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**The Council of Europe Project “Combating violence against children in Ukraine, Phase II”
Kharkiv Institute for Social Research**

**The Analysis of the System of Justice for Minors in Conflict with the Law in
Ukraine
Practical Aspects**



Research Report

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This publication results from the research conducted in June-October 2021 by Kharkiv Institute for Social Research as part of the Council of Europe Project "Combating violence against children in Ukraine, Phase II". The report provides information on how the rights of children in conflict with the law are observed, on whether prevention programmes are available and effective, on the practice of sanctions and the reintegration of children, and on the specialisation of actors involved in juvenile justice. The publication will be of interest to law enforcement officials, representatives of local authorities, civil society organizations, government officials, decision makers, parliamentarians and anyone interested in the juvenile justice in Ukraine.

The authors express their gratitude to all child-friendly justice professionals and children interviewed who participated in the surveys conducted within the research.

When using materials, reference to this publication is mandatory.

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Introduction

The Council of Europe has developed a number of legal standards and practical guides concerning child-friendly justice. These instruments provide for establishing a system of justice that guarantees the observance and effective implementation of all children's rights. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted in 2020 provide for the most comprehensive child-friendly justice standard list. The implementation of these Guidelines and other aspects related to child-friendly justice is a key priority of the Council of Europe Strategy for the Rights of the Child (2016-2021).

"...Having examined, in an open court session, criminal proceeding No. 12020030170000170 against a minor, a native of Mostyshche village of Kamin-Kashyrskiy district of Volyn region, a citizen of Ukraine, Ukrainian, incomplete secondary education, unmarried, with no previous convictions, a pupil of the 11th form of school No. 2 named after Mykola Zalipa, for committing a criminal offence under part 2 of Article 307 of the Criminal Code of Ukraine,

HAS FOUND AS FOLLOWS:

At a time, undetermined by the pre-trial investigation and under undetermined circumstances, the minor illegally acquired a particularly hazardous drug prohibited for circulation, cannabis, weighing 2.9300 grams, which he illegally kept in his possession.

...

HAS HELD:

To convict a minor for committing a criminal offence under part 2 of Article 307 of the Criminal Code of Ukraine, and to sentence him to six years of imprisonment."

An extract from the sentence passed on 23 December 2020 by the Ratne District Court of Volyn Region¹.

The research highlights the stages that a proceeding against a minor goes through within the criminal justice system. The research also broadly covers relevant international standards. In particular, it is about the prevention of delinquency among minors and the performance of the juvenile prevention units of the National Police of Ukraine, the divergence/removal of children from the jurisdiction of the justice authorities, the performance of the prosecutor's offices and the courts, safeguarding the rights of the child and the role of defenders and legal representatives of children, children deprived of their liberty and children serving their sentences under the supervision of probation authorities.

This research would be of interest to criminal justice professionals: police officers, prosecutors, judges and lawyers that deal with juvenile offenders, social workers, representatives of educational institutions, civil society and international organisations and anyone interested in child-friendly justice.

Special note before the belated edition

On February 24, 2022, a large-scale armed aggression by Russia against Ukraine broke out in Ukraine. An evil conflict in Ukraine called for the largest-scale humanitarian catastrophe in Europe since the Second World War and 8 million Ukrainians were forced to flee abroad, about 6 million were moved inside the country². 2,3 mln children became refugees³, thousands of children were forcibly deported to the territory of Russia, according to the statistics of the Office

¹https://reyestr.court.gov.ua/Review/93750589?fbclid=IwAR1Dif6DQmXt2hOEH5FrcqdOTav-5glxU1th_JhhitcHWQEI6HztjifNK8

²<https://data.unhcr.org/en/documents/details/98163>

³https://lb.ua/society/2022/07/04/522113_kordonom_perebuvaie_ponad_23 mln.html

of the Prosecutor General of Ukraine, 459 children were killed and 914 were injured as of January, 22 2023⁴.

