



# ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Lithuania



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## A. Juvenile Justice

### A.1. Please describe the legal framework and the main characteristics of the juvenile justice system of your country.

#### A.1.1. Is there a special law or code regarding juvenile justice?

In Lithuania, there is no special single law or code dedicated to juvenile justice. The reform of juvenile justice was initiated back in 1999 under the initiative of the UNDP, when the agreement was signed between it and the Government of Lithuania which initiated the approval of the Juvenile Justice Programme for 1999-2002. This document instigated the preparation of a juvenile justice concept which was materialised by the adoption of the National Programme of Juvenile Justice for 2004-2008, approved by the Resolution of the Government of Lithuania of 19 May 2004.<sup>1</sup> Later on, the new Juvenile Justice Programme for 2009-2013 was adopted.<sup>2</sup> It aims to continue the development of the Juvenile Justice System: to improve targeted, long-term and comprehensive juvenile justice systems, to identify and implement more differentiated measures for juveniles who are in different risk groups, to improve the quality of social and re-socialisation services.<sup>3</sup> In this document, juvenile justice is defined as “criminal and administrative justice of minors”. “Criminal juvenile justice” is described as “a system of material and procedural legal provisions regulating the origination and implementation of criminal

1 Resolution No 600 of the Government of Lithuania of 19 May 2004 On the Approval of Juvenile Justice Programme for 2004-2008. *Official Gazette*, 2004, No 83-3008.

2 Resolution No 1070 of the Government of Lithuania of 2 September 2009 On the Approval of Juvenile Justice Programme for 2009-2013. *Official Gazette*, 2009, No 110-4664.

3 Information from the EUCPN website. Access via internet: <http://www.eucpn.org/policies/results.asp?category=7&country=15>

liability for minors, instruments and implementing institutions”, whereas administrative juvenile justice is defined as “a system of administrative legal provisions regulating the origination and implementation of administrative liability for minors, instruments and implementing institutions”. However, juvenile justice in the same Juvenile Justice Programme is understood in a broader sense: it includes justice for young offenders over 18 years old, as well as other instruments, such as minimum and medium care of children.

State policy concerning youth crime has been described in separate laws (Code of Administrative Offences (hereinafter – the CAO),<sup>4</sup> Criminal Code (hereinafter – the CC),<sup>5</sup> Law on Minimum and Average Care of the Child (hereinafter – the LMACC),<sup>6</sup> Criminal Procedure Code<sup>7</sup> (hereinafter – the CPC), Law on Fundamentals of Protection of the Rights of the Child (hereinafter – the LFPRC),<sup>8</sup> etc.) and several national programmes with regard to delinquent juveniles.

The CAO provides liability for various administrative offences, administrative penalties and functions of related institutions. It should be noted that the text of the CAO was adopted back in 1984 (when Lithuania was a part of Soviet Union), and was amended more than 200 times. As a result, the text of the CAO is unsystematic and fails to conform to the current understanding of the purpose of administrative liability. Currently, the CAO provides some special rules for minors, as well as in some cases, parents are held liable for the acts of their children (minors).

The CC describes what acts are held criminal, provides penalties and reformatory sanctions for minors, as well as establishes conditions for criminal liability and circumstances eliminating criminal liability or releasing from penalty. The CC includes a separate chapter (Chapter XI) describing the peculiarities of criminal liability of minors. The aim of this Chapter is to ensure correspondence of liability to the age and social maturity of these persons; to restrict the possibilities of imposition of a custodial sentence and broaden the possibilities of imposition of reformatory sanctions against these persons; to help a minor alter his manner of living and conduct by co-ordinating a penalty for the committed criminal act with the development and education of his personality and elimination of reasons for the unlawful conduct; and to prevent a minor from committing new criminal acts. The Chapter describes the scope of application of the chapter; as well as listing and later on describing in detail reformatory sanctions against minors, describing

4 Code of Administrative Offences of the Republic of Lithuania. *Official Gazette*, 1985, No 1-1. with later amendments.

5 Criminal Code of the Republic of Lithuania. *Official Gazette*, 2000, No 89-2741, with later amendments.

6 Law of the Republic of Lithuania on the Minimum and Average Care of the Child. *Official Gazette*, 2010, No 157-7969, with later amendments..

7 Criminal Procedure Code of the Republic of Lithuania. *Official Gazette*, 2002, No 37-1341, No 46, with later amendments.

8 Law of the Republic of Lithuania on Fundamentals of Protection of the Rights of the Child. *Official Gazette*, 1996, No 33-807, with later amendments.

legal consequences of non-compliance with reformatory sanctions, laying down special features of the penalties imposed upon minors, as well special features of imposition of a penalty upon a minor, suspension of a sentence in respect of a minor; conditions for release of a minor from criminal liability, and, finally, providing conditions for release on parole from a custodial sentence of a person under the age of 18 years at the time of commission of a criminal act and replacement of the custodial sentence in respect thereof with a more lenient penalty.

The Code of Criminal Procedure (hereinafter – CCP), in contrast to CC, which accumulates all provisions relating to the liability of minors in one chapter, disseminates provisions relating to minors throughout the whole text. It provides some peculiarities for minors during the procedure; however, the provisions are so episodic that it is impossible to make a clear generalisation of them.

Penal Sanction Enforcement Code<sup>9</sup> (hereinafter – PSEC) and other penal sanction enforcement laws provide just several peculiarities relating penal sanction enforcement for minors. Among correctional institutions, a special type of correctional institutions for minors is provided (Chapter IX(II)).

Whereas the LFPRC is aimed at improving the legal protection of children within the country through the establishment of principles in defence of the rights and freedoms of the child in general, it provides some guiding provisions to be observed in juvenile justice. Article 38 of the LFPRC provides the right to education of the child, whose freedom has been deprived or limited, thus correctional institutions hosting minors must implement this requirement. In addition, the LFPRC includes a separate chapter on specific characteristics of child responsibility and behavioural control (Chapter VIII). This chapter lays down provisions relating to the application of discipline and reformatory sanctions of a child, general provisions of legal liability of the child, limitation of penalties and types and sizes of sentences given to children, designation of enforcement measures for the child offender which are alternative to sentencing, specific characteristics of child process rights and their guarantees, and rights of the child whose liberty has been restricted or deprived and their guarantees.

Finally, the LMACC which was adopted in 2007 is relevant to the juvenile justice system as it aims at developing a system of minimum and average care measures safeguarding the rights of the child, meeting his lawful interests and the security needs of society and which is targeted at the socialisation and education of children with behavioural problems who need pedagogical, psychological, special pedagogical, informational and other kinds of assistance. The law defines minimum care instrument as an obligation established upon a child subject to provision of educational aid, day social care and other services without taking the child from their representatives under law (Article 2(9)). Average supervision instrument is described as obligation established upon a child subject to education, care,

<sup>9</sup> Penal Sanction Enforcement Code of the Republic of Lithuania. *Official Gazette*, 2002, No 73-3084, with later amendments.

training and other services in a children socialisation centre (Article 2(10)). The LMACC lays down tasks, principles of minimum and average care, instruments of minimum and average care, conditions for application, prolongation, amendments or suppression thereof and the procedure of the implementation of related instruments.

**A.1.2. Which courts and other special authorities are responsible for the reactions of juvenile offending (criminal courts, specialised juvenile criminal courts, family courts, special prosecutors, police etc.)?**

There are no special authorities responsible for the reactions to juvenile offendings. All cases relating criminal juvenile justice are tried in courts of general competence and the examination of pre-trial procedures are subject to the general pre-trial institutions (police, prosecutors, etc.).

However, the criminal procedure is subject to the participation of special subjects, particularly, child rights protection officers or psychologists. In accordance with Articles 188 and 272 of the CPC, upon the request of participants of trial or initiative of the court, a representative of a child rights protection officer or a psychologist may be invited to the interrogation of an accused under 18 years to help to interrogate them, taking into account their social and psychological maturity.

As regards specialisation of prosecutors, at the moment recommendation rules of Prosecutor General of the Republic of Lithuania for specialisation<sup>10</sup> apply only to prosecutors interrogating minor witnesses and victims, and no specialisation is provided for the interrogation of minor offenders.

No special authorities or officers participate in administrative juvenile procedures: all minors are brought against the same pre-trial institutions and courts as in general administrative procedure.

However, the juvenile justice system outside the scope of administrative and criminal liability includes other special educational institutions, such as children socialisation centres established under the LMACC, which are public secondary schools providing average care of the child, as well as children day centres, which are public entities providing services for minimum care of the child.

