE AND DIVERSION IN BELGIUM

The laws on juvenile justice put in place in 2006 recognize restorative justice and offers such as mediation and GRC. Restorative justice aims to repair the damage done by an ADCO and restore the bond between the perpetrator and the victim (whether an individual or society). Furthermore, “restorative justice is not necessarily an alternative to closing the case...nor is it an alternative to the placement of minors...It is not a form of diversion either, even though it can contribute to it”.³⁷ Diversion is taken to mean avoiding judicial proceedings, involvement of magistrates or courts, or the progression of the case, and focuses primarily on the accused or suspected juvenile rather than repairing damages or making amends with the victim; “We will think, for example, about the preventive actions led by the police and thanks to which infringements can be prevented and the intervention of the prosecutor can be avoided”.³⁸

In Belgium, the **prosecutor** can apply measures of diversion including dismissing the case, sending a warning, meeting the minor and his/her legal guardians to remind them of the legal implications of their behaviour, or suggesting mediation. Of these options, only mediation involves the victim, if they can be identified and choose to participate. In this sense, if mediation is a measure taken by the prosecutor’s office, it is diversion.

According to the 2006 legislation, if the victim has been identified the prosecutor must consider mediation, and if they choose against it, they must issue a written document stating that they have considered mediation but concluded that a court-ordered measure is needed. If they choose to propose mediation they must inform the suspected minor, the victim, and their legal guardians that mediation is available and request that they contact a mediation service, such as the Educational and Restorative Actions Services (ERAS) in the Federation of Wallonia-Brussels.³⁹ Furthermore, they have the right to legal counsel before agreeing to mediation. The prosecutor also informs the mediation service of its decision so they may be informed if the victim, suspected minor and their

legal guardians do not come forward to accept the services. The mediation service notifies the prosecutor if the parties do not agree to their services, if they reach an agreement amongst themselves prior to mediation, or if mediation is unsuccessful. Otherwise, the service provides a progress report to the prosecutor within two months. If the parties reach an agreement through mediation the proposed agreement is sent to the prosecutor for approval, which he/she provides unless the agreement is “contrary to public order”. The mediation service writes a report on the implementation agreement that the suspected minor must complete. When this step is achieved the prosecutor can decide if additional steps or measures are needed in the case, but mostly this results in a closed case. If mediation is not deemed a success the prosecutor can send the case to the juvenile court, but the process of mediation and the contents thereof remain confidential and cannot be used against the minor.

As previously stated, **a judge (or magistrate)** must first consider a restorative measure, which includes mediation/GRC, as outlined in the legislation of 2006. If the juvenile court or a judge proposes mediation or GRC it may come with other measures. As with the above, a mediation service leads the implementation, and the parties must agree to participate for the process to continue. Reporting on successful or unsuccessful mediation is also required of the mediation service. If a mediation agreement or GRC “statement of intent” is reached it is added to the court record, and the agreement must be approved by the judge or court. The GRC and mediation process must remain confidential and not influence any further proceedings against the minor. Along with mediation and GRC, a juvenile court can consider other measures, or a combination thereof, that mostly allow a minor to remain in their living environment. These measures may include a written project initiated by the suspected minor with actions such as apologizing to the victim, repairing damages, outpatient treatment, taking part in a learning/training program, attending a youth outreach program, or a “school reinsertion” program. In this situation the minor presents the court with their proposed project, and if accepted, the judicial

³⁷ Mathieu 2017, p.10.

³⁸ Ibid, p.8.

³⁹ French-speaking community in Belgium.

protection service oversees and reports on its implementation. If the project is unsatisfactorily completed, the court can apply other measures to the juvenile. Research has found that this initiative is rarely used and rarely successful.

The law of 2006 established that community service (CS) and educational and community services (ECS) can be performed, along with other measures, for either 30 hours (CS) or 150 hours (ECS). An ERAS interviews the minor to suggest the type of work to be carried out in an institution with some social goal and otherwise oversees its implementation, including a “reflection process” concerning their actions with the minor and possibly their family. Upon the completion of service a juvenile judge reviews the ERAS report and evaluates the outcome of the measure. Some argue the validity of the restorative aspect of this approach as bonds with the victim are not clearly resolved, nor damage repaired, and since coercive work appears more punitive than restorative.

For minors over the age of 16 accused of an ADCO, the 2006 law also proposes paid work for no more than 150 hours to compensate a victim or assistance fund. Such work can be combined with other measures. Some argue that the purely financial motivation of this measure makes it neither educative nor restorative, and ERAS in one community has refused to comply with it.

The juvenile court or judge can also apply a measure of taking part in trainings or “awareness modules” which aim to stress the impact of the ADCO upon the victim, and other consequences of such behaviour. These trainings are organized by the ERAS and may include support groups, community projects, and meetings depending on the theme (anger management, substance abuse, etc.). Minors attend the trainings with a representative from ERAS, who reports back to the judge. Experts view this measure as a cross between a protective and restorative approach.

