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Report

Situation in Bulgaria - desk analysis.

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I. Juvenile Justice System in Bulgaria

1. Legal framework, administrative system and allocation of power and responsibilities

The juvenile justice system (JJS) in Bulgaria is governed by numerous pieces of laws that regulate the so-called formal justice or justice based on a clear legal procedure, executed within the **common criminal justice system** such as: Penal Code, Penal Procedure Code and Execution of Punishments Act. Another bulk of legislation designed **particularly for children** is: Juvenile Delinquency Act (JDA) and Child Protection Act.

1.1. Penal Code

Penal Code (in force from 1968 last amended in 2013) (PC) provides for specialized regulations, different from those for adults, such as:

- ages of criminal responsibility of children (*see more at page 7*);
- reduced system of penalties for children;
- measures for diversion from the formal criminal justice as well as for restorative justice.

Penal Code sets forth in a separate chapter titled *Specific Rules for Juveniles*¹ the rule that punishments are imposed on underage persons above all with the objective to re-educate and prepare them for socially useful work². *Punishments that may be applied to juveniles*³ are: deprivation of liberty; probation; public censure; deprivation of the right to practice a certain profession or activity.

The *maximum duration of imprisonment* which can be imposed on juveniles is up to ten years for children aged between 14 and 16 and up to 12 years for young persons between 16 and 18⁴. Persons under 16 years of age may also be punished with an administrative punishment - detention at the units of the Ministry of the Interior for a term of 15 days or a fine for minor

¹ Penal Code, General Provisions, Chapter VI.

² Article 60 of the PC.

³ Article 62 of the PC.

⁴ Article 63 of PC.

hooliganism⁵. Punishments for juveniles could be replaced, or *reduced with respect to length and severity*. It has been specially pointed out that *life imprisonment is replaced by deprivation of liberty*. Life imprisonment sentence cannot be imposed on children under the age of 18, which is in line with international standards⁶.

1.2. Diversion measures

Diversion measures are laid down in a form of discretionary power vested to the prosecutor (at the pre-trial stage) or to the judge to divert the child from the criminal proceedings or to cancel the case referring it to the administrative bodies and education measures provided that with regard to the perpetrator educative measures can successfully be applied pursuant to the JDA (Article 61 of the PC). The *prosecutor* may not start pre-trial proceedings or may terminate the instigated proceedings⁷. In such a case the prosecutor refers the case to the Local Commission on Juvenile Delinquency (LCJD) for the imposition of a measure for education (for these measures see more at page 17). The *court* may decide to close the case either imposing an educative measure, informing thereof the LCJD, or forwarding thereto the court file for imposition of such a measure to the said body⁸.

In cases where the determined punishment is deprivation of liberty for less than one year and its serving has not been suspended, the underage convict shall be exempted from serving it and the court shall accommodate him in a correctional boarding school or shall impose on him/her another educational correction measure provided by the JDA⁹. This rule is not applied only in the following cases: a) where the underage convicted has committed a crime during the serving of the punishment “deprivation of liberty” and b) where he/she has been convicted after completing full age. In cases of second conviction, provided the court finds that for the correction and re-education of the perpetrator it is necessary for him/her to serve the sentence of deprivation of liberty and where: a) the term is not less than six months, or b) the perpetrator has already served a punishment by deprivation of liberty.

⁵ Decree for Combating Minor Hooliganism, Art. 1 (1), amended in 2011.

⁶ Konstantinov, E. and Trajkov, Zdr. Methods for regulation of the prison population, Foundation “Hans Zaidl”, Central Prison Administration and the Institute for political and legal research, Sofia 1999, p. 51. See also UN Minimal standard rules on juvenile justice (Beijing Rules).

⁷ Article 61, para 3 of the PC.

⁸ Article 61, para 2 of the PC.

⁹ Article 64, paras 1-2 of the PC in conjunction with article 13 of the JDA.

Another possibility provided by law is that upon proposal of the prosecutor or of the respective Local Commission JD, the court may also, after pronouncement of the sentence, substitute the accommodation in a correctional boarding school for another educational corrective measure.

The specific rules for juveniles (Art.64 PC) also provide for the *automatic replacement* of a prison sentence of maximum one-year duration by placement in a boarding school for corrective training.

In summary: the law in force allows putting in practice the ‘intensive and remand fostering measures’ because such are listed in article 13 of the JDA. What is needed is training and motivation of prosecutors and judges dealing with cases of juvenile perpetrators. Majority of those measures have a nature of ‘restorative justice’.

The underage persons shall serve the punishment - deprivation of liberty in correctional establishments¹⁰. After reaching the age of majority, they shall be transferred to prison or prison hostel. In view of completing their education or vocational training, upon proposal of the Pedagogical Council and with permission of the prosecutor, they may be admitted to correctional establishment until completion of 20 years of age.

1.3. Penal Procedure Code

Penal Procedure Code (PPC) (in force from 2005, last amended in 2011) regulates under Chapter XXX (Art. 385 – Art. 395) special rules on examination of cases for crimes committed by underage persons. Some of the basic legal principles of the pre-trial and court proceedings are aimed to take into consideration the perpetrator’s age, psychology and personal dignity. These are:

- The investigative bodies should have appropriate training¹¹;
- The participation of a defence counsel in criminal proceedings is mandatory;
- Measures for remand (*see more at pages 10-11*);
- In the course of investigation and judicial trial evidence are collected about the date, month and year of birth of the underage person, about the education, environment and conditions of living thereof, and evidence whether the crime was due to the influence of adult persons;

¹⁰ Article 65 of the PC.

¹¹ The Judicial Power Act however, does not provide for such a requirement.

- Where necessary, in the interrogation of an underage accused party a pedagogue or a psychologist participates, who may ask questions with the permission of the investigative body. The pedagogue or psychologist has the right to familiarize themselves with the record of interrogation and to make remarks on the accuracy or completeness of matters recorded therein;
- The parents or guardians of underage persons are summonsed to the hearings of cases against them. They have the right to take part in the collection and verification of evidentiary materials and to make requests, remarks and objections;
- Where it is necessary to elucidate facts which may have a negative impact on the defendant who is underage, the court may temporarily remove him/her from the courtroom after hearing the defence, the parents or the guardian and the prosecutor, etc.

1.4. Execution of Sentences and Detention in Custody Act

Execution of Sentences and Detention in Custody Act (ESDCA) (in force from 2009, last amended in 2013) contains detailed rules concerning implementation of penalties imposed on underage perpetrators. The basic principle in execution of “deprivation of liberty” with respect to juveniles (chapter fourteen) proscribed by the law is that the complete activity aimed at reintegration of juveniles deprived of their liberty shall be conducted in conditions of maximising opportunities for contact of the sentenced persons with the outside environment as a whole, with relatives and persons who exert a good influence thereon, with volunteers and representatives of non-governmental organisations. Specific arrangements are laid down for the execution of the penalty “probation” (chapter sixteen, article 230).

1.5. Juvenile Delinquency Act

Juvenile Delinquency Act (JDA) (in force from 1958, last amended in 2013) establishes the: 1) separate administrative system for “combating the anti-social acts of minors and under-aged”, 2) provisions for penalizing-correctional measures for children who have committed crimes under the Penal Code, but are not criminally responsible, and reactions and penalizing measures for children who have committed status offences and 3) some responsibilities for prevention of juvenile delinquency. The law was passed in 1958 and today does not create the necessary legal, institutional and functional prerequisites for better ensuring the rights of the child in the justice

system, nor measures to achieve efficiency.¹² Aiming to counter juvenile crime and delinquency the Act lists administrative and educational measures, applied as a substitute for the penalties or independently, in case of delinquency of minors where penal measures are inapplicable¹³. The Act is supported by a secondary legislation such as: Regulations on the Problem Children Offices of 1998, Regulations on the Homes for Temporary Placement of Children of 1998, Regulations on Placement of Children in Social Pedagogical Boarding Schools and in Pedagogical Boarding Schools of 2006.

Even with the recent changes in 2006, the administrative structures and their mandates remain ineffective and functioning in parallel with the child protection system. The recent Governmental Concept on Justice for Children in Bulgaria states that the provisions of the JDA are in conflict both with national regulations and international legal instruments, to which Bulgaria is a party. This requires that JDA be repealed. All its provisions found to be effective, to be preserved, enhanced and incorporated in a new special law, which is to regulate in a contemporary way the area of children in conflict with the law.

1.6. Child Protection Act

Child Protection Act (CPA) (in force from 2000, last amended in 2013), establishes the: 1) separate administrative system for child protection, 2) mechanism for the placement of children in public care, 3) basic principles of child protection as follows: recognition and respect for the child's personality; bringing up of the child in a family environment; securing of the best interests of the child; providing special protection to children at risk, immediate reaction if the child is in need of protection etc. and 4) rights of children in the public domain. Child protection under this Law is carried out through undertaking of protection measures with respect to children or through special protection with respect to children at risk. The protection measure “placement of the child to live out of his or her family” is being imposed only when explicitly provided by law requirements are present and following specific procedure (for example when the child is a victim of domestic violence or a danger for damaging of his/her physical, psychological, moral, intellectual or social development exists).

¹² See: Concept for Public Policy on Justice for Children, adopted by the Council of Ministers in 2011 and the Road Map for its implementation passed by the Govt in 2013, both at: <http://www.justice.government.bg/107/>

¹³ Article 13 of the JDA.

The Law on Child Protection establishes a duty for mandatory reporting of cases of a child in need of protection. Each official, irrespective of them being bound by a professional secret, or person that has come across such a case has to signal the competent authorities, which work in the field of child protection.

The Act provides for an important legal definition of the “child at risk”.

2. Allocation of power and responsibilities

The JDA and the CPA establish two separate *administrative systems*: 1) a system for prevention and combating criminal activity and 2) a child protection system. Both systems function without sufficient coordination that signifies different policies and practices affecting the effectiveness and the efficiency of the state policy in the area of child care and protection¹⁴. Both systems (law enforcement agencies) comprise central and local bodies with the related powers/responsibilities.

2.1. Central bodies

The **Central Commission on Juvenile Delinquency (CCJD)** is set up under the Council of Ministers and consists of: **chairman** – a deputy prime minister of the Republic of Bulgaria; vice-chairs – a deputy minister of youth education and science, a deputy minister of labour and social policy, and a deputy minister of the Interior; secretary and members: a deputy minister of justice, a deputy minister of health, a deputy minister of finance, a deputy Ministry of Culture, a deputy Chairperson of the Youth and Sport, a deputy chairman of the State Agency for protection of the child, the vice-chair of the Supreme Cassation Court, a deputy chief prosecutor, and a deputy director of the National Investigation Service. The number of its full time staff and the tasks of the Commission are specified by a regulation passed by the Council of Ministers.

CCJD has functions on prevention of anti-social acts and crimes committed by children, on national policy coordination in the area and supervises the activities of the local commissions on juvenile delinquency. CCDJ produces annual reports on its activity before the Council of Ministers (article 7 of JDA).

¹⁴ See note 9.

The **State Agency for Child Protection (SACP)** is set up under the Council of Ministers as a special administration to the Chairperson responsible for setting standards for child protection and child care as well as for monitoring of children's rights (article 17a of the CPA).

The Social Assistance Agency (SAA) is a special executive agency to the Minister of Labour and Social Policy responsible for the provision of social assistance in the forms of financial transfers or social services to the population in need, including children and their families (article 5 of the Social Assistance Act).

2.2. Local bodies

Local Commissions on Juvenile Delinquency (LCJD) are set up at local level, as structures subordinated to the municipality but guided methodologically by the Central Commission¹⁵. Members of the LCDJ are representatives of the municipal administration in charge of education, health care, social welfare, of the police, NGOs, psychologists, pedagogues, lawyers, medical doctors, public figures. The sessions are also attended by a public prosecutor from the Regional Prosecutor's Office. In the municipalities with a population of over 10 000 people or by virtue of a decision of the CCJD, a secretary is appointed, whose remuneration is defined by the Mayor. The local commissions are supported by the municipal budget and by their own revenues. In Bulgaria function 299 Local Commissions, with 219 Associate Secretaries assigned to the municipality¹⁶. Briefly, the commissions do not have a full time staff apart from the secretary that fulfils also other activities in the municipality.

Contrary to its scarce human and financial resources (non-permanent staff and lack of budget) the local commissions have a lot of important powers and responsibilities. These comprise functions that violate the principle of division of powers¹⁷, e.g. functions of policy implementation and development, of case management (imposition of educational/disciplinary measures) and their implementation, coordination, after care of children released from detention and placement in institutions etc. Such a mix of powers and responsibilities leads to ineffective and inefficient policy and measures that above all parallels and often contradicts the policy of child care and protection. It should be noted that in 1958 when the law was passed, these structures were the only ones dealing particularly with children. The situation remains unchanged nevertheless child protection

¹⁵ Article 8, para 2 of the JDA.

¹⁶ See note 9.

¹⁷ See Pushkarova, I.

legislation was passed in 2000 and a system of child protection was built on different principles – professionalism, standards for procedures and intervention measures, a set of rights and guarantees for the child etc. The inconsistency among the child protection and child delinquency legislation and policies has been addressed in 2004 by a Governmental Strategy for Prevention and Combat of the Anti social Behaviour of minors and adolescents as well as by amendments to the JDA. However, the reform of 2004 was partial and inconsistent with the needs and trends in the child protection policies. It did not achieve qualitative results in the institutional framework, coordination in resources, standards and rights protection of children.