As regards children up to the age of criminal and administrative liability, the competent institution to decide upon application of minimum and average care measures is the director of administration in the municipality of residence of the offender. He is entitled to impose a sanction provided for in the LMACC having received a proposal from the

<sup>10</sup> Order No I-126 of the Prosecutor General of the Republic of Lithuania on 16 September 2009. Access via internet: <http://www.prokuraturos.lt/LinkClick.aspx?fileticket=BaCoTmMQ5FU%3D&tabid=166>.

Child Welfare Commission (Article 9 of the LMACC).

LMACC and the Law on Education<sup>11</sup> also establish child welfare commission (which operates in every school) which aims to organise and coordinate preventive work and educational assistance, to create a safe and favourable environment for the development of the child, and to perform other functions related to the welfare of a child. At the same time there is a municipal child welfare commission, which is responsible for the coordination of related work in the municipality.<sup>12</sup>

More on institutions participating in the juvenile justice see *Table 1* below.

### **A.1.3. What is the scope (only criminal or also antisocial behaviour) of juvenile justice?**

Juvenile justice encompasses both administrative and criminal offences, as well as other antisocial behaviour. It includes not only material criminal and administrative justice, but also procedure (including penal, administrative and other sanction enforcement), as well as the application of other social and educative instruments for persons under the age of criminal or administrative liability and prevention of deviant behaviour.

As regards antisocial behaviour, the LFPRC provides disciplinary measures that can be used by parents or other legal representatives of a child, as well as school administration. According to Article 49(1) and (2) of the LFPRC, parents and other legal representatives of the child may appropriately, according to their judgement, discipline the child, for avoiding carrying out his duties and for disciplinary infractions, with the exception of physical and mental torture, other cruel behaviour and the humiliation of the child's honour and dignity. Besides, disciplinary and educative enforcement measures: criticism, reprimand, severe reprimand, appropriate evaluation of behaviour and other enforcement means, established by laws, may be applied to a child for violations of internal order regulations of teaching and educative (care) institutions. Finally, LFPRC establishes that for constant and malignant violations of law and order, and also for perpetration of dangerous (criminal) acts, if for reasons of his age, state of health or other circumstances, administrative or criminal liability cannot be applied, reformative (disciplinary) sanctions may be applied (discussed in detail below). The law also provides that to turn the child over to a special educative and disciplinary institution is only possible per recommendation of institutions which have been authorised by court (Article 49(3) and (5)). Following the provisions of the LFPRC, a special educational and disciplinary institution is a children socialization centre established under the LMACC.

<sup>11</sup> Law of the Republic of Lithuania on Education. *Official Gazette*, 2003, No 63-2853, with later amendments.

<sup>12</sup> *Indrasiene, C., Merfeldaite, O.* Evaluation of the activity of the child welfare commission in pursuance of the minimal care of the child. SHS Web of Conferences 2, 00014 (2012), p. 2-3.

The LMACC regulates sanctions applicable to juveniles of antisocial behaviour not falling under administrative and criminal procedure. The tasks of minimum and average care of the child could be defined as a set of measures aimed at restricting, neutralising or eliminating the circumstances stipulating negative socialisation of an individual.

Pursuant to the provisions of the LMACC, minimum measures of child care could be imposed on the child: 1) who commits an act with the elements of a criminal act or criminal offence but has not reached the legal age of responsibility set forth in the CC; 2) who constantly commits the acts with the elements of administrative offence but has not reached the age set forth in the CAO imposing administrative responsibility; 3) who committed an administrative offence, but, pursuant to the provisions of the CAO an administrative penalty was not imposed; 4) whose behaviour is detrimental and harmful to other people and efforts of local community are insufficient to reach positive changes in the behaviour; 5) who does not permanently attend compulsory education programmes (or does not attend school). These measures could be imposed only when a school has used all possibilities for provision of educational assistance stipulated in the Law on Education. Pursuant to the Law, responsibility for execution of measures of the minimum care is attributed to school and municipal child welfare commissions.

According to Article 8(3) of the LMACC, average measures of child care could be imposed on the child: 1) who commits an act with the elements of a criminal act or criminal offence but has not reached the legal age of responsibility set forth in the CC; 2) who within a period of one year committed 3 or more acts with the elements of administrative offence but has not reached the age set forth in the CAO imposing administrative responsibility; 3) who has been placed under application of minimum measures of child care but no positive results have been achieved.

**Table 1. System of state's reaction to juvenile delinquency<sup>13</sup>**

<b>Basis</b>	Criminal act	Criminal act, where a person:  Is released from criminal liability;  Penalty is suspended;  Person is released on parole from a custodial sentence	Administrative offence	Criminal act or administrative offence, where a person has not reached the age of criminal or administrative liability	Administrative offence, but administrative penalty not imposed;  Dangerous or malicious behaviour;  Non-studying under the compulsory state programmes
<b>Measure</b>	Penalties	Reformative sanctions	Administrative penalties	All minimal and average care measures	Minimum care measures provided for in Art. 6(1-5) of the LMACC
<b>Applying institution</b>	Court		Court, police, other institutions	Municipality administration and Child Welfare Commissions  Court (for application of minimal care measures provided for in Art. 6 (6–8 p) of the LMACC and average care measures.	
<b>Executing institutions</b>	Correctional facilities,  Probation services,  Socialization centres,  bailiffs,  other bodies and organisations		Police,  Other institutions	Schools, children and youth day centres, socialization centres,  other bodies and organisations	
<b>Control institutions</b>	Prosecutor		Police, municipality, other institutions	Municipality administration – municipal child welfare commissions	
<b>Coordinating ministry</b>	Ministry of Justice		Ministry of Justice, Ministry of Internal Affairs	Ministry of Education and Science	

**How is the age of criminal responsibility regulated (please refer to the different age groups and include the legal definitions on “child”, “youth” and “young person”)?**

Generally, the definition of a child is provided for in the LFPRC. In Article 2 it is stated that “a child is a human being below the age of 18 years, unless otherwise established by laws”.

As regards criminal liability, a different age limit for offenders is provided in the CC. There

<sup>13</sup> According to *Nikartas, S., Ūselė, L., Zaksaitė, S., Žukauskaitė, J., Žėkas, T.* Vaiko minimalios priežiūros priemonės Lietuvoje: Prielaidos, situacija ir įgyvendinimo problemos. Vilnius, Lietuvos teisės institutas, 2013. Access via internet: <http://teise.org/data/Monografija.-Vaiko-minimalios-prieziuros.pdf>, p. 23-24.

are no legal definitions of “child”, “youth” and “young person” in the CC describing the age for criminal liability (the term “minor” appears only laying down special provisions for criminal liability for minors). There are two age limits for the criminal liability. As regards committing of most serious crimes, persons are liable from the age of 14 years. As defined by Article 13(2) of the CC, a person who, prior to the time of commission of a crime or misdemeanour, had attained the age of fourteen shall be held liable for murder (Article 129), serious impairment to health (Article 135), rape (Article 149), sexual harassment (Article 150), theft (Article 178), robbery (Article 180), extortion of property (Article 181), destruction of or damage to property (paragraph 2 of Article 187), seizure of a firearm, ammunition, explosives or explosive materials (Article 254), theft, racketeering or other illicit seizure of narcotic or psychotropic substances (Article 263), damage to vehicles or roads and facilities thereof (Article 280). For all other crimes and misdemeanours, criminal liability arises from the age of 16 years (Article 13(1)). Article 13(3) of the CC provides that a person who, prior to the time of commission of the dangerous act provided for by the CC, had not attained the age of fourteen years may be subject to reformatory sanctions or other measures in accordance with the procedure laid down by laws of the Republic of Lithuania. As already mentioned, such sanctions are provided for in the LFPRC and the LMACC.