BULGARIA

OVERVIEW

Bulgaria lacks a specialized or separate justice system for children. Its formative legislation, the Fighting against Anti-Social Behaviour of Minor and Underage Persons Act (FASBMUPA), harkens back to the 1950s with its punitive focus on behaviours such as running away, drinking, homosexuality and truancy for children as young as 8 years old. In 2000, Bulgaria adopted the Child Protection Law to ensure a child’s rights to normal physical, mental, moral and social development. On paper, the Act and Law work side-by-side, but the aims of FASBMUPA has created a systemic perception of children as potential offenders in conflict with society. Bulgaria joined the EU in 2007, but it has yet to fully transpose the three directives on juvenile justice.

CHILDREN AND JUVENILE JUSTICE

Data for the years 2012–2016 suggest that fewer children entered pre-trial proceedings or were suspected of crimes, and that an increasing number of children were acquitted. Yet, during this same period, a higher percentage of children were detained during pre-trial proceedings.

Children are usually suspected or accused of petty crimes in Bulgaria; the incidence of attempted or committed homicide and rape are consistently low, while theft, robbery, hooliganism, and damaging/destroying property are most common. Crimes such as “debauchery”⁴⁰ also consistently appear.

While “the Bulgarian legal system does not envisage diversion measures”⁴¹, prosecutors can legally divert a suspected child from criminal proceedings by requesting that the Commission for Combating Juvenile Delinquency impose an “educative measure”⁴² — most commonly, a

⁴⁰ Vicious crimes under section VIII of the Penal Code (articles from 149 to 159), Bulgaria connected with sexual abuse, sexual exploitation, pornography etc.

⁴¹ Giteva, 2017, p.25.

⁴² found in the FASBMUPA

warning or “placement under the correctional control of a public tutor”. Furthermore, a prosecutor can avoid or terminate pre-trial proceedings in cases of children suspected or accused of a crime that “does not constitute great social danger” if it was carried out due to “infatuation or because of thoughtlessness”. In these situations, as above, an educational measure will be applied by the court or the local commission. Children do not voluntarily carry out these measures and failure to comply leads to more serious measures being imposed. Furthermore, this kind of diversion is only possible for those who are still under 18 years of age during the criminal proceedings.

The number of children convicted of crimes dropped by more than 50% from 2012 to 2016. Convicted children who did not receive probation, public censure, or a fine were sentenced to imprisonment ranging from 6 months (in most cases) to 10 years. In cases of imprisonment, boys 14–18 years of age were sent to a reformatory, while girls of the same age were sent to a special unit of a women’s prison. The European Court criticized these facilities as meeting the minimum criteria for places of deprivation of liberty, and stated that placement in them would have a negative impact on minors.

JUVENILE JUSTICE SYSTEM

Specialized children’s or juvenile courts do not exist in Bulgaria. Beginning in 1991, with the ratification of the Convention on the Rights of the Child, Bulgaria took steps to ratify a number of international human rights treaties, and adopted the Child Protection Act in 2000. However, the FASBMUPA remains the most influential piece of legislation, and it continues to encourage public perceptions of children as juvenile offenders engaging in anti-social behaviour that should be fought. Under the current legislation several bodies carry out the administrative duties of juvenile justice: the prosecution court, Central and Local Commissions, the Child Protection Officer (police), the closed institutions of FASBMUPA, and probation officers.

There are no specialized prosecutors for children in conflict with the law. Prosecutors are required to take part in trainings on issues related to juvenile justice and to share their knowledge with other prosecutors. In this regard, the Min-

istry of Justice reported that, “... the former Prosecutor General supported regular, expert discussions among the professional societies related to child justice and the initiatives...has a generally positive attitude to the specialization of child justice”⁴³. Likewise, there are no courts or judges specialized in juvenile justice. If jurors are present for the hearing, they must contain a minimum number of teachers or educators according to the Code of Criminal Procedure.

The Central Commission for Combating Juvenile Delinquency consists of representatives of different ministries, and develops and proposes programs and activities to ministries and NGOs to prevent and restrict “criminogenic factors”. The Local Commission is organized on the municipal level and is aimed at children 8–17 years of age. It has been criticized by international bodies for lacking independence and impartiality as it has the power to charge and prosecute, but is also responsible for guidance and resolution. Furthermore, the proceedings of the Local Commission do not guarantee the rights of the child. Social supervisors (public educators) work within the Local Commission to “correct” and “re-educate” minors, and to provide assistance to parents. They are also tasked with notifying the proper authorities of any physical or psychological threat to the child’s development. Child Pedagogical Officers (CPO), essentially police officers with a pedagogical education, also work under the frame of FASBMUPA and are tasked with identifying children involved in crime or anti-social behaviour, supervising certain educational measures, identifying child victims, reporting parents/guardians violating a child’s rights, and monitoring “at risk” or “uncontrollable” children who were sentenced by the court. The CPO and probation officer must receive training. The probation officer, social worker, CPO and members of the local commission work together to create a curriculum of probationary measures, programs for public intervention, recommendations to the probation council, and statements to the court (if required) for each accused child. With the exception of monitoring threats to a child’s physical/mental well-being, it is clear that the role of the commissions, social supervisors and CPOs focuses on the completion of punitive measures rather than overall protection or rehabilitation

⁴³ Giteva, 2017, p.18.

of children in conflict with the law; the commission has no legal obligation to ensure the care of a child following their completion of imposed educational measures.