LCJD have a mandate in:

- prevention (organize and coordinate the general and personal preventive social activities¹⁸ at the municipality. In doing so LCJD may cooperate with NGOs in their activities for prevention of anti-social acts of children as well as to establish auxiliary bodies – centres, consultative offices, hot telephone lines and others¹⁹);
- policy research and development²⁰;
- case management & imposition and implementation of disciplinary measures set forth in the JDA²¹;
- monitoring and participation in the execution of the disciplinary measures or sentence deprivation of liberty (may propose before the public prosecutor or before the commissions²² an early release from a juvenile detention facility as well as before the Pedagogical Boards for the termination of their stay in a Correctional Boarding Schools²³).
- provide after care and monitor the conduct and the development of children released from a Correctional Boarding Schools or a juvenile detention facility as well as of the persons with conditional sentences or awarded an early release (diverted from the system), and take measures towards their further appropriate development²⁴;

¹⁸ Article 10, para 1/ a of the JDA.

¹⁹ Article 10, para 2 of the JDA.

²⁰ Article 10, para 1/ k, l of the JDA.

²¹ Article 10, para 1/ b, d of the JDA.

²² As per article 73 of the Execution of Sentences and Detention in Custody Act.

²³ Article 10, para 1/ c of the JDA.

²⁴ Article 10, para 1/ e, g, h of the JDA.

- render assistance to parents who are faced with difficulties in the education of their children;
- monitor the structures built under the JDA such as Problem Children Offices, Socio-Pedagogical Boarding Schools, Correctional Boarding Schools, Juvenile detention facilities, Homes for Temporary Placement of Minors and Juveniles and asylums as well as the guardians and trustees of minors and juveniles. In fact, this is a minimal activity because of the serious financial difficulties, incompetence of the commissions to carry out such functions or unawareness of the mode of their discharge²⁵.

In summary, the JDA attributes important and responsible functions to the local commissions. However, these functions are not supported by adequate resources or trainings, which make such functions only of recommendatory nature.

The activities for implementation of state policies in the area of child protection are under the authority of the territorial structure of Agency for Social Assistance (Child Protection Units in the structure of **Departments Social Assistance**). Presently there are **147 DSA-CPU**. As of may 2012, **739** people work in CPU. In 2011 the professionals from CPU have participated in **5 833** correction cases with the Local Commissions and in **286** judicial proceedings for the imposition of educational measures or **punitive** measures under **PC**. CPU professionals work actively with children with anti-social behaviour and their families. Their work focuses on consulting, support and assistance for the correction of risk behaviour. Measures for protection are applied in all cases where risk is identified, in accordance to the legal framework²⁶.

3. Concepts and definitions

Definition of a child

The Child Protection Act defines the child as a human being below the age of 18 (article 2). The Persons and Families Act provides for a gradual reach of the age of so called “civil majority” (capacity to act in person in legal terms) by children:

- children who are below the age of 14 are minors; they act via the representation of parents or guardians - shall undertake legal action for and on behalf of them.

²⁵ The conclusion was drawn on the ground of the Report of the CCCACMJ for 1999, the data from the Social Assessment of Child Care in Bulgaria as well as personal observations

²⁶ Data from the Road map: <http://www.justice.government.bg/107/> .

- children from 14 until becoming 18 years old are underage (juveniles or adolescents); they undertake legal action with the consent of their parents or custodians.

Age of criminal liability:

A basic concept in Bulgarian penal law existing ever since the adoption of the Penal Code in 1968 is that underage persons who have not completed 14 years of age (minors) shall not be held criminally liable. As per the Code:

- ✓ children under the age of 14 are minors and are not subjected to criminal liability (Article 31, par. 1). In case of minors who have committed socially dangerous acts, only educational measures may be applied;
- ✓ children aged 14 to 18 years are subjected to criminal liability - their acts, declared crimes under the Penal Code are punishable when at the time of committing the act they were capable of understanding the nature and meaning of the act and in control of their actions (art. 31, par. 2);
- ✓ children aged 14-18 that are subjects to criminal responsibility are divided in two age categories: 14-16 and 16-18; they are subjected to a reduced criminal responsibility in comparison to adults; the degree of reduction decreases in the 16-18 age category.

The general rule under civil law concerning the legal capacity and legal representation of children, applies also in criminal proceedings, where the legal representation of the child is mandatory.

Child victim of crime

Under the Criminal Procedure Code a victim is any person who has suffered material or nonmaterial damages from the criminal offence. After the death of such persons, this right shall pass on to their heirs. The accused party cannot exercise the rights of a victim within one and the same proceedings. These general rules are applicable also to children victims of crimes. The rights of the victim are provided for in Article 75 of the said Code. In pre-trial proceedings, the victim has the following rights: be informed of his/her rights within the criminal proceedings; obtain protection with regard to his/her personal safety and the safety of its relatives; be informed of the progress of the criminal proceedings; take part in the proceedings in accordance with the

provisions of this Code; furnish requests, note and objections; file appeals with regard to the acts resulting in the termination or suspension of criminal proceedings; have a counsel. The body which initiates the pre-trial proceedings immediately notifies the victim thereof, if the latter has specified an address for service in Bulgaria. The victim's rights arise if he/she has explicitly requested to be involved in the pre-trial proceedings and specified an address for service in Bulgaria. Given the general rule that the child has right to legal aid in all proceedings, affecting his or her rights or interests (as indicated above) under the Law on protection of the child, the child victim is entitled to have a counsel (lawyer), including free legal aid in case the child does not have parents, guardians, etc., or it has, but the latter cannot afford to pay a lawyer.

4. How the system functions

The JJS consists of: 1) system of the regular court and prosecution dealing with adolescent children aged 14-18 that have committed crimes and 2) administrative system particularly designed to deal with prevention and reaction (combat) to delinquent behaviour of children aged 8-18.

4.1. Common criminal justice system

Judicial proceedings in Bulgaria are divided among common courts – providing civil and criminal justice and specialized administrative courts that deal with appealed acts of the administration²⁷. The following criminal proceedings dealt with by the common criminal court may involve children aged 14-18:

1. Criminal cases with administrative nature based on:
 - a File on administrative infringement made by the police under the Combating of Minor Hooliganism Ordinance or under the Public Order in Sports Events Act;
 - the appeal against administrative penalty.
2. Private criminal cases:
 - on some crimes particularly determined in the Penal Code that are examined on the basis of the victim's application and without police and prosecutor's investigation;
 - on pre trial custody measures;

²⁷ See the Judicial Power Act (2007), article 61.

- based on a proposal by the LCJD to apply the most severe measures under the JDA – placement of minor children committed criminal acts or of juveniles released from penalties into specialized institutions;
 - based on appeals against the decisions of the LCJD to apply educative measures under the JDA.
3. Common criminal cases initiated on perpetration of a crime of general nature. The case develops in two phases: the first one is *pre-trial* where the investigation takes place performed by police investigators or investigation officers supervised by a prosecutor. Based on a file of the prosecutor the case goes to the court. The court phase develops in three instances. Proofs could be collected in the first two phases of the court proceedings as well as the child could be interrogated too. At this stage the court governs the criminal proceedings and decides on all matters of the case. There is no specialization within the court system to deal with juveniles. The **UN Committee on the rights of the child** directly recommended Bulgaria to “set up an adequate system of juvenile justice, including juvenile courts with specialized judges for children, throughout the country”. This specialization is linked also to another recommendation of the Committee - to train judges and all law enforcement personnel who come into contact with children from the moment of arrest to the implementation of administrative or judicial decisions taken against them²⁸. However, special requirements are set forth by the Penal Procedure Code as far as the training of the jury members. Such take part only at the first instance court and they should be teachers or educators²⁹. The participation of jury is mandatory in cases with juvenile perpetrators.

Prosecution Office - Raises and maintains the accusation for crimes of general nature, guides the preliminary proceedings, takes part in the legal proceedings as a state accuser, and exercises legality supervision. Within the framework of pre-trial proceedings, the prosecutor can order detention in custody for up to 72 hours. The prosecutor takes part in the work of the LCJD. According to data from the Supreme Prosecutor's Office of Cassation the number of accusations in 2010 decreased by 553 comparing to 2009. Since 2012 by virtue of Order of the General Prosecutor some specialization started in the public prosecutors for juvenile cases.

²⁸ See the Initial (1997) and the Second and the third periodical reports (2008) of Bulgarian Government to the UN CRC.

²⁹ As per article 390 para. 2 PPC.

Investigation services - are part of the judicial system under the supervision of the prosecution offices and divided on a regional principle - 28 district investigation services in the country and one National - in Sofia. They conduct the investigation of crimes particularly listed in the PPC. When necessary, they can rule detention in custody for up to 24 hours, acting as an investigating body. They have no central unit or any coordination among themselves; control and supervision are exercised by the court and the public prosecutor's office with respect to specific cases only. The law does not stipulate for a specialized investigation officers to deal with juvenile cases.

4.2. Legal procedure

The Penal Procedure Code sets forth Specific Rules for the consideration of criminal cases of juveniles³⁰. It deserves to be noted that these rules are applicable only if the accused is only a child/ children. In the case the crime has been perpetrated by an adult person with the participation of a child, the case follows the common proceedings.

Bail measures

The confinement/ bail measures that can be taken with respect to juveniles are adjusted to the age and needs of the child. These are a reduced sort of measures and the detention in custody is a measure of a last resort. The measures are:

1. *Supervision* measures that could be implemented either by the investigative authorities or by the prosecutor or by the court: by the parents or the guardian; or by the administration of the educational facility where the juvenile has been placed; or by the inspector at the Children Problem Office or by a member of the Local Commission on Juvenile Delinquency.
2. *Detention in custody*, this measure being used exceptionally as a measure of last resort³¹. It is taken by the court only (as it is the case with adults) based on the prosecutor's proposal and is a subject of appeal³². The bail could always be challenged in order to be changed to supervision measure³³. The "detention in custody" is executed in *suitable premises separately from the adults*, while the parents or guardians are notified without

³⁰ Chapter XXX, articles 385-395 of the PPC.

³¹ Article 386 para. 4 PPC and article 246 para.1 p.2 EPDCA.

³² Article 64 of the PPC.

³³ Article 65 of the PPC.

delay together with the director of the educational establishment, when the detained person is a school student³⁴.

In summary: the law in force allows putting in practice the ‘intensive and remand fostering measures’ only in the bail measure ‘supervision of the child by the inspector at the CPO or by a member of the LCJD – only in case the cooperation of the local CPU is ensured – to provide for assistance measured for the child.

Places for detention:

- **police units** - up to 24 hours, with an order by the investigating authority, and up to 72 hours, with a warrant by the public prosecutor.
- **investigation detention arrest** – there, the persons are placed who have been ordered to be detained in custody as a bail measure. This detention is carried out in the region where the criminal investigation takes place³⁵ based on a written warrant for the execution of the measure. Juveniles are placed in separate premises from the adults and are informed of their rights right to: notify one's relatives immediately after the arrest, visits, correspondence, parcel mail, amount of money for personal needs³⁶.
- **prison** – could be used for the execution of the bail measure “detention in custody” subject to all above mentioned guarantees for the rights of juveniles³⁷.

Rights for fair trial

The rights of the accused persons for *fair trial* apply also to juveniles (e.g. presumption of innocence, legal representation, legal aid, right to information, access to files and right to appeal). The law provides for the *mandatory participation of a lawyer* in juvenile criminal cases, who may be either chosen by the juvenile or appointed as an official counsel for the defence³⁸. The child lawyer should be part of the Bar but there is no a requirement for a specific

³⁴ Article 386 in connection to articles 56-66 PPC.

³⁵ Article 241 of the EPDCA.

³⁶ According to the research conducted by the Bulgarian Helsinki Committee, practically all mentioned rights are being violated. The conditions there do not allow activities for a useful employment of the time like education, professional training, labour, programs, etc. In many of the detention facilities, even the hours envisaged for a walk in the open air cannot be fulfilled. It is worth mentioning that the average stay in a detention arrest is no longer than two or three months. Whenever a longer detention occurs, it is rarely in juvenile cases, as the practice is to transfer the detainees as quickly as possible to “Boychinovtsi” or to the Sliven women prison. In: *The Investigation detention arrests*, Bulgarian Helsinki Committee, 2001.

³⁷ Article 241 in conjunction with article 247 of the EPDCA.

³⁸ Article 94 (1) of the PPC.

training of the lawyer. The child also has a right to legal aid³⁹ that is provided under the Legal Aid Act.

Interrogation of the child

The child, under the Child Protection Act (article 15) enjoys a right to be heard in all cases of administrative or judicial proceedings affecting his/her rights and interests. It is mandatory to carry out hearing of the child, provided s/he has reached the age of 10, unless this proves harmful to his/her interests. In cases where the child has not reached the age of 10, s/he may be given a hearing depending on the level of his or her development. The decision to hear the child is always motivated. Before the child is given a hearing, the court:

- provides the child with the necessary information, which would help him/her to form his/her opinion;

- informs the child about the possible consequences of his/her wishes or views as well as about all the decisions made by the judicial or administrative body.