Besides, Article 81(2) of the CC lays down that provisions regulating penalties, suspension of a sentence, release from criminal liability and release on parole from a custodial sentence and replacement of the custodial sentence in respect of a minor with a more lenient penalty (Articles 90-99), also the reformatory sanctions (provided for in Article 82(1)(1-5)) may be applied against a person who was 18 years old at the time of commission of a criminal act, however was below the age of 21 years where a court, having taken into consideration the nature of and reasons for the committed criminal act as well as other circumstances of the case, and, where necessary, clarifications or conclusion of a specialist, decides that such a person is equal to a minor according to his social maturity and application of peculiarities of criminal liability against him would correspond to the purpose of peculiarities of criminal liability of minors. The term of “social maturity” is discussed both in case-law and legal research. As the notion of “social maturity” is quite new in criminal law of Lithuania, the scope of application of this provision is not very clear. However, researchers notice that courts unwillingly apply this provision and relate social maturity not with psychological characteristics of offender, but rather with the document issued by a healthcare centre stating existence or not-existence of mental disorder. As regards administrative liability, there are also no definitions of “child”, “youth” or “young person”. Article 12 of CAO provides that only persons who are 16 years old at the moment of the execution of an offence are liable under the CAO. Article 13(1) provides that in respect of minors between 16 and 18 years old having committed administrative offences, general provisions of the CAO shall apply with exceptions provided in some particular articles (e.g., penalty of arrest may not be applied to a minor; a fine to minors may not exceed half of the generally applicable fine, an administrative offence committed by a minor is considered as committed in the presence of mitigating circumstances).

Besides, the CAO includes some special norms where parents of minors are held liable for the committing of an offence by their children, e.g. illegal acquisition of narcotic or psychotropic substances without aim to sell them or transfer in any other way, as well as use of narcotic or psychotropic substances without a medical prescription (Article 44(3)), minor hooliganism or hooliganism (Article 175), the appearance of drunk minors under 16 in public places (Article 178(4)), etc.

#### **A.1.4. Are there specific procedural rules for young persons and how do they differ from those for adults?**

General procedural rules for young persons are provided for in the LFPRC. Article 53 specifies that criminal process cases, wherein a child is suspected to have committed a criminal act, must be conducted in the presence of a defence attorney. Parents or other legal representatives of the child, an educator and a representative of an institution protecting the rights of the child must also be present, in circumstances specified by law. Further, the article states that a child shall not be subjected to any physical or mental coercion, and a child shall not be forced to testify against himself, his parents and other family members and to admit his own guilt. In examining cases of violations of rights of the child, the court must observe all process regulations and specifics relevant to the child. While setting sentence or penalty for the child, it is important to take into account his age, personality characteristics, living and educative conditions and other circumstances specified by laws. Administrative or other liability established by laws shall be applied for publication in the press or other media of the information identifying the person (name, surname) of a child who is suspected of having committed a criminal act, being tried or sentenced for a criminal act. A special article in the LFPRC is dedicated to rights of the child whose liberty has been restricted or deprived and their guarantees. Article states that arrest or deprivation of liberty of a child in instances provided by laws shall only be possible per court (judge) sentence (ruling, decision, or verdict). Arrest, deprivation of liberty, or any other restriction of liberty of a child must be substantiated, as briefly as possible, and applied only in exceptional circumstances. This law lays down a special provision dedicated to the protection of the child specifying that parents or other legal representatives of the child and in their absence, the institution for Protection of the Rights of the Child, must be informed at once, about the child's detention, arrest, another form of restriction or deprivation of liberty. A child who has been detained or arrested shall have the right to immediate legal or another type of required assistance, and shall also have the right to dispute in court the legality of restriction or deprivation of his liberty. As well, according to the same law, a child, whose liberty is restricted or deprived, must be held separately from adults, with the exception of instances that are cited by laws, whence this shall not be appropriate in consideration of the child's interests. Upon restriction or deprivation of a child's liberty, his other rights (right to education, and physical, mental, spiritual and moral development) that are not directly linked with the restriction or deprivation of liberty, may not be restricted. This type of child shall have the right to maintain ties with his parents (legal representatives), other family members,

relatives and those close to him, through correspondence and encounters with them, excepting in extraordinary instances cited by law, when all this may exert a detrimental influence on the child.

The CPC provides the following peculiarities as regards procedural rules relating minors in comparison with procedural rules for adults:

- More guarantees ensuring of the right to defence. A defendant is necessary in cases where the accused is a minor (Article 51(1)(1) of the CPC). Refusal of a defendant by a minor is not obligatory to a pre-trial officer, a prosecutor or court when due to the complexity of a case there are doubts on the possibility of a minor to make use of the right to defence (Article 52 of the CPC).
- In line with the provisions of the LFPRC, it is prohibited to publish data relating minor offenders (Article 177 of the CPC).
- Although in general cases court hearings are to be public, there is an exception in Article 9(2) of the CPC stating that in cases involving accusations to minors the court hearing may be closed.
- The CPC provides a list of suppressive measures that may be used seeking to ensure the participation of the accused in the trial. In respect of minors, a special suppressive measure – commitment to parents, guardians or other natural or legal persons taking care of the child (Articles 120(2), 138 of the CPC) is established.
- The maximum period of detention (as a suppressive measure) of a minor may not exceed 12 months, whereas the detention of an adult may last up to 18 months (Article 127(2) of the CPC).
- Restrictions to get acquainted with the pre-trial investigation information apply in cases when an accused is minor (Article 181(6)(1) of the CPC).
- Upon the request of participants of the procedure or the pre-trial investigation official, prosecutor or upon the initiative of the pre-trial judge a representative of child rights protection institution or psychologist, who helps to interrogate the minor taking into account his social and psychological maturity (Articles 188(5), 272(4) of the CPC), participates in the proceedings.

The CAO does not contain any procedural rules applicable exceptionally in respect of minors.

### **Are due process guarantees respected?**

There were not many research works analysing how the process guarantees in respect of minors were respected. However, from an institutional perspective, in 2012, the National Audit Office performed a public

audit on the effectiveness of the organisation of child rights protection and provided certain findings. First of all, it noted that legal representation of the child and protection of child rights in legal proceedings has been organised improperly. Particularly, not all municipal Child Rights Protection Divisions (hereinafter – CRPDs) have lawyers, CRPDs have different workloads, they lack information and other resources, not all CRPDs have access to registers and information systems, there is no uniform practice of the moment of presenting conclusions to court to be followed by all Divisions therefore conclusions presented to courts are of insufficient quality. There are no criteria of assessment of family living conditions in place, which results in subjective or formal assessment of these conditions by officials. Due to shortcomings in legal regulation, Child Rights Protection Divisions provide redundant conclusions in lawsuits where the division is the plaintiff. In addition, due to failure to regulate the procedural position of CRPDs specialists in criminal proceeding, these specialists are not able to fulfil the functions assigned to the Division in a proper manner. Children are usually interviewed in premises which are not specifically designed for such a purpose, without the participation of child rights protection specialists and psychologists and sometimes for a long time because of failure to fix the child’s interview venue. The presence of a child rights protection specialist and, during interviews of victims and witnesses, of a psychologist, is mandatory. Inadequate interviews of children have a negative impact on the criminal proceedings for the child, often children are interviewed repeatedly.

## **A.2. Please describe the sanctioning system regarding juvenile justice in your country.**

### **A.2.1. Please give an overview on the sanctions/reactions on youth offending at the different levels of criminal proceedings.**

As was already mentioned, the CC includes a separate chapter regulating peculiarities of criminal liability of minors. Article 90 of the CC stipulates that a minor may be subject solely to the following penalties: 1) community service; 2) a fine; 3) restriction of liberty; 4) arrest; and 5) fixed-term imprisonment. In addition, minors must not be set more than 240 hours of community service. A fine may be imposed only against a minor already employed or possessing his own property. A minor may be subject to a fine in the amount of up to 50 MSLs (MSL - minimum subsistence level, amounting to about 38 euros). Another peculiarity is that a minor may be subject to arrest for a period of between 5 and 45 days. Finally, the Article establishes that the period of a custodial sentence in respect of a minor may not exceed ten years.

There are certain provisions regarding the imposition of a penalty to a minor. In addition to the basic principles of imposition of a penalty (the requirement to take into account the degree of dangerousness of a committed criminal act; the form and type of guilt; the motives and objectives of the committed criminal act; the stage of the criminal

act; the personality of the offender; the form and type of participation of the person as an accomplice in the commission of the criminal act; mitigating and aggravating circumstances) the court must take into consideration the following circumstances: the living and upbringing conditions of the minor; the state of health and social maturity of the minor; previously imposed sanctions and effectiveness thereof; the minor's conduct following the commission of a criminal act.

As regards different levels of criminal proceedings, the CPC provides suppressive measures, which are also applicable in respect of minors. The aim of suppressive measures is to ensure the participation of the accused in court hearings. The suppressive measures include detention, home arrest, order to live separately from the victim, deposit, seizure of documents, order to register periodically at the police office, written promise not to leave the country. As from 2015, the suppressive measures will also include the measure of intensive care (it is already included in the CPC). In respect of children an additional suppressive measure, i.e. commitment to parents, guardians or other natural or legal persons taking care of the child is provided in Articles 121(2) and 198 of the CPC.