Children as young as 8 years of age who are accused of offending or anti-social behaviour (or are considered at risk of involvement in such activities) may be placed in socio-pedagogical boarding schools or correctional boarding schools if they have committed an “anti-social” act and do not have “an environment appropriate for normal upbringing”⁴⁴. Boys over the age of 14 are sent to a reformatory, while girls go to a special unit of the women’s prison. Minors and underage persons without an address found wandering, begging, in prostitution, abusing drugs or alcohol, or who are simply neglected, can be placed in temporary homes for a maximum of 2 months to receive medical, psychological and pedagogical evaluations, as well as an evaluation of whether or not they should be returned to their home. The European Court of Human Rights (ECTHR) criticized these institutions for meeting the minimum requirements to be considered places for deprivation of liberty.

RIGHTS OF CHILDREN ACCUSED OR SUSPECTED IN CRIMINAL PROCEEDINGS AND IN DIVERSION

As previously mentioned, children under the age of 18 who commit a crime that is not considered a major threat to the public out of “infatuation” or “thoughtlessness” can be cleared of criminal responsibility, yet alternative measures can be applied to them under FASBMUPA⁴⁵. Current legislation does not stipulate measures for restorative justice, mediation, conciliation, conferencing and sentencing circles, or diversion in a strict sense. However, during pre-trial proceedings or during a trial, the prosecutor or judge may refer the case to the Local Commission to decide upon corrective measures for the suspected child.

Code of Criminal Procedures establishes “Special rules for the examination of cases for crimes committed by juveniles”⁴⁶. Only specially-trained investigators can lead pre-trial proceedings against children⁴⁷, but is unclear as to

what those trainings should cover. A pedagogue or psychologist must be present during the child’s interview, but must ask permission from investigators before they ask questions from the child⁴⁸. It also stipulates that some of the jurors must be teachers or educators, and that the child’s parent or guardian be notified of the proceedings and allowed to be present if they wish. While the code also asserts that children should only be placed in pre-trial detention in exceptional cases, data from 2012–2016 suggests that there was an increase in the percent of children held in pre-trial detention. A child may be asked to leave the trial if it is thought that the information presented may negatively affect him/her. Most controversially, if a child commits a crime complicit with an adult, proceedings are conducted under general rules.

Directive 2016/800/EU has not been transposed into law. Five amendments were introduced in connection with Directive 2012/13/EU, three of which were in accordance with the rights prescribed by the Directive. The most well supported Directive is 2012/29/EU on the rights, support and protection of victims, with 16 amendments, not all of which are related to the subject matter of the directive, or have been implemented as of yet.

STATE OF DIVERSION IN BULGARIA

Certain articles of the Criminal Code assert that the court may impose an educative measure in place of criminal proceedings against a child. FASBMUPA recognizes restorative justice in terms of apologizing to and compensating the victim⁴⁹, as well as an obligation to perform works of public benefit. However, when this or other measures under the FASBMUPA are applied, the child’s case is not closed, but rather transferred to an authority with quasi-judicial powers. Furthermore, the child must comply with the educational or corrective measures prescribed by the court or local commission, or he/she may face more serious punishment. Diversion to a local commission does not fall in line with international standards and often reflects punitive rather than restorative intentions.

⁴⁴ Ibid, p.20.

⁴⁵ Article 13 of Code of Criminal Procedures, Bulgaria

⁴⁶ Chapter 30 of Code of Criminal Procedures, Bulgaria

⁴⁷ Article 385 of Code of Criminal Procedures, Bulgaria

⁴⁸ Article 388 of Code of Criminal Procedures, Bulgaria

⁴⁹ Article 13 of Code of Criminal Procedures, Bulgaria

NOTEWORTHY PRACTICES

NGOS have been the forerunners of noteworthy practices in Bulgaria. Securing funding for proven practices, however, seems to be a major challenge. As a result, those seeking financial support from the government have registered their programs as social services for children. The Institute for Social Initiatives and Practices has created a number of useful models, publication and trainings to support children in conflict with the law. UNICEF and the municipality of Sliven created a complex of integrated services (education, social services, justice, enforce-

ment, healthcare and employment) for children in conflict with the law that also includes temporary residencies, and they have applied for state funding. Caritas Ruse and Prison Fellowship Bulgaria created a project to reduce crime among children in two municipalities through, among other things, mentoring, consultations and trainings to overcome behavioural issues. Parents, families and a network of volunteer professionals worked together to create support groups, working visits for decision makers, conferences and trainings. The program closed due to lack of funding.