Judicial bodies are also obliged by the same Law to ensure appropriate surroundings for hearing the child in accordance with his/her age. The hearing and the consultation of a child mandatorily takes place in the presence of a social worker from the Social Assistance Directorate at the current address of the child and when necessary - in the presence of another appropriate specialist. The court orders as well that the hearing of the child shall take place also in the presence of a parent, guardian, other person who takes care of the child, or another close person known to the child, except where this does not correspond to the child's interest. In every legal case the court notifies the Social Assistance Directorate at the current address of the child and the said Directorate sends its representative who expresses an opinion, and if unfeasible, he/she presents a report. The Social Assistance Directorate may also represent the child in cases provided for by law. The child has a right to legal aid and appeal in all proceedings, affecting his or her rights or interests.

The above regulation applies only for cases of civil & administrative matter. The penal legislation however, was gradually changed in order to give the child in criminal cases similar rights or guarantees.

³⁹ See, Child Protection Act, article 15 (3).

Special protection measures concerning children victims of crimes are contained in the Criminal Procedure Code, Law on combating trafficking in human beings (in cases where a child is identified as a victim of human trafficking), Law on assistance and financial compensation of crime victims and the Law on protection of individuals endangered in relation to criminal proceedings.

Interrogation of an accused juvenile – takes place under the common regulation of PPC⁴⁰ but also some with the application of some specific provisions. The interrogation is preceded by the collection of data about the personality of the juvenile, his/her educational grade, the environment and the conditions in which s/he has lived and data on whether the crime was not the result of the influence of an adult⁴¹. It has not been specified, however, who is obliged to collect this information and to submit it to the court. The interrogation could take place in the presence of a pedagogue or psychologist, and, when necessary, in the presence of the parent or guardian. The assessment of this necessity lies with the interrogating authority.

*Interrogation of a child – witness*⁴² - the presence of pedagogue or psychologist, and, when necessary, in the presence of the parent or guardian is mandatory in case of minor children and depends on the discretion of interrogation authority – in case of adolescents. It is always up to the interrogation authority whether the attending persons could ask questions. Experts state that this regulation is an option rather than a ban for the participation of trained professional. PPC allows for the interrogation of the child witness to be held at the pre-trial phase in the presence of a judge⁴³. The child's statements collected in such a way could be used at the court phase that eliminates the following interrogations. The interrogation of the child could be video taped or to be held via video conference⁴⁴. This requires the courts to be equipped by such a technique and to use it.

*An appropriate facility for interrogation of a child is a specific legal requirement*⁴⁵, which, however, is not always followed by the competent authority. As a good practice that started from the project activities of NGO – SAPI a process of setting up of a so called 'blue rooms' is in a

⁴⁰ Article 138, articles 277-279 PPC.

⁴¹ Article 387 PPC.

⁴² Article 140 PPC.

⁴³ The interrogation should be held following the regulation of article 223 PPC.

⁴⁴ Article 140 para.5 PPC.

⁴⁵ Article 15 para 4 of the Child Protection Act sets forth an obligation for the judicial and administrative authorities to hear the child in age appropriate premises. The same in the Concept: <http://www.justice.government.bg/107/>

process of development. So far more than 12 such premises are built and are at disposal of judicial authorities for the interrogation of children – witnesses. These are separate premises technically and professionally equipped for *child friendly* examination that respects the best interests of the child.

It deserves to be noted also that the judiciary gradually applies the notion for a single interrogation of the child witness that is supported by the legal regulation saying that the *minor* witness that has already given a statement could be interviewed again only in the case his/her statement could not be read or the new examination is highly valuable for the disclosure of the truth⁴⁶. An extra guarantee in this direction is the ruling that the statement of a minor witness given at the pre-trial stage and before a judge, the convict and his/her lawyer should be read at the trial stage without additional interviewing. *All these regulations should be made applicable to the adolescent children and widely applied, states the Concept and the Road Map 2013-2014.*

The parents or guardians have the right to take part in the collecting and checking of the evidence material and to make requests, notes and objections. At the discretion of the court, an inspector from the Problem Children Office or a representative of the educational establishment where the juvenile studies may be invited to the court session.

Execution of punishments

The execution of punishments is governed by the Execution of Punishments and Detention in Custody Act (EPDCA). Chapter Fourteen of the said Act provides for special provisions on implementation of the penal sanction “deprivation of liberty” in respect to juveniles. The Penal Code establishes the places for serving prison sentences by juveniles - these are juvenile detention facilities – one for boys and one for girls. There is one juvenile detention facility for boys in Bulgaria with a capacity to accommodate approximately 250 persons in the town of Boychinovtsi. Juvenile females are placed at a separate ward in the women’s prison in the town of Sliven. The supervision for legality in the execution of imprisonment for juveniles is entrusted to the public prosecutor.

Upon admission to a correctional institution, juveniles are accommodated at a reception unit where they remain for a period of not less than 14 days and not more than one month under the observation of an educator, doctor and psychologist. Those admitted for the first time to the

⁴⁶ Article 280, para.6 in connection with article 281 PPC.

correctional institution are accommodated separately from the rest. Within three days after admission of juveniles, the administration of the correctional institution notifies the parents thereof or the persons who exercise the parental rights, the prosecution office, the draft registration office, the municipal council, the supervisory board and the police counselling centre at the place of residence thereof and the competent Local commission for juvenile delinquency. After the inmates attain their majority, they are transferred to a prison or prison hostel⁴⁷. To enable the inmates to complete their education or qualification, upon proposal of the Pedagogical Board and with the approval of the public prosecutor, they can be left in the juvenile detention facility until they complete 20 years of age.

The underage persons deprived of their liberty who turn 18 years of age are transferred to a prison on a proposal by the director of the correctional institution by order of the Chief Director of the Chief Directorate of Implementation of Penal Sanctions. Those placed under minimum-security and low-security regimes are being sent to open prison hostels for service of the rest of the sentence. Those placed under a medium-security regime or those who have an unserved period of the sentence exceeding five years are placed at closed prison hostels. Upon proposal of the pedagogical board, when underage persons deprived of their liberty turn 18 years of age, but are still pupils, they may be left at the correctional institution until they are 20 years of age. Furthermore, according to the same procedure, upon proposal of the director of the correctional institution the persons deprived of their liberty who turn 18 years of age may be left at the reformatory if they so wish. In such cases the prosecutor is to be notified.

The objective of the execution of the "deprivation of liberty" punishment is primarily in the re-education and preparation for socially useful work. There is no mention here of the other goals of the execution of prison sentences for adults – such as segregation or prevention. That is why the director of the correctional institution may:

- direct juveniles to contacts with persons and representatives of charitable organisations, who may facilitate their resocialisation;
- allow longer visits with relatives and other persons who exert a good influence over the juvenile;

⁴⁷ Article 65 of the PC.

- organise visits to historical and other remarkable landmarks, joint events with members of the public who are of the same age as the sentenced persons, visits to cultural, sports and other events outside the correctional institution.

The following security regimes are applied by the correctional institutions: minimum-security, low-security and medium-security regime. As a general rule, juveniles deprived of their liberty are assigned a low-security regime. By way of exception, a medium-security regime may be assigned to juveniles deprived of their liberty if they have previously served a custodial sentence, have escaped or have committed gross or systematic breaches of order and discipline at the correctional institution or have an unserved period of the sentence exceeding five years. Juveniles placed under a medium-security regime may be accommodated in segregated premises only if they intentionally exert a bad influence on the rest. The medium-security regime may be replaced by a low-security regime for good behaviour and conscientious attitude to work and studies not less than two months after the juvenile has been placed under a medium-security regime. The low-security regime may be replaced by a minimum-security regime for good behaviour and conscientious attitude to studies after service of one-fourth of the sentence imposed but not less than three months. Those placed under a minimum-security regime may visit or meet with volunteers and representatives of non-governmental organisations outside the correctional institution for a period of up to six hours daily. Specific groups of persons deprived of their liberty may be taken to work outside the correctional institution unguarded.

Conditions conducive to deriving benefit from the stay in the juvenile detention facility and for assisting the social integration of juvenile offenders are provided in the juvenile detention facilities for general educational and vocational training of juveniles. Their participatory nature is guaranteed by the opportunity to obtain a reduction in the duration of the sentence (days spent in educational activities count for working days and two working days are counted for three days of imprisonment⁴⁸). At the juvenile detention facilities there are secondary general education schools and vocational schools. The juvenile detention facility administration strives to ensure the participation in the educational activities of all juveniles placed there with a sentence or as a bail measure. Literacy courses and vocational training are organized. The participation in vocational training courses requires a certain level of education that the juvenile offenders

⁴⁸ Article 178 para 5 of the EPDCA.

usually do not have. At the same time, the opportunities for successful social integration after the release are exceptionally dependent on the opportunities for labour realization.

Rights of juvenile prisoners

The juveniles are entitled to at least two hours daily in the open air and to unlimited correspondence. They serve their sentence in two regimes only – a general and a stringent one. The reinforced stringent regime is not applicable to them.

Visits of relatives are actually hampered because there is only one juvenile detention facility in Bulgaria and for the majority of families of juvenile inmates it is difficult and expensive to visit their children⁴⁹.

The juveniles may be given rewards in the same way as adults, with the exception of the home leave reward. The sanctions that may be imposed are reduced in size and severity compared to the ones for adults - isolation in a punishment cell is up to five days and nights for the general regime and up to ten days and nights for the stringent regime. The law still provides for sanctions such as deprivation of the right to visits, to a parcel mail, decrease of the money allowed for personal use, deprivation of the right to take part in excursions and other activities outside the house as well as to participate in sports events, which runs counter to international standards. The enhanced protective measures envisaged in this law are not applicable to juveniles.⁵⁰

The law provides for formal review of the imposed sentence through reassessment of the regime of serving (when not less than two months of the sentence has been served) and for an early release (when at least one third of the imposed sentence has been served). There are no provisions for the initiative to be taken by the juvenile. In contrast to adults, early release of the juveniles is not conditional. Propositions can be made by the administration of the juvenile detention facilities, by the supervising commission or the local commission for combating juvenile antisocial acts by place of residence and by the public prosecutor before a special commission.⁵¹ The proposition is made after certain formal criteria (one third of the imposed sentence being served) and with positive changes having taken place in the personality and

⁴⁹ Report “Children in conflict with the Law, N. Petrova

⁵⁰ Art. 84, PEA.

⁵¹ The Commission by virtue of article 73 of the EPDCA is managed by the head of the Juvenile detention facility. Its membership includes a judge from the district court, social workers from the Juvenile detention facility, the psychologist of the house, representative of the Supervising Commission or of the Interdepartmental Commission for Combating Antisocial Conduct by Minors and Juveniles. The Commission considers and discusses all cases where a formal right is available and makes decisions on the replacement of the regime of treatment, for early release and addresses proposals to the court of law.

behaviour of the juvenile. Characteristics described by the social worker in the ward are attached to the proposition. It is the court that decides on the case. In practice the basic criterion applied by the court to make the judgment for an early release, is the remaining part of the punishment.

A month before the release, letters are to be sent to the Local Juvenile Delinquency Commission and to local institutions and organizations for post-penitentiary support⁵². The practice indicates an enormous need of social services on local level for post-penitentiary support to released juveniles. In many cases, the latter are in a more disadvantageous situation than adults released from the prisons who can be assisted by the municipal social welfare services or the employment bureaus. The only partner of the Juvenile detention facility at the local level are the Problem Children Offices and the Local Juvenile Delinquency Commission, which is extremely insufficient.

Execution of non-custodial punishments

Punishments, which do not involve deprivation of liberty are probation, public censure, deprivation of the right to exercise certain activities. The punishment “deprivation of the right to practice a profession or occupation” is possible in rare cases and is applied by the authorities empowered to recognize this right and to control its exercising⁵³. The public censure punishment is executed through its promulgation in the place of work or residence of the sentenced person, or in another way indicated in the sentence.⁵⁴

The probation was introduced in Bulgarian Penal Code as a non-custodial punishment in 2002⁵⁵. It is defined as a “... a system of non-custodial measures for control and intervention that shall be imposed separately or collectively”. Probation measures are:

1. Compulsory registration at the current address;
2. Mandatory regular appointments with a probation officer;
3. Restrictions on free movement;
4. admission to vocational training courses, public intervention programmes;
5. Corrective labour;
6. Community service.

⁵² Article 182 – 185 of the EPDCA.

⁵³ Articles 236-237 of the EPDCA.

⁵⁴ Article 239 of the EPDCA.

⁵⁵ Articles 42a – 43a of the Penal Code.

Probation measures have a duration of 6 months up to three years (with respect to the measures items 1 – 4), from three months to two years (with respect to corrective labour), from 100 to 320 hours a year in no more than three consecutive years (with respect to community service). The measures compulsory registration at the current address and the mandatory regular appointments with a probation officer are to be mandatorily imposed on all offenders sentenced to probation, whereas measures corrective labour and community service shall not be imposed on young persons who have not turned 16 years of age.

Probation is served in pursuance of the Execution of Punishments and Detention in Custody Act, chapter 16. The act stipulates for execution of the penalty on juveniles by a separate probation officers that have special training together with the inspector from the Problem Child Office⁵⁶. These officials in cooperation with the educator and member to the Local Juvenile Delinquency Commission should draft: personal programme for the execution of the probation measures sentenced, programmes to influence the behaviour of the sentenced juvenile and other statements and proposals for the child⁵⁷. **The probation also provides for a possibility to be linked with practices of ‘intensive and remand foster care’.**

Statistical data for juveniles passed the formal justice system

According to data from National Institute on Statistics⁵⁸:

In 2010, the number of under-aged (14-18) convicted and deprived of liberty is 73; the number of young offenders (19-21) in the prisons of the country is 299; the number of under-aged undergoing probation measures is 773; the number of young offenders (19-21) undergoing probation measures is 1812.