According to the CAO, all sanctions may be imposed on a minor, except administrative arrest. The generally imposable sanctions are as follows: a warning; a fine; confiscation of an object which has been a tool or a direct object of an administrative offence and profit which was received due to the committing of the administrative offence; a prohibition to exercise a special right; administrative arrest (as already mentioned – not applicable upon minors); removal from certain works (office). In addition, the CAO provides that in case a minor caused property damage to a person or organisation, the officer deciding upon the imposition of a sanction may at the same time decide on the order to compensate the property damage in case the minor offender has his own income where the damage does not exceed the value of 50 LTL (14 EUR). Otherwise, the issue on compensation of property damage incurred as a result of administrative offence is resolved in terms of civil procedure. In general practice, only two types of sanctions are imposed on minors: a warning and a fine, which is usually paid by their parents.

Outside the scope of criminal and administrative liability, the LFPRC establishes that for constant and malignant violations of law and order, and also for perpetration of dangerous (criminal) acts, if for reasons of his age, state of health or other circumstances, administrative or criminal liability cannot be applied, the following reformatory (disciplinary) sanctions may be applied upon a minor: 1) warning; 2) obligation of a public or other type of apology to the victim; 3) release upon guarantee, in custody of parents or other persons; 4) home supervision (leisure limitation); 5) placement in a special educative and disciplinary institution; 6) other measures provided for by laws (considering the age of the child, the type of violation committed by him and other circumstances).

According to the LMACC, the following minimum care measures may be applied: 1) obligation to have visits to a specialist; 2) obligation to attend a children day centre; 3) obligation to continue education in another school; 4) obligation to study under the

primary, basic, secondary education or professional education programmes; 5) obligation to participate in social education, rehabilitation, integration, prevention, educative and other programmes; 6) obligation to be at home at specified hours; 7) obligation not to appear in certain places having detrimental effect to child's behaviour, or not to get in contact with persons having detrimental impact on him; obligation to perform educative works upon the agreement of the child. As well, according to the same law, the average care measures are placement of a child in a special children socialisation centre.

**A.2.2. Which possibilities exist to divert a juvenile from a trial (diversion structures/schemes, alternative authorities like special community councils which can impose certain measures)?**

**A.2.3. What types of interventions can the competent court impose?**

A possibility to divert from a trial for minors liable for criminal activities is ensured only in cases when the possibility to be released by a court from criminal liability may be applied. Such possibility is available only for a minor who commits a misdemeanour, or a negligent crime, or a minor or less serious premeditated crime for the first time where he: 1) has offered his apology to the victim and has compensated for or eliminated, fully or in part, the property damage incurred by his work or in monetary terms; or 2) is found to be of diminished capacity; or 3) pleads guilty and regrets having committed a criminal act or there are other grounds to believe that in the future the minor will abide by the law and will not commit new criminal acts. Having released a minor from criminal liability on the grounds provided above, a court shall impose against him the reformatory sanctions provided for in Article 82 of the CC. The mentioned reformatory sanctions include: 1) a warning; 2) compensation for or elimination of property damage; 3) unpaid reformatory work; 4) placement for upbringing and supervision with parents or other natural or legal persons caring for children; 5) restriction on conduct; 6) placement in a special reformatory facility. A court may impose against a minor not more than three mutually compatible reformatory sanctions.

As well, there are generally applied provisions under which a person may be released from criminal liability. These are in cases where a person or criminal act loses its dangerousness (Article 36 of the CC), where a crime is of minor relevance (where the act is recognised by court as being of minor relevance due to the extent of the damage incurred, the object of the crime or other peculiarities of the crime); upon reconciliation between the offender and the victim; on the basis of mitigating circumstances; when a person actively assisted in detecting the criminal acts committed by members of an organised group or a criminal association; and on bail (upon certain conditions).

The most relevant provisions of diverting minors from trial are the release from criminal liability upon reconciliation between the offender and the victim and on the basis of mitigating circumstances. In accordance with Article 38 of the CC, a person who commits

a misdemeanour, a negligent crime or a minor or less serious premeditated crime may be released by a court from criminal liability where upon other circumstances he reconciles with the victim or a representative of a legal person or a state institution.

According to Article 39 of the CC, a person who commits a misdemeanour or a negligent crime may be released from criminal liability by a reasoned decision of a court where: 1) he commits the criminal act for the first time, and 2) there are at least two mitigating, and 3) there are no aggravating circumstances.

A special provision of release from criminal liability applies to minors. Article 93 of the CC provides that a minor who commits a misdemeanour, or a negligent crime, or a minor or less serious premeditated crime for the first time may be released by a court from criminal liability where he: 1) has offered his apology to the victim and has compensated for or eliminated, fully or in part, the property damage incurred by his work or in monetary terms; or 2) is found to be of diminished capacity; or 3) pleads guilty and regrets having committed a criminal act or there are other grounds to believe that in the future the minor will abide by the law and will not commit new criminal acts. Having released a minor from criminal liability on the grounds specified above, a court imposes against him the reformatory sanctions.

The CPC as well provides certain possibilities to divert from trial. The officer in pre-trial investigation may refer to a prosecutor with a request to terminate the proceedings, and the prosecutor may do this upon the evaluation of circumstances of the case, positions of the accused and victim and the public interest (Article 212 of the CPC). A very similar right to terminate the criminal proceedings is provided to a court itself (Articles 235, 254 of the CPC). The diversion is based on a principle of expedience. This principle ensures that the court is not bound to impose a sanction for every crime committed and allows taking into account every individual case.

There are no more possibilities to be diverted from a trial when a minor is subject to criminal liability. There are more of alternative sanctions in accordance with LMACC and the LFPRC for younger minors who fall outside the scheme of criminal justice.

As regards administrative procedure, there is a general possibility to divert of administrative liability in accordance with Article 30<sup>1</sup> of the CAO. This Article establishes that the officer (institution) may take into account the nature of the offence, personality of the offender, existence of aggravating and mitigating circumstances and acting in accordance with principles of justice and reasonableness, may impose a more lenient punishment than provided for in the sanction or not to impose any administrative sanction. Every decision of an officer or institution in such case must be substantiated. Such decision must be approved by a judge in a district court.

#### **A.2.4. Which forms of liberty depriving sanctions are provided? What is the minimum and what is the maximum length for liberty depriving measures?**

According to Article 90, three types of sanctions involving deprivation of liberty may be imposed upon minors: restriction of liberty, arrest and a fixed-term imprisonment. As regards arrest, a minor may be subject to it for a period of five up to forty-five days (Article 90(4) of the CC). As well, the period of a custodial sentence in respect of a minor may not exceed ten years (Article 90(5) of the CC).

Article 91(3) of the CC provides that the court may impose a fixed-term imprisonment upon a minor where there is a basis for believing that another type of penalties is not sufficient to alter the minor's criminal dispositions, or where the minor has committed a serious or grave crime. In the event of imposition of a custodial sentence against a minor, the minimum penalty shall be equal to one half of the minimum penalty provided for by the sanction of an article of the CC according to which the minor is prosecuted.

According to Gintautas Sakalauskas, the peculiarities of criminal liability for minors, which aim to ensure correspondence of liability to the age and social maturity of these persons; to restrict the possibilities of imposition of a custodial sentence and broaden the possibilities of imposition of reformative sanctions against these persons; to help a minor to alter his manner of living and conduct by co-ordinating a penalty for the committed criminal act with the development and education of his personality and elimination of reasons for the unlawful conduct; and to prevent a minor from committing new criminal acts, disclose the will of legislator to concentrate the most attention to a person, a minor, i.e., the existing regulation emphasises individual (special) prevention. However, according to the researcher, in case-law the whole chapter of the CC dedicated to peculiarities of criminal liability for minors is like a "sleeping beauty", as they are not used in practice or are mentioned just by the way. Although judges of the Supreme Court of Lithuania mention Article 91(3) of the CC, they generally do this in a formal way.

#### **A.2.5. What types of residential and custodial institutions exist for juvenile criminal offenders?**

For juvenile convicts the PSEC has established a juvenile correctional facility as one of the form of correction institutions. Article 77 of the PSEC provides that minor convicts and convicts above 18 years of age who have been left in the facility in the manner prescribed by the PSEC serve their sentence in a juvenile correction facility.