CROATIA

OVERVIEW

Diversion is a long-standing practice in Croatia, and the Croatian Juvenile Courts Act establishes that diversion can be offered at any phase of the criminal proceedings for children accused of petty crimes. The STOP program, adopted from practices in the Netherlands, is considered a successful model of diversion. It is used in Zagreb with the cooperation of juveniles, their parents, police, child protection professionals, juvenile judges, and NGOs. The widespread adoption of measures like STOP, however, are limited in part by the general belief, contrary to available data, that juvenile crime is on the rise. Furthermore, juvenile justice professionals have expressed their concern that not all of the participants in the juvenile justice system understand the application of diversion, and that diversion may not benefit all children equally.

According to the legal basis of the Croatian juvenile justice system, only a child aged 16–18 can be sentenced to imprisonment; children under the age of 16 are given educational measures, and those under the age of 14 are referred to the centre for social welfare.

As in other CEE countries, Croatia faced a rapid influx of juvenile crime in the 1990s. However, in 2011–2016 the number of reported, accused and convicted juvenile offenders dropped by more than 50%. The highest rate of reported crime during this period was carried out against property, followed by physical harm to another

person. Also during this period, the number of repeat offenders dropped nearly in half. Yet, overall there was an increase in the percentage of crimes committed by young women.

Of the reported juveniles who were diverted in 2011–2016, the decision to divert was based on what was in their best interest or that of society. Others avoided criminal proceedings due to the trivial nature of their offence, lack of suspicion, circumstances other than guilt, or the decision that the offence was, in fact, non-criminal. For those diverted during interlocutory proceedings, the decision was based on lack of proof, the public prosecutor abandoning the charge, exclusion of guilt or the offence being considered trivial or non-criminal. Of the 1739 reported juvenile offenders in 2015, 1306 were diverted before or during interlocutory proceedings.

JUVENILE JUSTICE SYSTEM

Analysis suggests that Croatia has adopted legislation in line with international standards that protect a child's rights in criminal proceedings. The juvenile justice system in Croatia is regulated by the Juvenile Courts Act, and the provisions provided in the act are applicable to those under 23 years of age when proceedings for a juvenile offence are initiated. Children under the age of 14 are not liable for criminal proceedings and are referred to the centre for social welfare. In cases wherein a child is complicit in a criminal offence with an adult, they will face proceedings according to the Juvenile Courts Act, except in rare cases where procedures cannot be separated as decided by a juvenile panel.

Police officers, judges, and public prosecutors involved in juvenile proceedings receive special training in, for example, interrogation that takes into consideration the cognitive abilities and personal traits of the child. Furthermore, a child has the right to legal defence throughout the proceedings, and will be appointed a specialized attorney-at-law if they cannot provide one themselves. The centre for social welfare is also involved in any proceedings involving a juvenile to protect their rights and well-being, and to make proposals or provide warnings concerning evidence which might support a judicial decision on their behalf. Protection of a child's privacy is guaranteed throughout the proceedings. Only public prosecutors can request criminal proceedings against a child in conflict with the law for criminal offences punishable with a prison sentence of more than five years. For lesser crimes, the public prosecutor may decide not to initiate proceedings if the accused is willing to restore or compensate damage, take part in publicly beneficial work, or undergo treatment for substance abuse. These measures must be fulfilled with the oversight of the centre for social welfare. They may also forego proceedings or measures for a secondary crime if the accused is already participating in sanctions for a previous crime.

STATE OF DIVERSION IN CROATIA

Croatia has a history of diversion, as well as declining juvenile crime rates. Yet the general public, and some child welfare professionals, believe that the current juvenile justice system should be "tougher" on juvenile offenders. Furthermore, despite a strong theoretical background expressing the benefits of diversion, those working in the juvenile justice system have expressed suspicion of, or strong opinions against, diversion based on personal and localized experiences.

STOP PROGRAM

One comprehensive and highly successful diversion program, the STOP program, has been initiated by the city of Zagreb on the basis of a "non-condemnation" model imported from the Netherlands. The premise of the program involves juveniles admitting responsibility for their behaviour, taking part (voluntarily) in pub-

licly beneficial work to renew their relationship with the community, active participation of the parents, and counselling or training. It is run by the "Association of Juvenile Judges, Family Judges and Other Professionals for Children and Youth", along with the NGO Pharma, the Croatian Association of Social Workers and the "Association for Out of Court Settlement and Mediation in Criminal Procedure".

If a juvenile has committed a petty crime, it is their first conflict with the law, and if they are ready to admit their responsibility, they may voluntarily take part in the STOP program. A specially-trained police officer can inform the child and their parent/guardian of the program, and should they agree to take part, the officer will initiate proceedings with a child protection professional, usually a social worker, who leads them through the program. Along with counselling, an activity is chosen through an NGO to correct the damage the juvenile has committed. The NGO monitors the child's performance and the child protection professional submits a report to the association of judges concerning the successful completion of the program. If the child does not successfully complete the program, police can initiate misdemeanour proceedings against the child and his/her parent/guardians.