In 2011, the number of under-aged (14-18) convicted and deprived of liberty is 99 and the number of young offenders (19-21) in the prisons of the country is 339; the number of under-aged undergoing probation measures is 664; the number of young offenders (19-21) undergoing probation measures is 1 651.

In 2011, 30 % of all convicted persons are young people aged 14-24. More than half of all convicted during the same period are persons aged 14-29.

⁵⁶ Article 229 of the EPDCA.

⁵⁷ Article 230 of the EPDCA.

⁵⁸ More (in Bulgarian) at: www.nsi.bg

The table below shows the number of under-aged that have been convicted in the last four-year period

| Year | Total | Boys | Girls | Child population (15-19) | |
|-----------------|-------------------|-------------------------|-----------------------------|--------------------------|----------|
| 2011 | 2 744 | 2 621 | 123 | 358 043 | |
| 2010 | 2 691 | 2 539 | 152 | 385 512 | |
| 2009 | 3 119 | 2 958 | 161 | 416 428 | |
| 2008 | 2 964 | 2 831 | 133 | 445 510 | |
| Types of crimes | | | | | |
| Year | Robbery and Theft | Theft of motor vehicles | Assaults resulted in injury | Fornication | Homicide |
| 2011 | 2 117 | 73 | 63 | 55 | 5 |
| 2010 | 2 038 | 110 | 89 | 37 | 8 |
| 2009 | 1 322 | 139 | 110 | 46 | 5 |

According to the data from the Supreme Court of Cassation the total number of lawsuits against under-aged offenders that have been dismissed in 2010 is 896, of them 408 were given to the Local Juvenile Delinquency Commissions for application of correctional measures (under art 61 of the Penal Code).

Administrative procedure for the imposition of disciplinary/ education measures

The JDA provides for the establishment of the following structures involved in the implementation of the measures of the Act:

- a) LJDC;
- b) problem children offices;
- c) socio-pedagogical boarding schools;
- d) educational boarding schools;
- e) houses for temporary placement of minors and juveniles;
- f) asylums for uncontrolled children.

Kinds of measures and procedure for their imposition under JDA

Measures (Article 13(1)) that the LCJD can impose are two types – non-custodial, that are executed in the community/family environment and custodial (placement of the child in institution)⁵⁹:

1. reprimand;
2. obligation to apologize to the injured person;
3. obligation to take part in services to overcome the deviant behaviour (counselling, training, other similar programmes);
4. supervision by the parents or by the substitute carers with the obligation of intensive care;
5. supervision by the public educator;
6. ban to the child to visit certain places;
7. ban to the child to meet or contact certain people;
8. ban to the child to leave his/her place of residence;
9. obliging the juvenile to compensate the damage caused if this is within his/her capacities;
10. obliging the juvenile to perform community work;
11. placement in a Socio-Pedagogical Boarding School⁶⁰;
12. warning about placement in a Correctional Boarding School with a probation term of up to six months;
13. placement in a Correctional Boarding School.

Procedure

The LCJD is mandated to manage cases when:

1. children aged 8 to 14 have committed anti-social acts;
2. under-age persons aged 14 to 18 have engaged in anti-social behaviour or have similarly committed a criminal offence, being thereby exempt from criminal liability in accordance with Article 61 of the Criminal Code and the case had been referred to the Commission;

⁵⁹ Difference is to be made among placements under the JDA and CPA. The JDA placement is a measure for education/ correction/ discipline the child whilst the CPA placement is for the provision of care or protection of the child being at risk.

⁶⁰ There is no clear distinction in this Act on the procedures of the application of preventive and repressive functions of the measures stipulated in the same act. For example, the placement in corrective boarding schools is an educational measure. In the same schools, however, children with antisocial behaviour can be placed. /Article 28, paragraph.1/. Thus, hypotheses are admitted where the state, represented by the local commissions, adopts one and the same measure both against offenders of the Law and against children with no antisocial behaviour. This legal paradox is brought to the extreme in the disposition of Article 6, item 2, letter "b" of the CBS's Regulations, according to which a prerequisite for an antisocial misbehaviour is present if the child has been of the victim of a criminal outrage. Opinion of the Human Rights Project, page 2.

3. under-age persons have committed an offence to which under another statute or decree is annexed intervention action under JDA⁶¹.

The Commission starts a case after being notified by: the courts or prosecutors, police and public authorities or citizens⁶². The data indicate that such cases are usually initiated by the Prosecutor's Office or by the Police⁶³. In 2010 again, the majority of correctional cases started in response to a signal from a prosecutor's office, mostly for crimes committed by under-aged. The rate of correctional proceedings after a signal from the police is 22%; 9% from the signals have come from professionals and citizens.

The procedure of imposing an educative measure on behalf of the LCJD presumes reviewing *of an educational case* by the ad hoc committee in a specialized composition, including the chairman (who should have a legal training) and two members. The Chairman of the commission determines the composition.⁶⁴ Before this commission reviews the case, the secretary of the LCJD hands it over to two public educators, non-members of the Commission, to conduct an inspection within 7 days to ascertain the existence of sufficient proof of offending. Where, upon completion of the inspection sufficient proof of offending is not found and where the commissioned offence has been found demonstrably trivial, intervention proceedings shall not be initiated. In contrast, if it has been found that sufficient data of offending exist, the Secretary of the Local Commission shall immediately report to the Chairperson who shall:

1. determine the *ad hoc* committee and
2. assign a Local Commission member, non-member of the panel, to draft within 14 days a written report of the personal characteristics of the offender, their age, health condition, physical and mental development, family environment and the level of care provided by the parents or foster parents, education and upbringing; the report shall be referred to the Chairperson of *ad hoc* committee⁶⁵.

The child, the parents/substitute carers are entitled to get acquainted with the report. The same

⁶¹ Article 12 of the JDA.

⁶² Article 16 of the JDA.

⁶³ "Status and trends of crime and antisocial behaviour of minors and juveniles Crimes against them. Activity of the Central and the local commissions combating minors and juveniles' antisocial behaviour, 1999, p. 21.

⁶⁴ One of the weaknesses of the ACJAB is the injustice of the procedure on imposing educational measures. The Human Rights Project supports the conclusions made in the report of the Bulgarian Helsinki Committee with regard to the contradictions of the educational cases procedure provided by the law with the international acts which are in force for Bulgaria, with the Constitution and the Child Protection Act., Opinion of the Human Rights Project

⁶⁵ Article 16, para 4 of the JDA.

persons are obliged to be present at the case review. The child may be represented by a close person or by a defence lawyer⁶⁶. In the case no such defendants are appointed, the interests of the child are protected by social worker from the local DSA. The case is heard in camera. Where the Chair of the *ad hoc* committee deems it in the best interest of the juvenile, other experts may be invited to the case hearing - a tutor, a psychologist, a psychiatrist, a class master, a school counsellor, a school therapist, a public educator and others, as well as the victim of the misdemeanour⁶⁷.

The *ad hoc* committee acts as a *quasi jurisdiction* and the JDA (amended in 2004) provides for rights and procedure similar to those in the common criminal justice system⁶⁸. The child has the right to be informed, not to provide explanations or admit guilt, to be heard in the absence of their parents or foster parents if the panel deems that in his/her interest. The *ad hoc* committee collects evidences and the whole hearing is to be recorded. The amended law focuses on the duty of the *ad hoc* committee to collect data of the personal characteristics of the offender, his/her age, health condition, physical and mental development, family environment, education and upbringing, the nature and gravity of the offence, the motives and circumstances under which it had been committed, whether an attempt had been made to remedy damages, the subsequent behaviour of the offender, previous actions and imposed measures and penalties, as well as other circumstances that may be relevant in the respective case. It is a drawback of the law not to make a clear link between this committee and the local DSA – Child Protection Department, where exactly the capacity for a social investigation of the circumstances of the child and his/her family lies.

Imposition of measures

The *ad hoc* committee applies all the educational/disciplinary measures under the JDA with the exception of the custodial measures - placement in a Socio-Pedagogical Boarding School or in Correctional Boarding School⁶⁹. Depending on the nature of the offense committed, it is possible that two measures are simultaneously applied. The decision of the *ad hoc* committee can be appealed before the court who can confirm it or cancel it and decide on another measure⁷⁰. If the

⁶⁶ Article 19, para 3 of the JDA.

⁶⁷ Article 19, paras 4-5 of the JDA.

⁶⁸ Articles 20-21 of the JDA, amended in 2004.

⁶⁹ Article 21, para 2 of the JDA.

⁷⁰ Article 24 of the JDA.

committee decides that custodial measures are appropriate a proposal should be made before the court to pronounce on the placement. The decision is appealable before the second instance court⁷¹.

Data from the National Statistical Institute for 2010 and 2011 reveals the following trends⁷²:

Local Juvenile Delinquency Commissions

1. Even though in 2010 the number of children registered as having committed anti-social acts has decreased, the number of correctional procedures has increased. This is mainly due to: 1/ the increase in the number of offences, committed by the same child; and 2/ increase in the number of anti-social acts and crimes committed by under-aged (14-16 years of age).

2. Data from Ministry of Interior – Department “Criminal Police” also show increase in the number of correctional cases in the Local Juvenile Delinquency Commissions: for 2009 – 4 543; 2010 – 4 195, 2011 – 4 983⁷³.

3. The Central Juvenile Delinquency Commission reports demonstrate that there are more than one correctional measures applied to the same child who has committed an anti-social offence or a crime. Until the 2004 changes in the Juvenile Delinquency Law there were provisions that no more than two correctional measures could be applied to the same child (see art. 11, par. 2). The average number of correctional measures applied for the same child were: in 2008 - 1,3; in 2009 1,1; in 2010 – 1,3⁷⁴.

Risk Factors

The analysis of the risk factors, environment, as well as the results from the report made by the State Agency for Child Protection in 2009, clearly show that children with anti-social behaviour are in fact part of the group of children at risk. According to the definition of child at risk (under paragraph 1, part 11 of the Additional provisions of the Child Protection Act) the behaviour of a child who has committed an anti-social act shows, in most cases, one or more of the attributes of being at risk. Even when a child’s behaviour escalates to acts, defined as crimes under the Penal Code, the reasons for that conduct and the specifics of the child’s age place the child in the

⁷¹ Articles 24a-24b of the JDA.

⁷² All the statistical data is taken from the Road map at: <http://www.justice.government.bg/107/>

⁷³ Data from JPO

⁷⁴ There are no indicators showing the number of children with correctional measures for whom correctional measures have been applied previously. Activity of the Local Juvenile Delinquency Commissions is being measured on a yearly base with no regard to the previous periods.

category “child at risk”.

Measures with respect to parents

The JDA sets forth interventions targeting parents or foster parents for neglecting the child⁷⁵. The measures are to be imposed by the LCJD and include warning, duty of attend special courses and counselling or a fine of between BGN 50 to 1,000. For the severe cases of parental misbehaviour the LCJD may apply before the court for restriction or termination of parental rights as stipulated in the Family Code⁷⁶.

Institutions involved in the application and execution of educative measures with respect to minors and juveniles

Problem Children Offices (PCO) are specialized structures taking part in the prevention of crime and antisocial behaviour of minors and juveniles⁷⁷. Problem Children Offices are set up at the municipal councils on proposal of police authorities, by a decision of the municipal councils and with the consent of the Minister of the Interior. These are managed and controlled by the National Police as well as by the Central Commission on Juvenile Delinquency. The staff of PCO is composed of inspectors with higher pedagogical education (that is, a teacher's qualification). Their total number in the country is 250 persons. To hold this post, they undergo a special selection procedure and a compulsory specialized training in the Police Academy to the Ministry of the Interior. These are most often the people who propose the implementation of an educative measure under JDA.

The PCO have to perform about 26 functions, among which are: detection and identification of juvenile perpetrators of antisocial acts, or victims of criminal assault or in uncontrolled circumstances, children living in an unhealthy environment, wandering, begging etc. Besides, they inquire into the reasons to commit of crimes and antisocial acts. The PCO inspectors register and supervise minors and juveniles who have committed antisocial acts as well as sentenced persons who have been released from a juvenile detention facility, a Correctional Boarding School or a Socio-pedagogical Boarding School, examine the personality traits of the

⁷⁵ Article 15 of the JDA.

⁷⁶ Articles 131 - 132 of the Family Code.

⁷⁷ Established under the JDA – articles 2, 26-27 and functioning according to the Regulations on the Problem Children Offices of 1998.

offenders, suggest measures to the authorities, organize investigations in the region, deliver lectures etc.

Data from the national statistics suggests for a decrease in the absolute number of children for whom a report has been filed in the Problem Children Offices from 4 170 children in 2010 to 3 968 in 2011. The absolute decrease in their numbers started in 2004 when there were reports filed for 5 702 children and has been a sustainable trend.

1. The system works mainly with under-aged children (14-18) (juveniles); there are three times more cases of under-aged than there are for minors;
2. Data for the type of act that has been reported:
 - The number of anti-social acts are more than the number of crimes;
 - There are minors who have committed a crime, but are not criminally liable;
 - The number of anti-social acts in 2011 is greater than in 2010 (the number is 2 011)
3. Anti-social acts in 2010 and 2011 as follows:
 - Runaways from home – 1 494 – 1 665 children
 - Runaways from school – 1 621 – 1 766 children
 - Vagrancy and begging – 671 – 624 children
 - Use of alcohol – 422 – 428 children
 - Use of drugs – 326 – 445 children
 - Prostitution – 119 – 136 children

Apparently, a big percentage of the anti-social acts are status offences, not crimes. Status offences imply a behaviour that signalizes problems with the care of the child and an environment that places the child at risk⁷⁸.