Juvenile Interrogation Isolator – Correctional Facility of Kaunas is the only such institution in the Republic of Lithuania where juveniles under arrest are kept and where convicted juveniles serve their sentence. This facility aims to reduce juvenile delinquency through the humanisation and modernisation of juvenile living environments under the conditions of isolation, to execute prevention of juvenile delinquency and their

reintegration after release more effectively and justly, and to develop the conception of life in legal society.

Its territory is divided into four sectors that are isolated from each other: *correctional facility*, where juvenile convicts are living and studying; *interrogation isolator*, where the juveniles, to whom the measures of suppression – detention – were inflicted, are kept, as well as the convicts, who are waiting until the court's decision takes effect and are left to work in household until then; *the department of social integration into society*, where the convicts spend up to 3 months awaiting the end of their sentence, conditional release or conditional exemption from punishment; *productive premises*, where the convicts are in position to work and acquire profession. There is the Department of Kaunas Mechanics School in productive premises, where vocational training for convicts takes place.

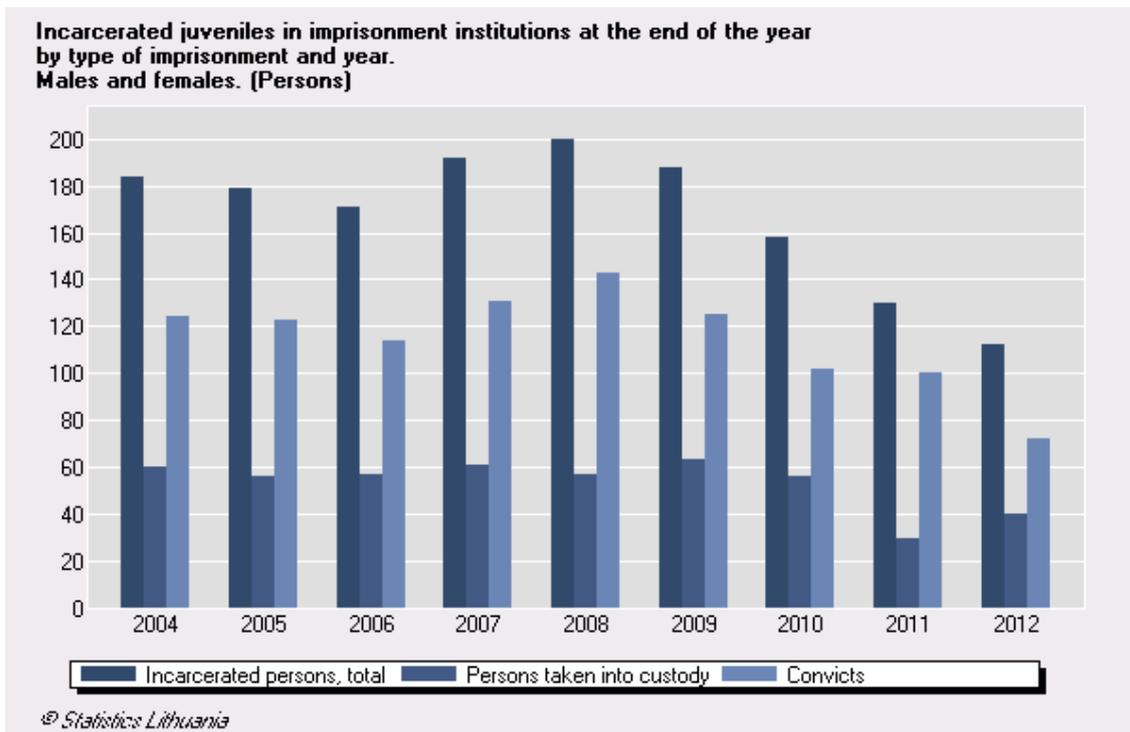
In the correctional facility, juvenile convicts are divided into general and light groups. Convicts in the general group are entitled to buy food and necessary supplies; receive one short-time and one long-time visit in a period of two months; receive and send unlimited quantity of letters, as well as receive small packets; once a month they can make a phone-call. Convicts in the light group are entitled to buy food and necessary supplies; receive one short-time and one long-time visit every month; receive and send unlimited quantity of letters, as well as receive small packets; make phone-calls.

The PSEC establishes that minor convicts who turn 18 being placed in the correctional facility, seeking to continue their correctional results may be left in the juvenile correctional facility until the end of the serving of sentence. However, they cannot surpass 21 years of age. Such convicts are subject to the regime applicable to adult convicts (including possibilities to work, food and material supply rates, etc.).

In Lithuania, the number of juvenile convicts is constantly decreasing. In 2008, there were 143, in 2009 – 125, in 2010 – 102, in 2011 – 100, and in 2012 – 72 juvenile convicts. Accordingly, the number of persons taken into custody is also decreasing in trend. In 2008 there were 57, in 2009 – 63, in 2010 – 56, in 2011 – 30, in 2012 – 40 juvenile convicts taken into custody (see *Picture 1*).

In the correctional facility there are 150 places, in interrogation isolator – 108 places, place of detention – 17 places.

**Picture 1.**



Juveniles who have been released from criminal liability are placed in a special reformative facility, which in Lithuania is a children socialisation centre. Children socialisation centres must ensure the adequate education of children with behavioural problems and who are susceptible to crime, to provide qualified education assistance and other services contributing to positive behavioural changes of the child and developing their values and social skills. These centres were intended to create conditions for the reorganisation of old special child foster homes and the establishment of new child socialisation centres.

Only children above 14 years of age can be admitted to a socialisation centre. Younger children may be admitted in exceptional situations, when their behaviour is dangerous to other people or their property.

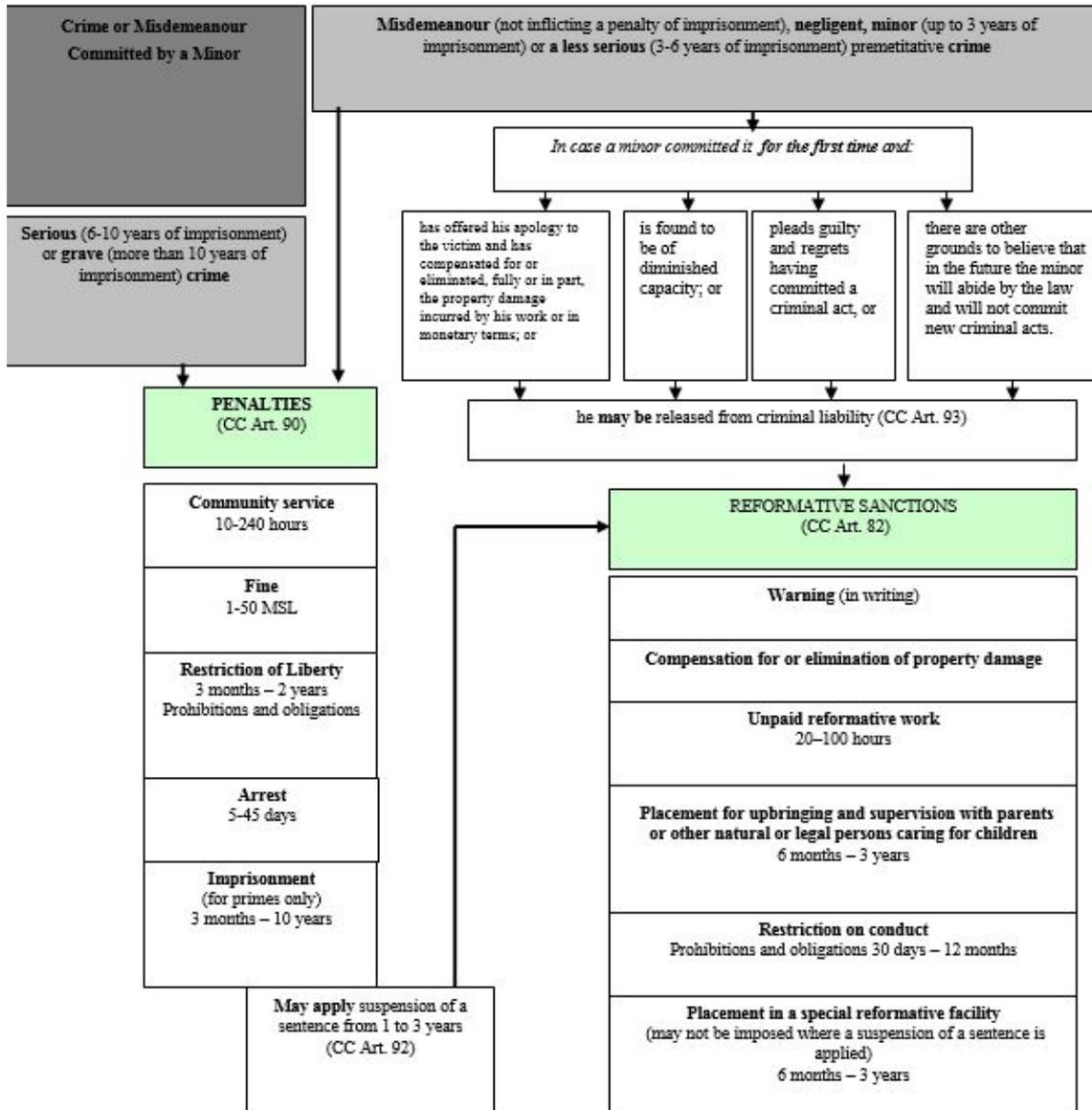
In 2012, there were six children socialisation centres with 160 pupils. The National Audit Office published a public audit report on the effectiveness of children socialisation centres in Lithuania and delivered rather severe findings. It concluded, that there are no adequate prerequisites for the effective socialisation of children because of insufficient cooperation between the authorities responsible for the measures of average care of the child (Ministry of Education and Science, Ministry of Social Security and Labour, law enforcement institutions, municipalities, children socialization centres, children's parents/custodians/ caretakers). In particular, children socialisation centres and municipalities do not work with the child's parents, custodians or caretakers when the child is at the socialisation centre, courts do not obligate parents to attend courses; police inspectors in charge of minors' affairs according to the child's place of residence are not