CONDITIONS AND FACTORS CONTRIBUTING TO AND HINDERING THE ENJOYMENT OF DIVERSION

While the STOP program is seen as a form of punishment, those who have taken part in it commented that it was a positive experience and that they were highly satisfied. At the same time, the program is only available in and around Zagreb; other cities have expressed interest, but there is a lack of support to expand the program. Professionals dealing with children in conflict with the law recognize the lapses in systemic good practices: "We have holes in the system. I don't want to make the impression that we do not believe in diversion...It happens that juveniles are left behind. This is a bad message: young people realize the system does not protect them, does not care about them"⁵⁰. Another stated that, "Today there is no progress in child protection...it is either a severe punishment or no reaction at all".⁵¹

⁵⁰ Mraović, 2017, p.39.

⁵¹ Ibid. p.39

HUNGARY

OVERVIEW

While Hungary has adopted legislation in line with the three EU directives, the will and ability to apply these measures has been seriously hampered by punitive political rhetoric (especially concerning drug-related crime), negative public perception (despite decreasing crime rates), lack of funding/training/understanding of key concepts of diversion, and overburdened child protection and judicial systems. Yet, new criminal procedures to be put in place in 2018 offer hope to those who recognize the importance of diversion. Discussing the new procedures, the Minister of Justice stated, “We tried to open the possibility for diversion as wide as possible”.

CHILDREN AND JUVENILE JUSTICE

While the occurrence of certain crimes (vandalism, property crimes, violent crimes and drug-related crimes) have increased, the overall number of child and juvenile offenders (mostly from age 14) in Hungary has decreased by more than 30 percent in 2011–2016.⁵² At the same time, the number of diverted juvenile offenders also decreased by nearly 30 percent. Most noticeably, diversions for juvenile offenders involved in drug-related crimes, theft, and vandalism dropped drastically: nearly 98 percent for drug-related crimes, 60 percent for vandalism, and 40 percent for theft — all areas that have seen an increase in juvenile crime during the period under investigation. Furthermore, rural areas, where access to education, employment, and child protection services are greatly limited, experience the highest rate of juvenile crime.

JUVENILE JUSTICE SYSTEM

The founding document on juvenile justice in Hungary dates back to 1908 and focuses on resocialization and education. In 2006, a separate juvenile criminal code for offenders aged 14–18 was proposed and rejected. There is no separate legislation, code or institutional system for juvenile offenders in Hungary. Protections for juveniles come under the Fundamental

Law of Hungary, the Criminal Code⁵³ that came into effect in 2013, the Criminal Procedure Act of 2013⁵⁴, the Child Protection Act of 1997⁵⁵, and the Misdemeanours Act of 2012. The Criminal Code set the minimum age for criminal responsibility, “between the age of twelve and eighteen years at the time of committing a criminal offence”. Furthermore, it sets out that: “A penalty shall be imposed upon a juvenile when the application of a measure appears to be impractical. Only measures may be imposed upon a person who has not reached the age of fourteen years at the time the criminal offence was committed”. The number of juvenile offenders aged 12–14 increased drastically in 2016. The Misdemeanours Act⁵⁶, which regulates smaller criminal offences, contains a chapter on safeguards for juveniles, while the Child Protection Act emphasizes “education of young offenders”, which takes place in state reformation institutions as a “special punishment”. A new legal institution of preventive probation was set up in 2015.

According to the Child Protection Act, criminal proceedings for children under the age of 12 shall be terminated, and the legal consequences will be entrusted to the child protection system, which also deals with prevention and aftercare. The child protection system, however, faces severe issues in terms of capacity, financing, and personnel. Just as there is no special criminal code, there are no separate juvenile courts in Hungary. The National Office for the Judiciary/National Judiciary Council may assign judges to adjudicate for children in conflict with the law, and the Criminal Procedure Act states that “at the court of first instance, one of the associate judges on the panel shall be a teacher”. Likewise, there are no specialized lawyers to deal with children in criminal proceedings. According to the Hungarian Criminal Code from 2013, judges should apply measures rather than liberty-depriving sanctions against juveniles for less serious crimes. For the 25–33 percent of juvenile offenders who were diverted, diversion most often led to probation, while the courts frequently used “work for public interest” as an

⁵² For serious crimes the minimum age of criminal responsibility in Hungary is 12.

⁵³ Act C of 2012 on the Criminal Code, Hungary

⁵⁴ Act XIX of 1998 on Criminal Procedure, Hungary

⁵⁵ Act XXXI of 1997 on the Protection of Children and Guardianship Administration, Hungary

⁵⁶ Act II of 2012 on Petty Offences, Petty Offence Procedure and the Petty Offence Registry System, Hungary

alternative sanction. Those who faced criminal proceedings waited an average of 3 years (from order to investigate to receiving a legally binding court decision), thereby hindering a child's right to procedure without undue delay. According to one addictologist interviewed for the research, "If the criminal procedure lasts for years it loses all its 'charm'....and its educational value is minimal". Furthermore, although the necessary legislation exists to ensure the right to timely procedure, as one prosecutor noted, "...the key person is not the police officer or prosecutor, but the judge. If (s)he has lots of cases, (s)he will postpone the trial or set the date of a hearing or trial months later". Therefore, assurance of children's rights in Hungary is infringed upon by an overburdened justice system.