JDA stipulates that the LCJD should exercise public control over the work of the Problem Children Offices. In practice, there is no mechanism for the implementation of such. Research findings indicate rather the opposite tendency - the local commissions serve as a professional instrument of the PCO inspectors. According to data from the Social Assessment of Child Care

⁷⁸ Road Map at: <http://www.justice.government.bg/107/>

in Bulgaria research⁷⁹ the commissions not only fail to supervise the PCO activities but it is the Problem Children Offices that determine the decisions of the commissions⁸⁰.

Socio-Pedagogical Boarding School (SPBS)⁸¹ - is an institution for corrective or preventive placement for children above the age of 8. The grounds for placement of children are two types: 1/ delinquent behaviour or 2/ or living in environment conducive to become delinquent. The major critique to this measure is that it allows for children to be mixed up – children committed anti social acts with simply children from socially disadvantaged families. The main reason for SPBS to stay as alternative is the need to fill the gap of missing services for children and families at certain communities.

Correctional Boarding Schools (CBS)⁸² - accommodate children above the age of 8, having committed antisocial acts and adolescent offenders for whom the non custodial disciplinary measures have proven insufficient and no appropriate social environment exists for their normal development. Placement in CBS is a measure at the disposal of the court of prosecutor to divert the juvenile from the formal criminal justice process⁸³.

The JDA stipulates that children placed to SPBS and CBS will be shall be provided conditions to complete basic or secondary education and to acquire qualifications. Education and training shall be based on the standard curriculum for the respective type of school. Therefore these institutions are supervised by the Ministry of Education, Youth and Science. Graduates shall be issued with the same documents and shall acquire the same rights as under statutes and regulations relating to general and to vocational schools. Adolescents above the age of 16 and unwilling to continue their education shall be trained in a vocational class. A Report of the State Agency for Child Protection suggests that the interventions should not only target the educational needs of children but also to be focused on rehabilitation and reintegration, which in practice it does not do⁸⁴.

The maximum length of stay in SPBS and CBS cannot exceed 3 years, but the child could remain there until up to the completion of 16 or 18 years of age for the purpose of graduation based on

⁷⁹ Social Assessment Report, p.65.

⁸⁰ The PCO inspectors usually speak like this: “I placed X. in a Boarding School for Corrective Training, I sent Y. to a Socio-Pedagogical Boarding School” etc.

⁸¹ Established under the articles 2, 28-33 of the JDA and functioning under the Regulations on the Socio-pedagogical Boarding Schools of the Ministry of Education and Science (MES) of 1999.

⁸² Established under the articles 2, 28-33 of the JDA.

⁸³ Articles 61 and 64 of the Penal Code.

⁸⁴ See: Report of SACP of 2009 at: <http://sacp.government.bg/programi-dokladi/dokladi/>

child's will⁸⁵. The total capacity of the boarding schools is **859, and** the number of children placed there is **334 (as of march 2012)**.⁸⁶ Of them – 64 girls (25 in SPBS and 39 in CBS); 270 boys (124 in SPBS and 146 in CBS), which makes 80% of all children are boys. According to age: 20 children aged 9-14 are placed in SPBS; 264 children aged 14-17, and 21 over the age of 18 are placed in SPBS and CBS. Most of the children come from family environment (67%). 28% come from institutions for residential care (in 2012).⁸⁷ About 18% of the children don't have contact with their families and stay at the boarding schools during holidays. **The most common reasons for placement** are theft, running away from school, home, institution and aggressive behaviour. Total number of the staff in 2010 (in the eight boarding schools still active then) was **227**, including 77 administrative staff, 73 teachers and 65 educators for about 320 children and capacity of the schools of 859. In these schools, teachers and educators work with a status of educational workers, a teacher's diploma is required. Persons having completed social pedagogy or social activities cannot be appointed there, due to the lack of a teacher's diploma, which is considered as a problem having in mind the needs of children⁸⁸. The staff working in the Boarding School for Corrective Training does not undergo a compulsory specialized training. Only 2 CBS and 1 SPBS are located in towns that are municipality centres, all the others are located in small villages relatively close to big cities and regional.

Because of wide critique to these institutions there is a process of constant decrease of their number and the number of placement. The general public attitude towards these schools is one of concern for their serious contribution to the criminalizing of the children placed there. The most widespread opinion about them is that the children increase “their qualification to commit crimes”, that they are “an instrument to punish and to segregate the children”, i.e. the care is directed towards protecting the community from the children, rather than creating conditions for a change⁸⁹. The Report of the State Agency for Child Protection suggested the SPBS to be closed down and the CBS to be reformed⁹⁰. It is proposed that resource of the SPBS and CBS (financial and human) should be used

⁸⁵ Article 30, para 3 of the JDA.

⁸⁶ Data from the Road map at: <http://www.justice.government.bg/107/>

⁸⁷ Total number does not make 100 % because some of the children come from other places, but their relevant rate is too small.

⁸⁸ Report “Children in conflict with the Law, N. Petrova

⁸⁹ The data made available by the Bulgarian Helsinki Committee show that 65% of the children placed in correctional institutions are from minority groups, predominantly Roma. Such data indicate the presence of a drastic example of indirect discrimination. The conditions leading to such results must be sought both in the provisions of the Act itself, and in the established practices of Commissions and Problem child offices. This discrimination policy must be addressed by the state, because it results from the acts of state governance bodies. Standpoint of the Human Rights Project Group, p. 4

⁹⁰ See: Report of SACP of 2009 at: <http://sacp.government.bg/programi-dokladi/dokladi/>

for the development of new services, but not at the facilities of the old institutions. Presently, the national budget provides about 3 million BGN yearly for SPBS and CBS. Planning a simultaneous closure of SPBS and reform of CBS would mean available financial and human resources that could be referred to the new services, for prevention and protection. **The fact that the majority of children come from family environment indicates the need for new measures and services that include extensive work with the family.**

By 31.03.2012 four SPBS and four CBS exist in Bulgaria⁹¹:

| | Number of schools / Total number of children <u>2004</u> | Number of schools / Total number of children <u>2008</u> | Number of schools / Total number of children <u>2009</u> | Number of schools / Total number of children <u>2010</u> | Number of schools / Total number of children <u>2012</u> |
|-------------|--|--|--|--|--|
| SPBS | 18 / 1271 | 5 / 207 | 5 / 189 | 4 / 155 | 4 / 149 |
| CBS | 6 / 349 | 4 / 250 | 4 / 226 | 4 / 227 | 4 / 185 |

The **Homes for Temporary Placement of Minors and Juveniles** (HTPMJ) are set up by the Ministry of the Interior⁹². There are altogether five of them for the entire country. They accommodate children aged from 6 to 18 years:

- a) whose place of residence cannot be established;
- b) who were caught in wandering, begging, prostitution, alcohol misuse, distribution or use of drugs and other intoxicating substances;
- c) having wilfully left establishments for obligatory education or compulsory treatment;
- d) having committed an antisocial act and fallen into a state of being uncontrolled, which makes inappropriate their stay with their parents or the persons replacing them⁹³.

The stay of the children in the homes cannot exceed 15 days. The stay for more than 24 hours is permitted by the public prosecutor, while in exceptional cases only, with the permission of the

⁹¹ Road Map at: <http://www.justice.government.bg/107/>

⁹² Article 2 and 34 of the JDA and the Regulations of HTPMJ as well as the Ministry of Interior Act.

⁹³ Article 35 of the JDA.

corresponding public prosecutor, the duration of stay in the home might be extended to 2 months.

In spite of the number of functions written down in the JDA, related to the identification of the reasons for which children enter these homes, such homes have been transformed into virtual “dispatch units”, as they are often referred to, mainly because of the short stay of the children there. Their basic activity, to which funds and staff is dedicated, is to bring back the children to their homes or to escort them to establishments from where they have escaped.

The staff in the homes, even though with a pedagogical qualification, is militarized. According to the staff working in the institutions, the main reason for the existence of the HTPMJ is to admit and keep uncontrolled children, in contrast to the voluntary placement in asylums.⁹⁴ According to the latest amendments to JDA, various socio-pedagogical programmes and activities should be carried out in these homes. In practice, however, neither the material conditions there, nor the staff as quantity and quality allow for doing anything else in addition to watching TV⁹⁵.

Public tutor (PT) is a professional whose role (both preventive and part of the educational and correctional measures) is established under JDL⁹⁶. Conflicting data exists about the number of PT, but according to CJDC in 2009-2010 there were about 1 500 PT. In 2011 the Ministry of Finance paid 4 849 632 BGN-remuneration for 1 872 PT⁹⁷. According to CJDC the activity of PT is highly important for the “process of prevention”.

Apart from the indefinite data for the number of PT it is clear that their number has increased progressively over the last years and is more than two times the number of CPU staff. The increasing number of PT is not justified by CJDC and there has been neither analysis of the results of their work nor of their training. Financial resources needed for their remuneration is significant, but their efficiency is unclear.

PT apply individual correction/educational measures⁹⁸, assist parents who have difficulties with upbringing of children, which means that their functions duplicate some of the function of social workers in ASA, as well as the ones of the social services for assistance for children at risk. PT as professionals are isolated and with less opportunities for improvement of quality of work and

⁹⁴ Ibid., p.52.

⁹⁵ Report “Children in conflict with the Law, N. Petrova

⁹⁶ Articles 2 and 40-46 of the JDA

⁹⁷ Data from the Road map at: <http://www.justice.government.bg/107/> .

⁹⁸ Articles 13 and 41 of JDL.

qualification in comparison to social services where supervision, quality control and state evaluation and financing are guaranteed. Social services, unlike PT, have clear system of criteria and quality standards, workload, requirements for qualification and permanent supervision and control. The conclusion is that the state finances two parallel systems without clear results therefore evaluation is reaffirmed.

Data shows that protective measures are predominantly taken in family environment, under art. 23 of the Child Protection Act. Children and their families are referred to social services for psychological support, improvement of parent's capacity, legal support (Centre for Public Support, Complex for Social Services for Children and Families, etc). The 5 833 correctional hearings in which CPU has participated in 2011, have concluded with protective measures for 826 children (under CA) and 532 children and their families have been referred to social services.

Placement outside the family is a protective measure that is rarely applied. Children with anti-social behaviour are usually placed in the family of relatives and rarely in specialized institutions and residential institutions (Crisis Centre, for example), foster care. All actions and measures of the child protection authorities imposed on this group of children are related to the decrease of the total number of children treated by the system established under JDL.

Given the nature of work and the urgency of a considerable number of CPU cases, the shortage of staff, the fact that some activities are difficult to be pre-planned, the staff always work under extreme conditions and hypertension. The lack of sufficient number of staff members leads to overload, high level of turnover of trained and experienced staff and frustration among clients of the social services.

Asylums for uncontrolled children were regulated first by Decree 252/December 1995 of the Council of Ministers on the asylums for uncontrolled children and by Regulation No. 5 / Ministry of Labour and Social Welfare of May 1996, regulating their structure. They are the bodies referred to in the 1996 amendments of the JDA. At present, their activity is governed by the Regulations on the Activity and the Structure of the Asylums for Uncontrolled Children of March 1999. It is worth

mentioning that the asylums are mainly social facilities but not places for children with antisocial behaviour⁹⁹.

Summary

- In general the legislation for counteraction to antisocial behaviour of minors and juveniles includes kind of diversion measures and measures of restorative justice nature. Some experts insist that the whole administrative system for combating the antisocial behaviour of children is based on the idea of diversion from the formal JJS. The problem is that the options for diversion do not correspond to sufficient number of community or family based measures with a good quality.
- Still, the administrative structures CCJD and LCJD do not act as professional bodies in coordination with the child protection system.
- The measures enumerated in the JDA, presumably as an alternative to institutional care, are formally applied. These measures do not represent clear legal alternatives, since the offender is not granted the right to choose the alternative. The fundamental reason for their not being used by the Court is the absence of rules for their application.
- Trends in youth crime
 - the trend in absolute number of youth offences is in decrease – from appr. 5 000 registered children in the CPO in 2004 to less than 4 000 in 2011.
 - the offending rate per 1000 of the child population however, increases: in 2008 the proportion of children convicted in the common criminal justice system is 0,006 of the child population but in 2011 – this proportion is 0,007.
 - the comparison between the absolute decrease in the number of registered child offenders and the increased proportion of convicted children suggests for ineffectiveness of the interventions being they preventive or reactive. The decrease in total numbers could be explained by the decrease in overall child population in the country.

⁹⁹ Maria Petkova, open Society Foundation.

5. Influences on the system

The political influence over the JJS is motivated by two sources: observations and recommendations of the UN CRC via the monitoring process as well as by the national agents – child protection system, NGOs and the academic circles. The need of reform of the Bulgarian juvenile justice system has been widely discussed during the last 10 – 15 years with the participation of various stakeholders – e.g. the State Agency for Child Protection starting from 2003 and the Ministry of Labour and Social Policy during the discussions on the National Strategy of the Child (2007-2008), Bulgarian Helsinki Committee (starting from 1998), the NGOs sector dealing with child rights protection (starting from 1997), UNICEF and many others.