always informed in advance of the release of the child for holiday and, at the expiry of the average care measure, of the release of the child from the socialisation centre; there are no re-socialisation programmes for children to consolidate the acquired pro-social skills after leaving socialisation centres; and, finally, no inter-institutional cooperation mechanism has been provided for. The National Audit Office also noted that the support provided to children is not sufficiently individualised, as centres are not specialised according to children's age and type of emotional and behavioural disorders; children do not take part in the development of their average care plans and plan amendments are not always discussed with the child; adaptation of children at the socialisation centres is given insufficient attention; and there is a lack of education support professionals (psychologists, social pedagogues, special education teachers), i.e. those who are "closest to the child".

**A.2.6. What does in practice happen with most juvenile offenders? Are they regularly subject to diversion schemes or to court trials? Do you have any reliable data about the diversionary and sentencing practice?**

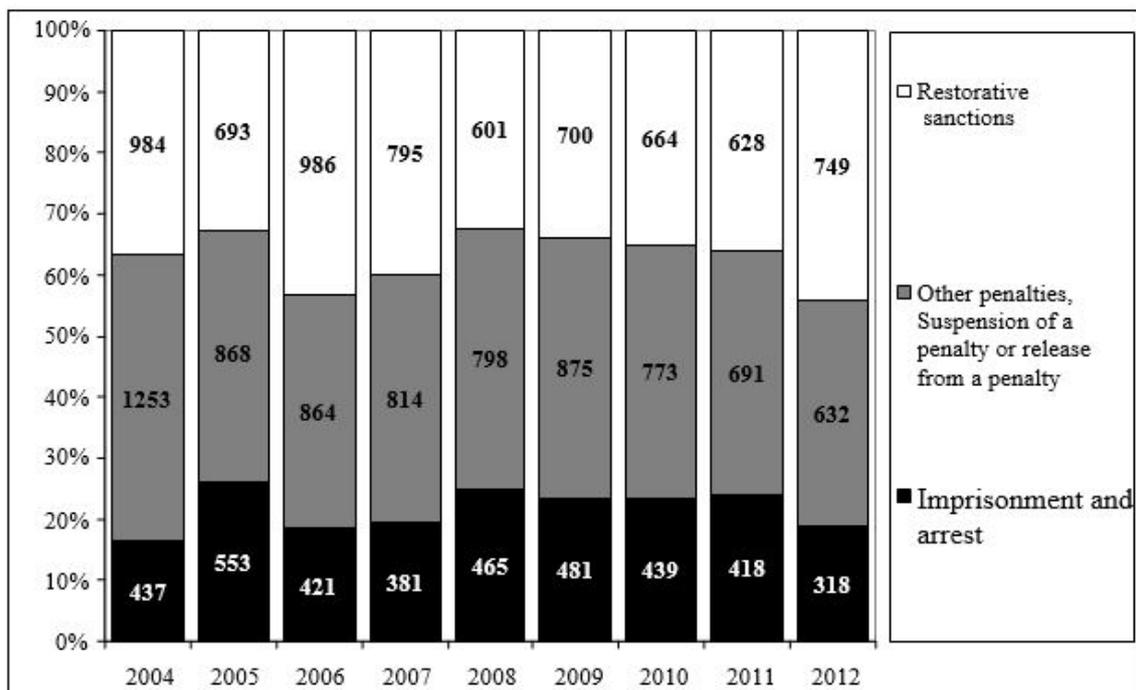
As the possibility (only a possibility!) to be released from criminal liability is restricted with relatively severe conditions (for more information on the imposition of penalties and reformatory sanctions see *Scheme 1*), the reformatory sanctions are in practice applied in less cases than penalties.

**Scheme 1. Penalties and reformative sanctions applied to minors under the Criminal Code of the Republic of Lithuania**



According to the data provided by the National Court Administration, in 2012, arrest or imprisonment was imposed on 318 juveniles, other penalties, suspension of a penalty or release from a penalty were imposed on 632 minors, whereas restorative sanctions were imposed only on 749 juveniles. In 2011, an arrest or imprisonment was imposed on 418 juveniles (in 2010 – 336, in 2009 – 700, 2008 – 601), other penalties, suspension of a penalty or release from a penalty was imposed on 632 minors (in 2010 – 691, 2009 – 773, 2008 – 875), whereas restorative sanctions were imposed on 628 juveniles (in 2010 – 664, in 2009 – 700, in 2008 – 601) (see *Picture 2*).

**Picture 2. Reformatory sanctions and penalties imposed on minors in Lithuanian courts during 2004–2012**



In accordance with Article 82(2) of the CC a court may impose up to 3 mutually compatible reformatory sanctions. From *Table 2* it is clear that the number of imposed reformatory sanctions every year is about 25-30 percent higher than the number of persons, upon whom the sanctions were imposed.

**Table 2. Imposition of restorative sanctions to minors in Lithuania during 2004–2012** <sup>14</sup>

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>Restorative sanctions</b>									
A warning	163	99	155	145	110	129	100	109	103
Compensation for or elimination of property damage	52	19	21	20	23	16	14	19	62
Unpaid reformatory work	96	51	128	64	42	91	105	93	218
Placement for upbringing and supervision with parents or other natural or legal persons caring for children	142	42	57	35	19	19	10	11	15
Restriction on conduct;	526	470	622	525	407	445	435	396	348
Placement in a special reformatory facility	5	12	3	6	0	0	0	0	3
<b>Total of imposed restorative sanctions</b>	<b>984</b>	<b>693</b>	<b>986</b>	<b>795</b>	<b>601</b>	<b>700</b>	<b>664</b>	<b>628</b>	<b>749</b>
<b>Total of persons to whom restorative sanctions were imposed</b>	...	<b>599</b>	<b>723</b>	<b>624</b>	<b>476</b>	<b>520</b>	<b>482</b>	<b>450</b>	<b>594</b>

At the same time, from *Table 3* it is clear that the number of penalties and the number of minors, upon whom the penalties were imposed, is more or less equal. Thus, if we compare punished minors rather than penalties or reformatory sanctions (such statistics are not accumulated in Lithuania), the number of juveniles to whom reformatory sanctions were imposed, would be fewer. So, in such a case, it would be possible to believe that restorative sanctions are applied in respect of not more than 25 of persons subject to application of provisions dedicated to the juvenile justice.<sup>15</sup>

<sup>14</sup> Based on the information from the Statistics Lithuania and the National Court Administration. Cited from: Sakalauskas, G. 2013, p. 30.

<sup>15</sup> Ibid., p. 27-30.