STATE OF DIVERSION IN HUNGARY

The Year of Child-Friendly Justice in Hungary (2012) aimed to protect child victims and witnesses through the creation of amendments and regulations based on the Council of Europe's guidelines. The National Office of the Judiciary developed working groups to assert these children's rights during legal proceedings and trainings for judges. Addressing the omission of child perpetrators in these protections the Ministry of Justice noted that, "The new criminal procedure law will change this paradigm to extend the concept of child-friendly justice to the juvenile offenders".

At the time of the research there were no specific laws on diversion in Hungary; it was not substantially part of the child-friendly justice initiatives, and no specific trainings were organized on the topic. The diversion methods established by the Criminal Code and Criminal Procedure Act included: mediation, active repentance, warning, work performed in amends, probation with supervision, and drug diversion. According to professionals, the task of applying diversion falls to the public prosecutor, although the Criminal Code establishes that the judge may issue a warning, work performed in amends or probation with supervision during the court procedure. No forms of diversion can be utilized after the court decision takes place.

The Criminal Code refers to diversion in cases of drug-related crimes. In Hungary, prosecution of drug-related offences can be suspended if the offender participates in a rehabilitation program, receives treatment for substance abuse, or takes part in preventive education/communi-

ty programs. Human rights experts criticize this approach as unnecessarily targeting children while allowing drug production and trafficking to continue. Furthermore, according to the statistics, in 2013–2016 the number of juvenile offenders involved in drug-related crime increased rapidly, while the number of these children offered diversion decreased tremendously.

Internal factors contributing to the enjoyment of diversion

According to the opinion of the focus-group interviewees of this research, the Year of Child-Friendly Justice resulted in the reformation of judge appointing processes (and hope for the appointment of more competent judges), a program teaching high school students about the justice system, a working group creating child-friendly material about the rights of children, and the will to improve the utilization of the 56 existing "child-friendly" hearing rooms. Optimism is also expressed over the criminal procedure law to come into force in 2018.

"There were two hearings and I had no lawyer during the first one. My father was there with me. The lawyer said almost nothing at the second hearing except that I have right to say nothing or to say 'I do not know' or 'I do not remember'."

(child, age 15, Hungary)

External factors contributing to the enjoyment of diversion

Committed professionals have developed grassroots cooperation that offers some promise in terms of supporting diversion in Hungary. They recognize that diversion is a way to avoid stigmatization.

LIMITATIONS TO CHILDREN'S ACCESS TO DIVERSION

Internal

While Directive 2016/800 states that authorities and staff involved with children in conflict with the law must "receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology and communication in a language adapted to the child", professionals in Hungary receive little to no such training. Professionals who try to provide information are not trained to evaluate a child's mental/emotional/cognitive state to communicate with them effectively. Furthermore, a real understanding of diversion that coincides

with the spirit of the law is lacking among professionals and children. Insufficient resources also impact the quality of services provided to suspected and accused children; one child protection-guardian interviewee noted, “[a]t the beginning I had no computer and cell phone”. Moreover, there is a lack of adequate, consistent, and widespread operating and professional standards in Hungary, as well as multidisciplinary cooperation between the authorities involved in criminal procedures. To that end, the professionals who fail to carry out mandatory reporting of child abuse may be enabling these issues for the child. The hesitancy to stand apart, and to make a decision on behalf of a child, particularly when it comes to diversion, speaks to

the strong hierarchy present in the Hungarian justice system, as well as the bureaucratic and administrative burdens placed on these professionals.

External

The new criminal procedure code states that all persons under the age of 18 are vulnerable, but in general, suspected or accused children are not considered/treated as such. The workload for professionals in the juvenile justice system leaves little to no time for training, reduces personal motivation, and quickly leads to burn-out. Furthermore, while racism and xenophobia may not be direct, practices suggest it does exist.

ROMANIA

OVERVIEW

According to the available literature, legislation, interviews with juvenile justice professionals and juveniles themselves, Romania not only complies with international and European standards, but it also diverts more children away from judicial proceedings than initiates such procedures against them. As such, “Romania is placed among the most advanced countries in Europe as far as juvenile justice is concerned”⁵⁷. However, after thorough review, there are areas where improvements can be made, such as specialized training for juvenile justice professionals, better efforts to include the family, cooperation among institutions, and streamlining standards and procedures such as oversight of the obligations that would ensure that the current ratio of diverted children continues to hold steady or improves.

CHILDREN IN JUVENILE JUSTICE

Police are the first point of contact for children in conflict with the law. However, the police do not keep statistical records on the profile of offenders and victims, but rather the crimes committed. Therefore, there is not a sufficient amount of data on the age and gender of reported or accused juvenile offenders. Children under the age of 14 and those aged 14–16 who

do not demonstrate competence are reported to the Child Protection Department (CPD), which is legally responsible for the child’s welfare. This may be considered the “first and most prevalent form of diversion used”⁵⁸. The CPD will create a plan of protection that may include: placement in a residential centre or with a family (blood relation or foster family), special supervision, or emergency placement. Of those given a placement measure, more than half were accused of theft, and of the 21 children at the Sfântul Stelian Center some were accused of prostitution and homicide. Nationally, from 2011–2016, an average of 95 children a year were placed in residential care without a concrete time limit. If a child of this age and competency is kept in their home, they will be given specialized supervision which the CPD or local social services must oversee. As with the placement measure, the majority of these children are accused of theft. From 2011 through 2016 the number of children in conflict with the law given specialized supervision dropped from 988 to 454.