In response to the critique coming from the international community and national NGOs¹⁰⁰ reforms in the JJS started. The reform developed in two stages and mainly focused on the legislative changes in order to ensure the necessary safeguards for the fair trial and protection of the human rights of children:

- in 1996 just before the Initial Report of Bulgarian Government the changes in the JDA introduced judicial control over the administrative placement of children in educational institutions (SPBS and CBS), improved administrative procedure before the LCJD and changes in the profile and name of CBS.
- in 2004 the changes in JDA introduced judicial procedure for all custodial measures of the JDA.

The main outcome of these reforms is the decrease of the number of the institutions and the number of children placed there.

It is positive that apart from the Government and NGO sector, active agent to the reform became the community of magistrates¹⁰¹.

¹⁰⁰ See: UNICEF/UNDP Report on Children in Conflict with the Law, Bulgaria, 2002. Human Rights Watch..., Bulgarian Helsinki Committee: Labour Correctional Boarding Schools in Bulgaria and the rights of minor and adolescent children in Bulgaria. Obektiv, 5/1996. Socio Pedagogical Boarding Schools and Correctional Boarding Schools. Children in Institutions, vol. 1, Sofia, 2001. In the name of institution: Correctional Schools in Bulgaria. Sofia, 2005. See also: the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe (following his visit to Bulgaria from 3 to 5 November 2009) who also critically observes the systems and *inter alia*: “... invites the Bulgarian authorities to reform the juvenile justice system and bring it into line with international and European standards” (at: <https://wcd.coe.int>)

¹⁰¹ See the Recommendation Paper adopted in a Round Table “The Response of the Justice System to children in conflict with the law: United Nations standards and European experiences in juvenile justice”, jointly organized by the Regional Programme Office for South Eastern Europe of UNODC, UNICEF and the Bulgarian Judges Association, October 2009.

Contrary to this, the plausible main actor – Central Commission on Juvenile Delinquency remains distant and in opposition to any discussions for possible reforms thus playing an important role for impeding any political initiatives.

- There is no reliable public control throughout the stages of juvenile justice and the counteraction to antisocial conduct of minors and juveniles.

The system is understaffed and underfinanced, the staff in the local commissions works on a voluntary basis, it is not professionally trained, the CPU are reluctant to get involved in this area due to its own similar problems. The issue of JD is not debated publicly in contrast with the issues of child care and protection. In fact the society is not much concerned about the need of reforms.

Analysis of the philosophies driving the system

- a) *The youth justice and legal philosophies embodied in the system's actual functioning. E.g. what is the model of adolescence embedded in how the system works*

The mere existence of the Juvenile Delinquency Act as law in force in Bulgaria for 56 years demonstrates that legal philosophy embodied in the system's actual functioning remains not changed. It is a concept of children being a danger for the society that invokes need to protect the society and to keep 'deviant' child in isolation. The initial title of the said law is Combating Child's Crime Act. It was changed in 1961 with the today's title. The long lasting discussions on its change have not produced so far any real change in the system. The child protection system is still weak to play a convincing role in such a change.

The concepts of "anti-social behaviour" and 'status offences'

By tradition, Bulgarian doctrine and legislation use the concept of 'asocial', 'antisocial', 'anti-community', 'socially dangerous' or 'socially harmful', 'criminal conduct' of minors and juveniles. There is no universal definition of these concepts. 'Asocial conduct' is interpreted as behaviour being in contradiction to the norms and rules of public life without necessarily being a crime - for example, truancy from school or home, violation of unwritten behaviour norms, use of alcohol, etc.

The Juvenile Delinquency Act does not define the terms used, such as "antisocial act", "public misdemeanor", "delinquency", etc. but contains a very general definition of "anti-social

behaviour” – “an act that is socially dangerous and illegal or contradicts the morals and the good manners” (article 49a of the Additional provisions). It allows a very broad interpretation of the behaviour of children by the local commissions that go way beyond what the Bulgarian criminal justice system penalizes in the behaviour of the adults.

Article 10 of the Penal Code defines the “socially-dangerous act” as an “... act that endangers or harms the person or the rights of citizens, their ownership, the legal order established by the Constitution of the Republic of Bulgaria or other legally protected interests.”

According to some researchers, there is a large room for subjectivism in the classification of the misdeed and in the choice of a counteraction measure. “The use of various terms without their content being specified provides to the members of local commissions ample room for discretionary judgment. This is extremely dangerous, since those members can take action entailing imprisonment in the sense of article 5 of the European Convention on the Protection of Human Rights. The Bulgarian Helsinki Committee has found cases when children have been placed in boarding schools for corrective training for acts which are not prosecuted by the law as crimes and which could not be considered to be antisocial, such as truancy from school or home, or prostitution.”¹⁰² For instance, a large variety of child behaviour could ground, according to the JDA, placement of the child in a Home for the temporary placement of minors and juveniles: truancy from home or school, “children caught up in wandering, begging, prostitution, misuse of alcohol, supply or use of drugs or other intoxicating substances” or “having committed an antisocial act and fallen into a state of being uncontrolled” (article 35). The broad terms used by the law without clear definitions allows for wide discretionary powers, both at the level of the police and at the level of the courts¹⁰³.

In addition, despite a distinction between an antisocial act and the other acts has been made in the law, e.g. an escape from home is not an antisocial act but requires intervention, as long as the child is not able to take care of oneself and falls into situation that endangers his or her health and life, it does not help the system to intervene in the interest of the child. Still, the system perceives

¹⁰² Bulgarian Helsinki Committee, “Procedure on placing in boarding schools for corrective trainings and social pedagogical boarding schools”, draft report, p.5.

¹⁰³ Comments of Prof. Jaap Doek - Chair of the UN CRC, during his visit to Bulgaria in 2006. The term is critically examined also by Margaritova, Sv. Legal procedures towards the delinquent behaviour of the juveniles. At: <http://www.pravanachoveka.com/%D1%81%D1%8A%D0%B4%D0%B5%D0%B1%D0%BD%D0%B0%D1%82%D0%B0-%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D0%B4%D1%83%D1%80%D0%B0-%D0%BF%D0%BE-%D0%BE%D1%82%D0%BD%D0%BE%D1%88%D0%B5%D0%BD%D0%B8%D0%B5-%D0%BF%D1%80%D0%BE/563/>

such acts as *punishable* misdeeds. This contradicts the concepts of the Child Protections Act considering such acts as risky behaviour of the child calling for protection rather than for punishment. This is the main challenge that is manifested in the parallel rather than in concerted functioning of the JDA and CPA and their administrations. Another problem is the mere existence of the concept of ‘status *offences*’ in the JDA that prevents children from entering the system of protection rather in the JJS¹⁰⁴.

- b) the balance lies as between features based on ‘child-friendly’ and human-rights compliant versus retributive and punitive features

The criminal justice system in the field of juvenile justice in Bulgaria has been established and still operates within the framework of the punitive justice model. It focuses on the punishment; crime is an individual act entailing individual responsibility, which is mainly perceived as an act of punishment. The system is normatively based, staffed and institutionally guaranteed only with respect to punishments and measures involving deprivation of liberty and segregation.

The consent is not required

Contrary to the requirements of the UN Convention on the Rights of the Child and the UN Minimum Standards and Norms, the police and prosecutors have no power to divert children from the criminal justice system into community based programmes that address offending behaviour and work with the child and his or her family. The establishment of such schemes for first time offenders and repeat minor offenders would ensure that children are not taken to court for minor offences and suffer all the disadvantages that prosecution causes. It would enable children to stay with their families, in education and allow them to receive support.

- c) flow-chart of the young person’s ‘journey’ through the system

See Annex 1 and also Annex 2 “Child in the System”.

- d) ‘Restorative justice’ to the juvenile justice system

¹⁰⁴ Children in Conflict with the Law. UNICEF, UNDP – Bulgaria. Report, drafted by Petrova-Dimitrova, N. Sofia, 2000, pp. 15-16.

There are ‘restorative justice’ features to the juvenile justice system in Bulgaria. Some of the measures that are at the disposal of the Local commissions could become easily real restorative justice measures if changed by their contents and procedure – e.g. supervision measures, obligation to apologize to the injured person; obligation to take part in services to overcome the deviant behaviour (counselling, training, other similar programmes); obliging the juvenile to compensate the damage caused if this is within his/her capacities; obliging the juvenile to perform community work. At the moment these are queasy restorative measures also because of lack of procedure for their application and lack of appropriately trained staff and resources.

- d) observations by the United Nations Committee on the Rights of the Child concerning the particular country’s compliance with the UNCRC

The UNCRC insisted twice¹⁰⁵ - in its concluding observations following the initial (1997) and second & third periodic reports (2008) of Bulgarian Government the Committee is concerned primarily that “the State party has not established specialized juvenile courts or chambers within the existing settlements as recommended by the Committee in its previous concluding observations”. As a logical consequence, as well as a clear expression of the practical justification for the establishment of specialised juvenile courts/chambers, under paragraph 69, letter d) of the Observations, the Committee directly recommended Bulgaria to “set up an adequate system of juvenile justice, including juvenile courts with specialized judges for children, throughout the country”. This specialization is inked also to another recommendation of the Committee - to train judges and all law enforcement personnel who come into contact with children from the moment of arrest to the implementation of administrative or judicial decisions taken against them.

These recommendations drive in 2011-13 a new endeavor to reform the sector with a focus on: legal reform to create a synergy between child protection legislation and practice and JJS, development of a net of community based services for children committed and establishment of crimes as well as to establish specialized juvenile courts with specialized judges for children. The reform is conceptualised in the National Concept on Justice for Children (2011)¹⁰⁶ further

¹⁰⁵ In compliance with paragraph 68, letter a) of the Concluding Observations on Bulgaria of the UN Committee on the rights of the child (adopted at its Forty-eighth session consideration of Reports submitted by States Parties under Article 44 of the Convention, Part “Administration of juvenile justice”).

¹⁰⁶ At:

elaborated and detailed in the Road Map for the implementation of that Concept. The reform receives financial and expert support under the Bulgarian-Swiss Cooperation Programme (2012-2014).

- e) Comment on the strengths and limitations of official statistics /data sources on youth crime

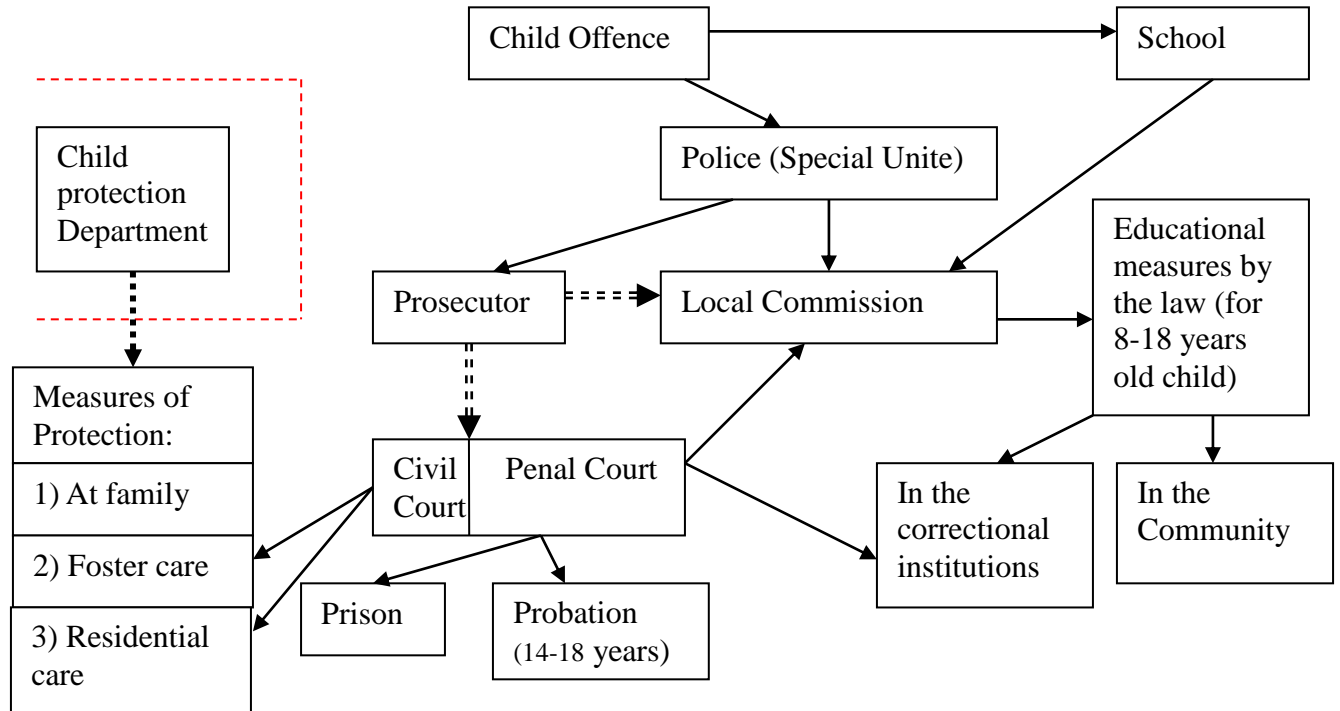
The official statistics comes from various sources that collect it based on various criteria. The lack of uniform indicators, standards and criteria is the major problem for collecting of reliable statistics. Statistical data is accumulated by the structures of the:

- National Statistical Institute
- Office of the Chief Prosecutor
- Ministry of Justice – Directorate of the execution of sentences
- Central Commission for Combating the Antisocial Conduct of Minors and Juveniles
- The Ministry of the Interior - The “Child Crime” Section at the Directorate of National Police, The Research Institute of Criminology and Penal Law
- State Agency for Child Protection
- Agency for Social Assistance.