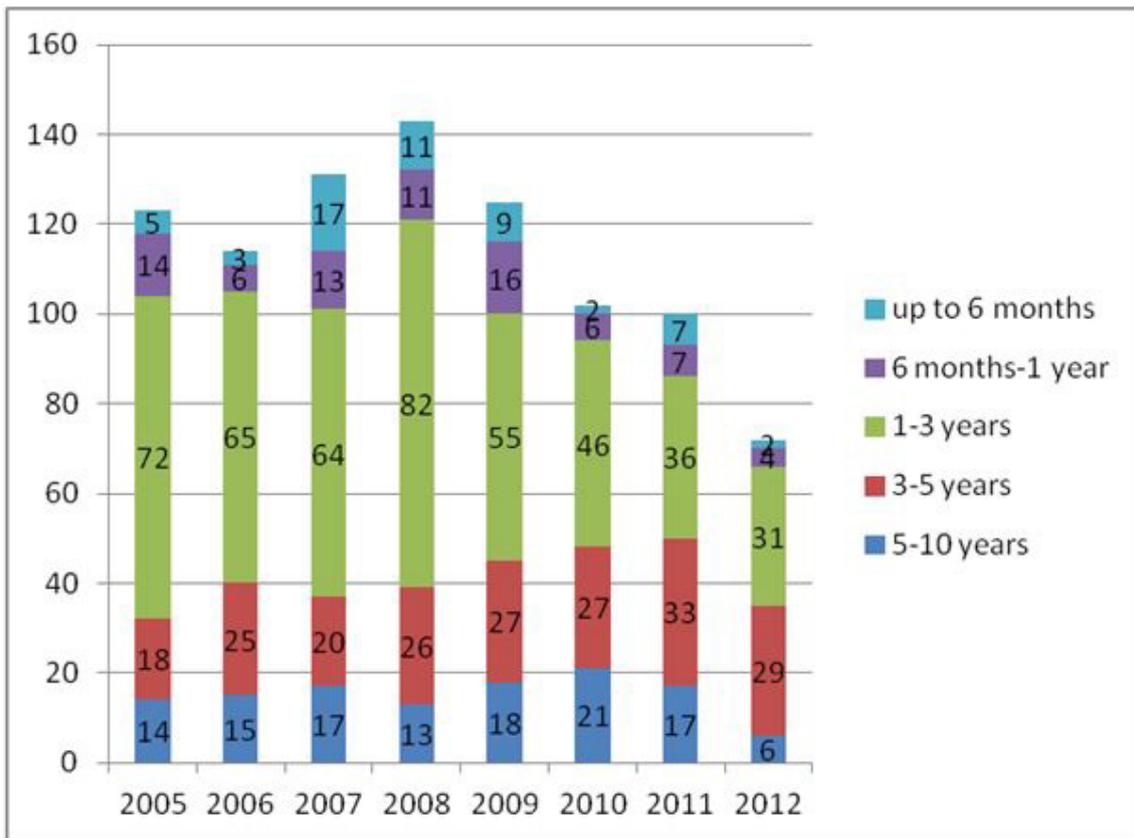
**Table 3. Imposition of penalties on minors in Lithuania during 2004–2012** <sup>16</sup>

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>Total of juveniles to whom penalties were imposed</b>	<b>1 690</b>	<b>1 424</b>	<b>1 284</b>	<b>1 189</b>	<b>1 263</b>	<b>1 342</b>	<b>1 197</b>	<b>1 098</b>	<b>943</b>
<b>Penalties imposed, Of them:</b>	<b>1 690</b>	<b>1 421</b>	<b>1 285</b>	<b>1 195</b>	<b>1 263</b>	<b>1 356</b>	<b>1 212</b>	<b>1 109</b>	<b>950</b>
<b>Imprisonment</b>	<b>327</b> 19,3 %	<b>408</b> 28,7 %	<b>371</b> 28,9 %	<b>330</b> 27,6 %	<b>390</b> 30,9 %	<b>396</b> 29,2 %	<b>366</b> 30,2 %	<b>356</b> 32,1 %	<b>261</b> 27,5 %
<b>Suspension of imprisonment</b>	<b>682</b> 40,4 %	<b>379</b> 26,7 %	<b>439</b> 34,2 %	<b>394</b> 33 %	<b>328</b> 26,0 %	<b>350</b> 25,8 %	<b>293</b> 24,2 %	<b>224</b> 20,2 %	<b>174</b> 18,3 %
<b>Release from a penalty</b>	<b>32</b> 1,9 %	<b>15</b> 1,1 %	<b>5</b> 0,4 %	<b>7</b> 0,6 %	<b>2</b> 0,2 %	<b>7</b> 0,5 %	<b>2</b> 0,2 %	<b>2</b> 0,2 %	<b>0</b>
<b>Arrest</b>	<b>110</b> 6,5 %	<b>145</b> 10,2 %	<b>50</b> 3,9 %	<b>51</b> 4,3 %	<b>75</b> 5,9 %	<b>85</b> 6,3 %	<b>73</b> 6,0 %	<b>62</b> 5,6 %	<b>57</b> 6 %
<b>Suspension of arrest</b>	<b>335</b> 19,8 %	-	-	-	-	-	-	-	-
<b>Fine</b>	<b>108</b> 6,4 %	<b>114</b> 8 %	<b>66</b> 5,1 %	<b>45</b> 3,8 %	<b>64</b> 5,1 %	<b>81</b> 6,0 %	<b>62</b> 5,1 %	<b>44</b> 4,0 %	<b>50</b> 5,3 %
<b>Community service</b>	<b>96</b> 5,7 %	<b>28</b> 2 %	<b>21</b> 1,6 %	<b>8</b> 0,7 %	<b>12</b> 1,0 %	<b>16</b> 1,2 %	<b>6</b> 0,5 %	<b>17</b> 1,5 %	<b>24</b> 2,5 %
<b>Restriction of liberty</b>	<b>0</b>	<b>329</b> 23,2 %	<b>333</b> 25,9 %	<b>360</b> 30,1 %	<b>392</b> 31,0 %	<b>420</b> 31,0 %	<b>410</b> 33,8 %	<b>404</b> 36,4 %	<b>384</b> 40,4 %
<b>Other</b>	<b>0</b>	<b>3</b> 0,2 %	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b> 0,1 %	<b>0</b>	<b>0</b>	<b>0</b>

During recent years, the penalty of restriction of liberty composed the greatest part of the penalties imposed on minors, as it substantially substituted other similar alternative, i.e. suspension of imprisonment. Part of the latter diminished from 40.4 percent to 18.3 percent during the period of 9 years. It should also be noted, that almost 90 percent of imprisoned juveniles must serve a sentence of imprisonment of more than 1 year (see *Picture 3*).

<sup>16</sup> Ibid., p. 33

**Picture 3. Period of imprisonment imposed on minors at the end of the year in Lithuania during 2005-2012<sup>17</sup>**



<sup>17</sup> Based on the information from the Statistics Lithuania and the Prison Department under the Ministry of Justice of the Republic of Lithuania.

## B. Restorative approach within juvenile justice

**B.1. Where do you see a restorative approach within the juvenile justice system (this questionnaire follows a process based definition of restorative justice)?**

**B.2. What are the types of restorative justice measures provided for juveniles (e.g. victim-offender mediation, family conferencing, circles)? Please also refer to their legal basis.**

**B.3. Do these restorative measures play a role in juvenile justice (sentencing) practice?**

**B.4. What are the main actors involved in delivering restorative justice measures (public institutions, NGOs...). Who bears for the costs of restorative justice measures?**

In Lithuania, the restorative justice system has not been established yet. Recently, a number of research works have been carried out analysing the issue of the most appropriate model of restorative justice,<sup>18</sup> emphasizing the necessity to take into account the Recommendations of the Council of Europe Committee of Ministers No R (87) 20 On Social Reactions to Juvenile Delinquency.<sup>19</sup> However, the creation of the restorative justice system is still being considered.

There are some separate attempts to implement restorative justice in different fields of criminal justice, usually in the form of individual, local projects financed from various non-governmental sources. For example, at the moment, a call for proposals is open for developing and implementing a mediation programme in the Lithuanian criminal justice system. The aim is to increase the application of alternatives to prison. A central part

18 Ušėlė, L., Matijaškaitė, A., Uscila, R. Atkuriamasis teisingumas: samprata, tarptautinių dokumentų rekomendacijų, užsienio valstybių patirties apžvalga, atkuriamojo teisingumo sistemos kūrimo sąlygų analizė ir pasiūlymai dėl jos kūrimo Lietuvoje (2006). Teisės institutas. Access via internet: <http://www.teise.org/data/1Atkuriamasis-teisingumas-2006.pdf>; Bikelis S., Ušėlė L., Gavrilovienė M., Kavoliūnaitė E., Michailovič I., Uscila R. Atkuriamojo teisingumo sistemos Lietuvoje koncepcija ir jos įgyvendinimo priemonių plano projektas. Vilnius, Teisės institutas, 2008; Uscila, R. Atkuriamasis teisingumas penitencinėje sistemoje. *Pedagogika*, 2001, T. 103.