In 2014–2016 (the new Penal Code entered into force early in 2014), an average of 8000 children were dealt with at the prosecution level. These are children over the age of 14 who acted with competence. From 2014 through 2016, the number of discontinued cases involving these juveniles rose from 4268 to 5471 in 2015, be-

⁵⁷ Durnescu et al. 2017, p.61.

⁵⁸ Ibid, p.30,

fore dropping to 3590 in 2016. At the same time, those sent to court dropped from 3548 in 2014 to 2966 in 2015, before rising to 3883 in 2016. Of these cases, the most predominant crime is aggravated theft (roughly 1500 on average), followed by aggravated robbery (ca. 500) and robbery (ca. 250).

Prosecutors can waive or discharge a case against a juvenile in conflict with the law. If the case is waived, the child may be tasked with certain obligations which, once fulfilled, render the case fully closed. In 2016, “more than 4,000 children were diverted...while only 3,883 children were sent before a criminal court”. Of those who went before the court, 521 were given non-custodial educative measures, 397 received prison or custodial educative measures, and virtually none received a suspended sentence (as a result of a new Penal Code which prioritizes educative measures). For those awaiting trial, prosecutors may impose: “police holding” for up to 24 hours; “judicial control” during which the accused is obliged to carry out tasks such as checking in with the police and notifying police of changes to their address, etc.; substance abuse treatment; electronic surveillance; and restraining orders from people or places as preventive measures. They may also be subject to house arrest or pre-trial detention, the latter of which may, in the trial stage, be extended up to 5 years. Parents or tutors must be informed of police holding or preventative arrest immediately. Of the total number of children in conflict with the law who were sent to court, 11.5 percent were subject to pre-trial detention measures in 2016 — a 4.1 percent increase from 2011.

JUVENILE JUSTICE SYSTEM

The laws establishing the juvenile justice system in Romania include the Penal Code, Penal Procedure Code, Law on Child Protection, and laws regarding both custodial and non-custodial punishments and measures. The institutions involved in juvenile justice in Romania include police, prosecution, courts, probation services, social services, child protection departments, child protection commissions, residential centres, education centres, and detention centres. Procedures against juveniles are confidential — “not public and video technology can be used in special cases”⁵⁹.

⁵⁹ Ibid, p.55.

⁶⁰ Art. 2 of the Order no. 56/2014 on the prosecution coordination, Romania

⁶¹ Durnescu et al. 2017, p.23.

⁶² Ibid.p.23.

⁶³ Law no. 272/2004 regarding the child protection, Romania

The police are the first point of contact for a child in conflict with the law. Should an investigation take place it is supervised by a prosecutor and follows the Criminal Procedure Code and the manual of the National Police Inspectorate on “procedural guarantees and the rights of juveniles”, including the right to information and a lawyer (which can be provided by the state free of charge). Although police should be specialized⁶⁰, “there is no evidence that there are police branches or police staff specialized in working with juvenile or young offenders”⁶¹. Furthermore, despite these procedural guarantees, some juveniles, especially those in rural areas, reported that they were not given “proper assistance from a lawyer or an appropriate adult”⁶². Finally, according to the child protection law, children under the age of 14 must be accompanied by a social worker or psychologist during the penal investigation.

According to the Child Protection Law⁶³, if a child is under the age of 14, or aged 14–16 but has demonstrated a lack of competence, the police will inform the CPD who carries out an evaluation and proposes protective measures in the best interest of the child. The child protection commission or court (if the parents/tutor did not agree with the measures proposed by the CPD, the court may be asked to evaluate the situation and order measures) can impose placement, emergency placement or specialized supervision, which is carried out by local CPD or social services. Placement can be with a family (blood relation or foster) or in a residential facility. Specialized supervision may include non-voluntary counselling or therapy, substance abuse treatment, enforced school attendance or attendance at a “day centre”, and restraining orders from places or people. While parents are obliged to take part in counselling, it seems there are no guidelines concerning such a program, just as no standards outline the techniques and approaches of working with juveniles in residential or “day” centres, or within foster situations.

Following the initial criminal investigation, according to the Penal Procedure Code, the cases of children considered criminally liable will be reviewed by a prosecutor. Law no. 304/2004 established the current judicial system includ-

ing the organization of the various courts (local, county, courts of appeal, and High Court of Justice and Cassation) and the corresponding prosecution offices. There are currently only two prosecutors specializing in juvenile justice, both of whom work at the Prosecution Office for Minors and Family — all other prosecutors work with children and adults alike and do not have specific training to work with juveniles. At this stage the prosecutor may suspend the investigation in case of serious illness, dismiss the case for lack of evidence, waive the prosecution if it is not in the public interest or is an offence punishable by fine or less than 7 years imprisonment, or press charges and send the case to court. Dismissing and waiving prosecution are considered diversion. However, with a waiver may come the obligation to carry out certain measures such as community service, counselling or reparations to the victim — upon the successful completion of which the case is considered closed and removed from the child’s criminal record.