The lack of unified informational system among the different units is most probably the main reason for having difficulties in collection of the statistical information and for receiving qualitative information.

The conducted research does not answer questions related to the effectiveness of the system, to the attitude of the minors and juvenile towards the existing system, to the attitude of the society to the system in Bulgaria. A necessity for multidiscipline representative studies arose. It should be focused on the effectiveness of the measures, executed in the institutions and society, on the approbation of new practices, their monitoring and assessment. The international standards recommend the changes in the prevention policies against crime and antisocial behaviour of minors and juveniles should do on the basis of comprehensive researches, studies, new approaches.

Annex 1. Flow-chart of the young person's 'journey' through the system



II. Foster care system and services

1. Regulatory framework for child placement in foster care

Child placement in foster care is regulated with a law and secondary legislation. The leading normative act is a law – the Child Protection Act (CPA). With its adoption in 2001, the CPA establishes placement in foster care as a protection measure on the child and as an alternative to institutional upbringing. In this respect, it is prioritized higher than the institutional forms of alternative care.

The CPA sets the following definition – “Foster care is the upbringing of a child in a family environment, i.e. with close friends or relatives or in a foster family.”¹⁰⁷

Secondary legislation, regulating foster care in Bulgaria, is as follows:

- Rules on the application of the CPA,
- Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children therein, adopted with a Decision of the Council of Ministers # 314 from 2006, amended and supplemented on 4.09.2012;
- Ordinance for criteria and standards for social services for children;
- Methodology on the conditions and procedure for delivering the social service “FOSTER CARE”.

The normative acts elaborated and passed in 2003 guarantee the child’s rights during placement in foster care: Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children therein; Ordinance for criteria and standards for social services for children. Furthermore, the conceptions and procedure of selecting and establishing foster families are also set forth there.

1.1. National Standards relating to foster care

Bulgaria has a “Methodology on the conditions and procedure for delivering the social service “FOSTER CARE”. The methodology aims to establish the quality criteria for the service and outline the mandatory activities and steps for the provision of the service “foster care”. As per

¹⁰⁷ Art. 34a of the CPA

Methodology, placing and rearing children in foster care has as primary goal to guarantee the child's right to grow and develop in a family environment. In this sense, several specific goals¹⁰⁸ have been identified in foster care:

- „to ensure for a specific time period a safe family environment for the child, which can contribute to his/her full physical, psychological and emotional development;
- to prevent child institutionalization and secure the support of biological parents in crisis situations;
- to prepare the child for self-dependent life and train/impart social skills;
- to prepare the children placed in institutions for the reintegration in their biological family or for adoption.”

The Methodology clearly states that regardless of the reason/purpose for the foster care placement, the latter must be regarded as a temporary measure on the child. A foster family may sound like good care alternative and a way to meet the needs of the child for a temporary period. However, it cannot be viewed as permanent family environment, as would be the case with the biological or adoptive family.

1.2. The types of foster care

In Bulgaria, *the forms of foster care* are: voluntary and professional. Beginning 2007, after amendments were made to the CPA¹⁰⁹, *professional foster care* was introduced as a legal form of care. Our country uses the following terminology: placing a child in a “foster family” as a protection measure (CPA) and “foster care” as type of service (in the RASAA¹¹⁰). With the last regulatory changes, *placement with close friends or relatives is also a type of foster care*. Babysitters, nannies, as well as guardians or trustees of the child are not considered foster family.

According to the norm set out in Art. 3 of the OCPASAFFPCT¹¹¹, the placement in foster families may be:

¹⁰⁸ “Methodology on the conditions and procedure for delivering the social service “FOSTER CARE”, pt.2

¹⁰⁹ Child Protection Act

¹¹⁰ Rules on the application of the Social Assistance Act

¹¹¹ Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children Therein

- Short-term – up to 6 months, undertaken in order to support the biological family and the child’s reintegration in it;
- Mid-term – from 6 months to 1 year, undertaken with the same purpose;
- Long-term – over 1 year, undertaken for children whose parents have passed away, are missing, or are totally or partly deprived of parental rights, or are continuously providing no care for the child and its reintegration in the biological family would not be possible;
- Emergency placement – undertaken in order to save a child’s life and health.
- Substitute care – the child is placed there for a short period of time in case of an illness, annual leave, etc.

The term “foster care” includes the provider’s activities on organising campaigns and informational meetings for recruitment of foster parent candidates, assessment and training, matching and supporting the child and foster family. The term “Foster care” also includes its actual provision, i.e. the work of the foster parents.

1.3. The role of foster care

During the child’s time in a foster family, the foster parents take the responsibility for its life and health, as well as proper upbringing. Prior to the court’s ruling, the foster parents have the right to express an opinion regarding a change in the protection measure on the child. However, they cannot make decisions concerning the future of the child or change decisions already coordinated with the person, carrying parental responsibility for the child. The foster parents do not possess parental rights or responsibilities, nor does an adoption-type legal relationship exist between them and the child.

The foster family is obligated to inform the “Social Assistance” Directorate about each change in circumstances around the child, namely:

1. circumstances relating to Art. 32 of the Child Protection Act;

2. circumstances relating to Art. 6, par.2-4 of the Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children therein;
3. change in current address;
4. marriage of foster parent;
5. divorce of foster parents;
6. other important circumstances.

2. Social care services

2.1. Providers of the foster care service (NGO/private companies/state)

According to the Ordinance¹¹², in Art. 5 “The Committee on the Child from Art. 20 of the CPA, researches the needs for a “foster care” social service in the respective municipality and plans with the municipal program, the needed types and number of foster families in the municipality.”

According to the Methodology for provision of “foster care”, a municipality can be a provider of this social service. Other providers may be the “Social Assistance” Directorate; physical persons, registered according to Commercial Law; and legal persons, licensed under Art. 43 “b” of the CPA. Organisations with the status of social service providers may have the right to provide the “foster care” service after obtaining a license from the SACP and registration in the Agency for Social Support.

The provider of the foster care service conducts the following activities in the course of its provision:

- Informational campaigns
- Assessment and training of foster care candidates;
- Support to the foster family in the process of getting to know the child;
- Monitoring and support of the foster family in the process of providing care for the placed child;

¹¹² Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children therein, adopted with a Decision of the Council of Ministers # 314 from 2006, amended and supplemented on 4.09.2012;

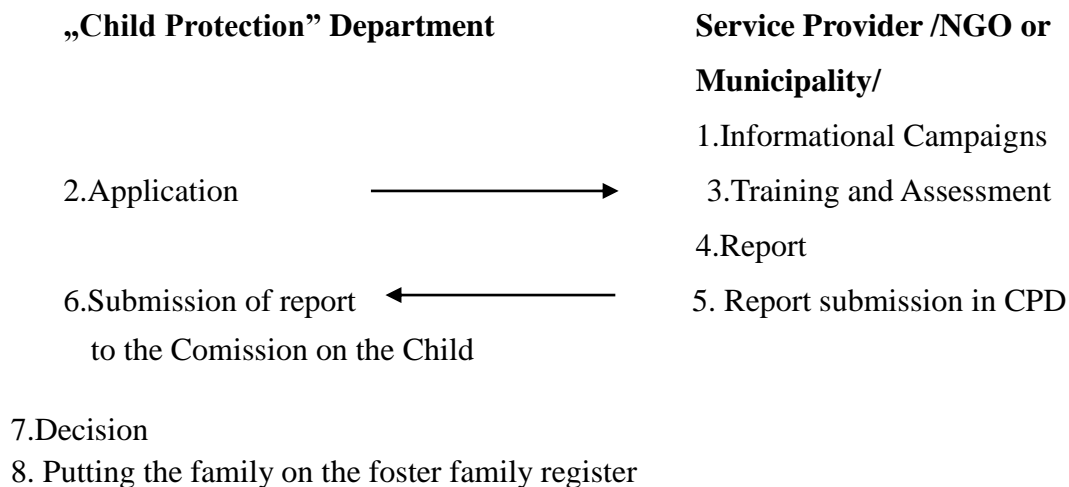
- Development, supervision and upgrading and maintenance training of foster families.

In the implementation of these duties, the provider assigns a social worker to each foster family or candidate foster family. That worker is responsible to work with the family in the process of assessing and training the candidates, as well as supporting to the foster family in the period of acquainting with and caring for the child.

Foster care may be provided by a Community Support Center, as long as that particular services is part of the Center's service capacity. So far, foster care does not have its own financial standard and can be delivered within the framework of a Community Support Center or through project funding.

2.2. The process for granting approval to foster carers

According to the OCPASAFFPCT¹¹³ in Art.4, par. 2, „foster families are established by the Commission on Foster Care. This Commission is regulated by Art. 31, par.2 of the Child Protection Act.



The child's placement is realized by the court. The competent body is the district court at the headquarter district of the “Social Assistance” Directorate, which executed the temporary

¹¹³ Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children therein, adopted with a Decision of the Council of Ministers # 314 from 2006, amended and supplemented on 4.09.2012;

placement. The latter occurs by way of an administrative order, issued by the Social Assistance Directorate which undertakes the placement.

Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children therein, foresees that placement in foster care should be carried out by the “Social Assistance” Directorate based on a contract its Director and the foster family.

With the Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children therein, there arises *an opportunity for the participation of civil organisations* in the process of training, assessment, consulting, and support of foster families. The regulatory framework still does not allow these organisations to conduct their own recruitment and selection of foster families, nor placement.

One of the Ordinance’s significant aspects are the procedure and conditions **for placing one child in foster care**, by identifying the leading needs of the child. Child placement in foster care is a priority and responsibility of the social workers from Child Protection Departments.

Another aspect of the Ordinance is that *foster family monitoring* is carried out by the “Social Assistance” Directorate in order to guarantee responsible fulfilment of the duties of foster parents toward care and upbringing of the foster child/children.

The creation and maintenance of a register of foster family candidates, established foster families and children placed therein allows for timely and coordinated activities in the realization of foster care.

It’s the state’s obligation to provide legal justification for the implementation of foster care. By way of the Ordinance, first issued in 2003, the State determines the application, recruitment and selection procedures for foster families, as well the child placement procedure. Through the nationally represented bodies, the Ordinance sets forth the rules and regulations of the overall framework, ineligibility or expulsion conditions for foster parent candidates, the sequence of

procedures, and the distribution of tasks and responsibilities among the various actors in the process.

Furthermore, the *State is obligated* to set the minimum number of hours and topics that have to be covered in the *training process*; introduce the requirement for conducting supervisions; develop electronic registers for foster families and the children placed in them;

Internal procedure

Child protection is enacted after a signal is received by a Child Protection Department in the “Social Assistance” Directorate, about a child at risk or about child rights abuse (in writing, over the phone or in person, or through active inquiry by social workers)- art. 9 of the Rules of the Application of the Child Protection Act (RCPA). A written signal is registered in a signals register log, and the word-of-mouth signal is described in a fill-out form and also filed in the log. Anonymous signals are not reviewed except in cases concerning violence against a child or by decision of the Director of the “Social Assistance” Directorate – Art. 10, par. 5 of the RACPA.

An assessment is made on the case. The “Child Protection” Department prepares an action plan. The next stage is to choose a suitable foster family from the register. The choice is made by the Director of the “Social Assistance” Directorate after a motivated proposal by the 2 social workers – the one who works with the child and the other, who made the foster family’s assessment to include in the register under Art. 21, par.1, pt.6,b. “j” CPA (Art. 16 of the OCPASAFFPCT¹¹⁴). Afterwards, a meeting is set up with all partners except if the child’s placement is an emergency.

A process of acquainting the foster family and the child, which consists of meetings, the child’s visit to the foster home, and information exchange between social workers and foster family on:

1. the needs and habits of the child;
2. the peculiarities in the child’s behavior and development;
3. the child’s health and general physician;
4. biological family of the child;

¹¹⁴ Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children Therein

5. other relevant information that could help the foster family care for the child better.

The process of establishing an emotional relationship and acquainting the child with foster family usually takes from 4 to 6 weeks. It may be shorter or skipped altogether in case of short-term or emergency placement.

After familiar relations have been established between child and foster parents, it is placed temporarily in the family with order of the Director of the “Social Assistance” Directorate and a contract is signed with the foster family. The child is placed in the family, and the foster parents are instructed in the action plan and every information needed for rearing the child. (Art. 18, par. 2 OCPASAFFPCT¹¹⁵).

Since according to Art. 26 of the CPA, the placement outside family is enacted by court, the “Social Assistance” Director, or the prosecutor, or parent have to issue a request to the respective district court to initiate a judicial proceeding. According to Art.28, par. 2 of the CPA, the request is reviewed immediately in an open hearing attended by the concerned bodies or persons, who issued the request, as well as by the child itself.

The court announces in 1-month’s time a decision, which is communicated to all parties and implemented immediately.

The social worker working with the child visits the foster family at least 2 times in the first month and once per month onwards. S/he is allowed to come into personal contact with the child.