19 Recommendations of the Council of Europe Committee of Ministers No R (87) 20 On Social Reactions to Juvenile Delinquency Adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies). Access via internet: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=608029&SecMode=1&DocId=694290&Usage=2>.

of the project will be on creating a system for mediation and training mediators<sup>20</sup>. This project will be implemented with the support of the Norwegian Financial Mechanism. Another country-wide project “Strengthening of Police Capabilities aimed at Prevention of Juvenile Delinquency through the Implementation of the Restorative Justice Model” is tasked to present to the territorial police units and other social partners a new procedure of conflicts solution while dealing with juvenile delinquency problems. It also delivers new programs, methodical material, and interactive educational module for police training units.<sup>21</sup>

However, at the moment there is no national strategy for a restorative justice system for juveniles, or in general. Although Point 36.2 of the National Programme for Crime Prevention and Control<sup>22</sup> establishes the effort to create the restorative justice system in Lithuania whose main task would be the restoration of a former state between the subjects affected by the crime, i.e. between the victim, the perpetrator and the society, this task has not been implemented yet.

Currently, there is one provision in the CC which theoretically could be considered as a measure of restorative justice. It was already mentioned, that one of the possibilities to be released from criminal liability is the reconciliation between the offender and the victim. Article 38 of the CC states that a person who commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime may be released by a court from criminal liability where: 1) he has confessed to committing the criminal act, and 2) voluntarily compensated for or eliminated the damage incurred or agreed on the compensation for or elimination of this damage, and 3) reconciles with the victim or a representative of a legal person or a state institution, and 4) there is a basis for believing that he will not commit new criminal acts. As may be seen, there are rather strict conditions enabling to make use of this possibility. However, researchers notice, that reconciliation under this Article is more a formal act rather a real form of mediation.<sup>23</sup>

There are more of restrictions to repeat offenders or to persons who commit a new criminal act to make use of this provision. The Article states that a repeat offender, a dangerous repeat offender, also a person who had already been released from criminal liability on the basis of reconciliation with the victim, where less than four years had

20 Information from the website of Norway grants. Access via internet: <http://eeagrants.org/News/2014/Developing-a-mediation-system-in-Lithuania>

21 Information from the website of the project “Strengthening of Police Capabilities aimed at Prevention of Juvenile Delinquency through the Implementation of the Restorative Justice Model”. Access via internet: <http://mediacija.policija.lt>.

22 Resolution of the Seimas of the Republic of Lithuania of 20 March 2003 No IX-1383 On the Approval of the National Programme for Crime Prevention and Control. *Official Gazette*, 2003, No 32-1318.

23 Michailovič, I. Nepilnamečio kaltininko ir nukentėjusiojo mediacijos galimybės Lietuvoje. *Teisė*, 2000, No. 35, p. 69-79; Uscila, R. Nusikaltimo aukos ir nusikaltėlio mediacijos instituto samprata, pagrindiniai modeliai ir jų veikimo principai. *Jurisprudencija*, 2001, Vol. 20 (12), p. 74-84; Uscila, R. Aukos ir nusikaltėlio mediacija Skandinavijos šalyse. *Jurisprudencija*, 2002, Vol. 29 (21), p. 93-109; Uscila, R. Nusikaltimo aukos ir kaltininko mediacijos įdiegimo galimybės Lietuvoje. *Teisės problemos*, 2006, No. 2 (52), p. 84-99.

lapsed from the day of reconciliation until the commission of a new act, may not be released from criminal liability on the ground of reconciliation. As well, if a person released from criminal liability on the ground of reconciliation commits a misdemeanour or a negligent crime within the period of one year or fails, without valid reasons, to comply an agreement approved by a court on the terms and conditions of and procedure for compensating for the damage, the court may revoke its decision on the release from criminal liability and decide to prosecute the person for all the criminal acts committed. And, if a person released from criminal liability on the ground of reconciliation commits a new premeditated crime within the period of one year, the previous decision releasing him from criminal liability shall become invalid and a decision shall be adopted on the prosecution of the person for all the criminal acts committed.

The state does not cover any the costs of restorative measures, because as was already mentioned, the state system of restorative justice is not functioning. All the implemented measures of restorative justice are financed by project funds.

There is no statistical information on the use of restorative justice instruments in Lithuania.

## C. Foster care within the juvenile justice system

### C. 1. Does foster care play any role in your juvenile justice system?

In general, in Lithuania, there are three types of alternative family care settings: family guardianship, social family guardianship and institutional care settings. One form of the institutional care, relating institutional care of children with antisocial behaviour, is care provided in socialisation centres. At the moment, there are 6 children socialisation centres where children are sent in accordance with the juvenile justice system. Socialisation centres substituted the previously used special children foster care institutions, thus changing the attitude towards children susceptible to criminal behaviour. In 2012, 151 children lived in these centres. There are two ways how children are placed in these institutions: 1) upon the imposition of a reformative sanction under the CC; 2) as an average care measure in accordance with the LMACC.

As one of reformative sanctions upon minors the CC provides a placement of a minor in a special reformative facility. The term for placement therein may be fixed for a period of six months up to three years, but not for longer than until a minor reaches the age of 18 years. The specific term of placement into a special reformative facility is laid down by a court upon taking into consideration the personality of the minor, the repetitive character of his criminal conduct, the type of sanctions previously applied, and other circumstances of the case. According to the CC, placement in a special reformative facility may be ordered in respect of a minor as an independent sanction or in combination with a warning or compensation for or elimination of property damage (Article 88 of the CC).

As can be seen from *Table 2* above, in practice, the reformative sanction of placement in a special reformative facility is not widely used. In 2004, 5, in 2005 – 12, in 2006 – 3, in 2007 – 6, during 2008-2011 – none, and in 2012 – 3 minors were placed in a special reformative facility.

Another form of placement of a child is application of average measures of the child care. As already mentioned before, this measure could be imposed on the child in three cases: 1) where a child commits an act with the elements of a criminal act or criminal offence but has not reached the legal age of responsibility set forth in the CC; 2) where he has within a period of one year committed 3 or more acts with the elements of administrative offence but has not reached the age set forth in the CAO imposing administrative responsibility; 3) where he has been placed under application of minimum measures of child care but no positive results have been achieved.

Average care measure may be imposed for a period of up to one year, but no longer than

the moment when the person reaches 18 years of age. Average care measures may be extended, however, not longer than 3 years of stay in a child socialisation centre, and no longer than the moment when the person reaches 18 years of age. As already mentioned before, average care measures may be imposed on a minor of no less than 14 years of age, but in exceptional cases, the when behaviour of the child is dangerous to life, health or property of his own or of other persons, the measure can be imposed on younger children.

**C. 2. Under which conditions can foster care be imposed within the juvenile justice system (at pre- or post-sentencing level or in case of diversion)? Can foster care be imposed as an alternative to custody or pre-trial/police detention? If so please describe the regulations for foster care (length, rights of the children/the foster carers etc.) If there are possibilities in law, how are they used in practice?**

Care within a child socialisation centre may be imposed only in cases where a child has been released from criminal liability or a penalty or where a child may not be held liable due to his age. In case a child is subject to sentencing, there is no possibility to impose any of reformatory sanctions, and only a penalty may be imposed.

Criminologists in Lithuania criticise such regulation;<sup>24</sup> according to them, reformatory sanctions should be the primary measure and in general should be used instead of a penalty in respect of minors due to the aims of peculiarities of criminal liability of minors.

**C. 3. Does your system know any other alternatives to custody like alternative care in case of pre-trial detention (e.g. in closed juvenile welfare institutions instead of prisons) or in case of juveniles sentenced to youth prison or comparable forms of custody? If there are possibilities in law, how are they used in practice?**

In cases when a minor is arrested or sentenced he is placed in the Juvenile Interrogation Isolator – Correctional Facility of Kaunas (described above in Point A.2.5.). In Lithuania, there are no any other alternatives to custody.

<sup>24</sup> Nikartas, S., Sakalauskas, G., Ūselė, L., Zaksaitė, S. 2009, p. p. 71-74.

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