If the case proceeds to court it will be heard by randomly selected judges who work with both adults and juveniles; three specialized judges hear more serious cases and appeals at the Juvenile and Family Tribunal in Brasov. The court may impose either educative measures (week-end curfew, daily assistance, supervision or “civic traineeship”) or custodial measures, in either an educational or detention centre. The educative measures are overseen by probationary services established under Governmental Decision 92/2000⁶⁴. Probation officers are not specialized in working with juveniles, and in 2016 more than 4000 children were under probationary supervision. Furthermore, according to the Penal Code, the court must ask probationary services for an evaluation report concerning the child, the offence and recommendations on sentencing and obligations. Judges may impose additional obligations with educative measures including restraining orders regarding places or persons (including the victim), attendance of classes or vocational training, undergoing specified treatment, or reporting to the probation officer at set intervals.

There are two custodial educational centres in Romania where a juvenile may spend 1–3 years. These centres offer “educational and training

programs and also...social reintegration programs”. There are two centres of detention which focus on “educative and vocational activities”. They differ from educational centres in that children spend 2–5 year here, have a higher level of security, and fewer freedoms. Children in custodial institutions have greater privileges compared to adult prisoners concerning contact with the outside world, the right and obligation to attend school, vocational trainings or work, as well as the ability to leave the institution for trips, 24-hour leave, and school holidays. Furthermore, “if the juvenile shows progress in view of social reintegration” they may be recommended to the court for daily assistance rather than custodial measures. Additionally, juvenile sentences are not recorded in the criminal registry, and their acts are not subject to the regulations on recidivism.

STATE OF DIVERSION IN ROMANIA

“In Romania diversion is the rule in dealing with juveniles in conflict with the law and other ways are expectations.”⁶⁵ The Law on Child Protection⁶⁶ sets out that when a child under the age of 14 comes before the police accused of criminal activity, the CPD is informed and carries out an evaluation on the basis of which they propose an individualized plan for protective measures. If the parents/legal guardians do not agree with the CPD decision, the court can decide upon the measures. The CPD or social services must oversee the implementation of these measures. Once they are complete the case is closed and the action is not included in the child’s criminal record. At least 500 children took part in these measures in 2016.

Juveniles over the age of 14 found competent in carrying out an act in conflict with the law will have their case reviewed by a prosecutor who, according to the Penal Procedure Code, may suspend the investigation (in case of serious illness), dismiss the case due to lack of evidence, waive the prosecution, or go forward with the charges and send the case to court. The prosecutor can waive prosecution if the punishment for the offence is a fine or up to seven years of imprisonment. The prosecutor may attach measures or obligations such as community service, counselling, apologizing, or repairing damage to the victim. Unlike court-or-

⁶⁴ Governmental Decision 92/2000 on setting up the social reintegration and supervision services, Romania

⁶⁵ Durnescu et al. 2017, p.56.

⁶⁶ Law no.272/2004 On the protection and promotion of the rights of the child, Romania

dered measures, these duties are overseen by the prosecution clerk and police. Once they are complete the case can be considered closed and the offence and measures do not appear on the child's criminal record. In 2016, 3590 out of 7473 cases were diverted by the prosecution.

CONDITIONS OR FACTORS CONTRIBUTING TO THE ENJOYMENT OF DIVERSION

Romanian legislation, mainly the Law on Child Protection and the Penal Procedure code, favours diversion. Likewise, local structures and monitoring bodies are set up to serve the purpose of diversion, especially child protection units.

LIMITATIONS HAMPERING CHILDREN'S ACCESS TO DIVERSION

Governmental Decision no. 604/2016 establishes that prosecution clerks and the police must oversee waiver obligations and measures, but as the police especially represent a punitive role in the juvenile justice system, tasking them with rehabilitation "will never send the right message"⁶⁷. Furthermore, this may give prosecutors (who also lack specialized training in dealing with juveniles) pause before issuing such obligations, resulting in fewer diversions. In fact, more train-

ing and procedures aimed specifically at juvenile services and including juveniles and their families effectively, as well as streamlined standards, are needed to ensure diversion continues to be the rule rather than exception. Finally, as in other countries, "moral panic" or negative public perceptions of juvenile crime has an impact on the use of diversion in Romania.

NOTEWORTHY PRACTICES

Overall, the Romanian system appears to be a good example of asserting the best interest of the child, however, the Brasov Tribunal for Minors and Family is a fine example of a specialized court with child-friendly procedures. The child protection departments also deal adequately with children in conflict with the law, but would benefit from specialized procedures and training. The Buzias education centre is a good example of an institution working with juveniles in detention.

⁶⁷ Durnescu et al. 2017, p.57.



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