The administrative acts, issued by the “Social Assistance” Directorate Director, are ruled or appealed against according to the Administrative Procedure Act.

¹¹⁵ Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children Therein

The decision with which the court rules the child protection measure may be appealed at the district court in a 7-day period after the ruling – Art. 28, par.4 of the CPA. The District Court’s decision is final.

The child may be placed in a family that is confirmed with an order of the “Social Assistance” Directorate Director and included in the Directorate’s register. The placement occurs after a contract is signed with the foster family. The contract determines the time period of placement, financing, rights and responsibilities related to the raising of the child (Art.26, par.3, CPA). Under Art.18, par.1 of OCPASAFFPCT¹¹⁶, the contract will also set the rules on questions related to:

1. suitable living conditions;
2. personal space for the child;
3. suitable food and eating regime;
4. personal needs of the child;
5. conditions for emotional development;
6. care for health and education;
7. meetings with parents, relatives, friends, significant people in the child’s life;
8. collaboration with the “Social Assistance”;
9. other important circumstances around the child or foster family.

2.3. Recruitment and Financial standards for the service “Foster Care”

The foster carers are recruited by Municipality, by “Social Assistance” Directorate or by NGO’s. In 2007, in Bulgaria *professional foster care* was introduced legally. Foster families receive not only financial aid for supporting the child, but also remuneration for the work done.

Securing funds for child support (according to the Rules for Application of the CPA):

- One-time benefits for a child, placed in voluntary foster care; one-time benefits for a child in professional foster care (Art. 48, par.3):
 - Up to 5 times the minimal monthly wage,

¹¹⁶ Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children Therein

- Monthly funds for the care for children in foster families, (Art.50, par. 3):
 - **Up to 7 years old** – triple the amount of the minimal wage (2013);
 - **From 7 to 14 years old** – 3.5 times the amount of the minimal wage (2013);
 - **from 14 to 18 years old** (or if s/he studies- until high school studies are completed, but not after 20 years of age) – 4 times the amount of the minimal wage (2013);
- If a child with a disability is placed in foster care, there is an additional benefit.

Remuneration of professional foster families (Art. 57 of the Rules for Application of the CPA as of Sept. 2013):

- with 1 foster child - equals 150% of minimal monthly wage;
- with 2 foster children – 160 % of minimal monthly wage;
- With 3 or more foster children – 170% of minimal monthly wage;

If necessary, the regulatory framework allows to obtain needed material resources – furniture, blankets, clothing, etc.

2.4. Training, staff development and support for foster carers

As pointed out in the ORDINANCE, the **basic training** for foster family candidates includes no less than 36 hours in the training program. The program is approved by the Minister of Labor and Social Policy, the SACP¹¹⁷ Chair, and the Executive Director of the Agency for Social Assistance.

The foster family training topics are:

1. Introduction to foster care;
2. The family: What does it mean to take care of someone else's child;
3. The child – development and upbringing;
4. Welcoming and saying goodbye;
5. Safe care;
6. Violence against a child;

¹¹⁷ State Agency for Child Protection

7. Support and monitoring of foster families.

The candidates for professional foster families receive basic training through the approved program, but also, **additional qualification** for raising and bringing up children. With the changes in the ORDINANCE from 04.09.2012, additional qualification for raising and bringing up children in professional foster families is provided through training of no less than 24 hours in the training program¹¹⁸.

Annex 7 Methodology on the conditions and procedure for delivering the social service “FOSTER CARE” describes the *content of the additional qualification program* for foster family candidates. It aims to impart the minimum mandatory set of skills and knowledge needed for the upbringing of children who are priority placements in fostering homes.

The program is specialized. It includes at least 8 sessions, 3 hours each, and upgrades on the already acquired knowledge from basic training. It covers the following themes:

1. Child rights and protection;
2. Specialized care, provided in case of placing an at-risk child from age 0 to 3;
3. Specialized care, provided in case of placing a child with disability;
4. Specialized care, provided in case of placing a child victim of abuse or trafficking;
5. Specialized care, provide in case of an emergency placement of a child.

The foster care is introduced as a profession but without having defined standards for the profession and professional training.

The foster care is introduced as a profession in the National List of Professions, but there are no State Educational Requirements that determine the activities to be performed within the profession and the requirements in relation to the development of the respective competences – knowledge, skills and personality qualities needed for the profession successful implementation. The State requirements serve as a basis for the preparation of the teaching curricula and programmes.

¹¹⁸ program is approved by the Minister of Labor and Social Policy, the SACP¹¹⁸ Chair, and the Executive Director of the Agency for Social Assistance.

2.5. The quality and safety of care in foster homes monitored and maintained

According to the OCPASAFFPCT¹¹⁹, the quality monitoring of care in the foster home is conducted by the main actors: service provider and “Social Assistance” Directorate. The provider is obligated to conduct “monitoring and support the foster family in performing foster care.” The social worker from the “Social Assistance” Directorate that works with the child has to visit the child in the foster home. These visits are regulated “at least 2 times in the first month and once in every subsequent month.”

The social worker from the service providing organisation has to work with the foster family and visits them as well. These visits are regulated as follows: “at least twice in the first month and once every subsequent month.” The social workers have to prepare protocols from these visits. The ORDINANCE obligates the “SA”D and service provider workers to “discuss the child’s development with the foster family at least once a month”.

The ORDINANCE also places responsibility on the foster family by obligating it to “provide opportunity for the social workers to come into personal contact with the child”. It also has to inform the “SA” Directorate working with the child and the foster care service provider about any important circumstances arising around the child. Such circumstances may be: change in the foster parent’s family status, health, address, etc.

With the new changes in the ORDINANCE (effected 4.09.2012) the “SA”D Director and/or the service provider is obligated to **provide help and support** to the foster family in performing the tasks of bringing up the foster child. This support is fulfilled through “maintenance training, consulting, self-help and support groups, and other services” (Art. 23 of the Ordinance). Furthermore, there is a requirement for foster families with active placements to participate in trainings organized by their service provider.

The service provider’s social worker (working with the family) is obligated **to review** the family at least once a year. The review includes a meeting with the foster family, a visit to the foster

¹¹⁹ Ordinance on the Conditions and Procedure for Application, Selection and Approval of Foster Families and Placement of Children Therein

home and a report. If a changes in family’s circumstances are identified that imply potential harm to the child’s physical, psychological, moral, intellectual or social development, the social worker **prepares a social report for assessment**. The report is submitted to the Commission on Foster Care with the Regional “Social Assistance” Directorate and this could lead to the elimination of the family from the foster family register.

In the Methodology on the conditions and procedure for delivering the social service “FOSTER CARE” and placing children therein (in short the METHODOLOGY) in chapter 7, there is a description of the standards for security and safety of a placed child. The Standards for **protection from abuse and violence** against the child by the foster family place the following requirements on the service provider’s social worker:

- To have written policies and procedures for protection from abuse and violence;
- To have a system for signals and complaints;

3. Children and young people in foster care

3.1. Data collection

The *data collection unit* is the number of children who are at risk. The State Agency for Child Protection conducts an annual survey of all at-risk groups of children and the protection measures assigned to them, which is an important part of the system for ***monitoring the condition of child care services*** and the observance of child rights. The monitoring is conducted through several indicators, with sustainable methodology that registers dynamics. To this end, a special informational card was developed, which includes comparable indicators and with which information is collected every 6 months and at year-end. Separate data is collected in this methodology for the number and type of placements (short, long, emergency), as well as the number of foster children up to a specific constant date, and also the total number of established foster families to that date.

Separate data is collected for children, placed in foster families and children in institutions. Even if there arises a need to place a foster child temporarily in an institution, it is not officially registered in both types of care, but in the primary care placement. Furthermore, it is explicitly

mentioned that temporarily (due to sickness or other reason) the child is being placed in an institution.

3.2. Placement in foster care

The legislation shows which children may be placed in foster care. The grounds for placing a child outside the family – with close people or relatives or in a specialized institution, as well as a foster family – are listed in Art. 25 of the CPA, namely:

1. a child whose parents are deceased, missing, deprived of parental rights or with limited parental rights;
2. a child whose parents without due reason are continuously unable to care for the child;
3. a child whose parents are permanently unable to take care of the child
4. a child victim of abuse in the family or at great risk of suffering in its physical, psychological, moral, intellectual or social development.

In the Methodology on the conditions and procedure for delivering the social service “FOSTER CARE”, point 3.1. lists several criteria which determine what children qualify for foster care: “The main user of a foster care service is a child which for a period of time cannot or ought not to live with its parents. The main target groups are:

- children, whose parents are temporarily unable to care for them adequately;
- child victims of abuse and violence;
- children who are to be adopted;
- children placed in specialized institutions;
- newborns who cannot be taken care for by their parents.”

In the Methodology on the conditions and procedure for delivering the social service “FOSTER CARE” and placing children therein, determines the following children as priority groups for foster care¹²⁰:

- children up to 3-years of age;
- children with disabilities;
- child- victims of abuse or trafficking;

¹²⁰ Art. 25 of the Ordinance

- children placed under the measure “police protection”, after its expiration;
- children in substitute foster care placement.
- children with behavioral problems (as of 04.09.2012).

The Methodology on the conditions and procedure for delivering the social service “FOSTER CARE” clearly states that *“The setting of priority groups for professional foster care does not mean that these are the only eligible placements. Professional foster families can accommodate children who are outside the priority groups, but still in need of foster care.”* The leading principle in foster care is on one hand, the child’s needs, and on the other – the capacity of the foster family to meet these needs, regardless of whether voluntarily or professionally.

3.3. Review and support of children

There is a regulation that requires the social worker from the "Child Protection" to attend regular child who is placed in foster care. Frequency of visits is determined by the child's needs and the specifics of the case. Must be carried out home visits once every 6 months, but there is no prohibition, they are more often if needed. Legislation allows the social worker from the department "Child Protection" to seek the assistance of the service providers for children at risk and they can provide intensive psycho-social support for the child and family. This practice is in developing process in the country.

4. Some possibilities for applying Foster Care as an alternative measure¹²¹

4.1. Introduction

Foster cares are provided under the conditions of *Law of child protection¹²²* (LCP). There is no any possibility under the Bulgarian legislation to remove the detention or imprisonment with foster care or some similar measures.

¹²¹ Scientific report to the project “*Alternatives to Custody for Youth Offenders – Developing Intensive and Remand Fostering Programmes*”, provided by British Association for Adoption and Fostering, in cooperation with Family, Child, Youth Association (Hungary), Budapest Capital Child Protection Agency (Hungary), University of Salento – Department of Legal Studies (Italy), Social Activities and Practice Institute (Bulgaria). Report is provided by *Ivan Georgiev*, Judge at Sofia Regional Court; PhD student in Civil and Family Law at the Institute of State and Law of the Bulgarian Academy of Sciences. *georgiev22@gmail.com*.

The biggest question is if the foster care could apply in some situations as an alternative of the restrictive measures. In the present report I will try to find the answer, giving a comprehensive panorama of the current criminal legislation.

4.2. Is there place for foster care?

Under the provisions of LCP, it is clearly indicated that the family environment is the best option for living of children.

When the court imposes a punishment of imprisonment up to three years, it can postpone the imposed punishment for a period from three to five years if the person has not been convicted for imprisonment for a crime of general nature, and if the court finds that for the purpose of the punishment and, most of all for the reformation of the convicted, it is not necessary to serve the sentence – Art. 66, para. 1 PC. During the probation period the convicted shall be obliged to study or work, unless he/she is obliged to undergo treatment.

In case of postponement of the fulfilment of the punishment the court can assign to the respective public organisation or a work team, upon their consent, corrective care for the convicted during the probation period – Art. 67, para. 1 PC. For postponement of the punishment for a juvenile the court shall inform the respective local commission which shall organise the corrective care – Art. 67, para. 4 PC.

That is one of the possibilities for implementing foster care as a part of the execution of the penalty for juvenile offenders – they could be obliged to live with foster family during the postponed period. Of course, this is an option only for children without biological families.

The other good place for implementation of foster care is the case of releasing ahead the term of the punishment. The court can rule a probationary release ahead of term for the remaining part of the punishment of imprisonment regarding a convicted with exemplary conduct and honest attitude to the work, and who has proven his reformation and has served actually no less than half

¹²² Promulgated, State Gazette (SG), No. 48/13.06.2000.

of the imposed punishment – Art. 70, para. 1 PC. The court can release ahead of term the convicted to imprisonment juvenile if he has corrected himself, after having served actually no less than one third of the imposed punishment – Art. 71, para. 1 PC. Regarding the persons released ahead of term the court shall assign the organising of the supervision and the corrective care for them during the probationary term to the respective commission, and for the juveniles - to the local commission for fighting juvenile crime – Art. 73, para. 1 PC. The total control and the management of the corrective care and of the conduct of the released ahead of term shall be carried out by the regional court at the place of their residence – Art. 73, para. 3 PC. As to the previous example, the foster care in this case could be an intensive instrument for reintegration of the young offender.

Some of the restraining measures could implement a foster care. For example, the surveillance could be successfully completed in the foster family. It is a better solution for both – the offender and the inspector.

Conclusion

The brief review of the relevant national legislation shows that there is place for foster care. Unfortunately, the Bulgarian legislation in the sphere of juvenile justice is too old and disorganised. Some of the *de lege ferenda* suggestions are only palliative cure. Probably the only way for implementation of alternative measures of detention is a quite new reform of the system of correctional measures and places of detention.

Annex 2. Child in the system