Along with the fact that a full-scale war has been going on in the country for almost a year, the system of law enforcement agencies is again waiting for another cycle of reforms. Thus, in November 2022, the Prosecutor General of Ukraine announced the start of the implementation of the Comprehensive Strategic Plan for the Reform of Law –enforcement Agencies as a Part of the Security and Defense Sector of Ukraine for 2023–2027⁵. The main criterion for evaluating the effectiveness of the entire system of law enforcement agencies will be judges' verdicts and protection of victims' rights, introduction of electronic tools, e-case management, etc. Unfortunately, there is not a single mention about the introduction of child-friendly justice. Many other proposals in the direction of juvenile justice, which were developed within the framework of the Interdepartmental Coordination Council on Juvenile Justice, were not reflected.

The statistics of crimes committed by children since the beginning of 2022 emphasize the relevance of the data presented in the report and the recommendations developed in this report. We are observing a general trend of a remarkable decrease in juvenile delinquency since the independence of Ukraine. Statistics of crimes committed by minors in 10 months of 2022 is total less than 2,000 cases, which is almost half the number of previous years⁶. The record decrease in child crime was influenced by many factors: the departure of almost 25% of the child population abroad, the actual paralysis of juvenile police bodies due to active hostilities and their concentration only on war crimes. All this indicates a reduction in the burden on the system of criminal justice bodies for children, which opens a window of opportunity for reforming this area and introducing full-fledged child-friendly justice system.

Background

In 2015, the Government declared its commitment to improving the country's juvenile justice system following the President's approval of the National Human Rights Strategy.⁷ In 2017, the Inter-Agency Coordination Council on Juvenile Justice was established.⁸ The main task of this subsidiary body of the Cabinet of Ministers of Ukraine is to remove obstacles that hinder the establishment of child-friendly justice in Ukraine. On 18 December 2018, the Cabinet of Ministers of Ukraine approved the National Strategy for the Reform of the Juvenile Justice System for 2018-2023 (hereinafter – the Strategy). The Strategy is to be implemented in the following key areas:

- Prevention of child delinquency;
- Protection of the rights of minors prosecuted for administrative offences;
- Protection of children's rights in criminal proceedings (pre-trial investigations; court proceedings; sentencing minors and execution of sentences; re-socialisation of minors).

In order to implement the Strategy, on 27 November 2019, the Cabinet of Ministers of Ukraine approved Resolution No. 1335-p “On Approval of the Action Plan for the Implementation of the National Strategy for the Reform of the Juvenile Justice System until 2023”.

⁴ https://t.me/pgo_gov_ua/8932

⁵ <https://sud.ua/uk/news/publication/254562-my-nachinaem-kompleksnuyu-reformu-pravookhranitelnykh-organov-andrey-kostin>

⁶ https://eppd13.cz/?page_id=1918

⁷ Strengthening Children's Rights Guarantees in Ukraine <https://chemonics.com/impact-story/strengthening-childrens-rights-guarantees-in-ukraine/>

⁸ <http://en.dejure.foundation/news/what-dejure-foundation-do-to-establish-child-friendly-justice-system>

On 21 January 2019, the Ministry of Justice of Ukraine and the Prosecutor General's Office of Ukraine issued the joint order No. 172/510 "On the Implementation of the Pilot Project "Recovery Programme for Juveniles Who are Suspects of Criminal Offences,"⁹ which approved the procedure for the implementation of this project based on the free legal aid system. The pilot project has now been completed, and the draft Law of Ukraine No 5617 "On Child-Friendly Justice" has been developed¹⁰ to introduce all the novelties that have been drafted to enable a more individualised and balanced decision-making in bringing children to justice, as well as protecting the rights of children in contact with the law. It is important to underline that the draft law covers the diversion of children from criminal proceedings, terms for restorative reconciliation (mediation), guarantees to participants to restorative reconciliation (mediation) in criminal proceedings, the procedure for restorative reconciliation (mediation) and legal implications of reconciliation (mediation), compensation for damages during the restorative reconciliation (mediation), the procedure for enforcing agreements on diverting children from criminal proceedings and legal implications of restorative reconciliation (mediation), and taking other restorative actions provided for by an agreement on diverting children from criminal proceedings.

Over the last ten years, several reforms have been launched in Ukraine, namely:

- the Unified standards for the training of juvenile justice professionals have been introduced;
- data collection study has been conducted;
- the establishment of a unified register of psychologists have been considered;
- the Methodological Recommendations for Investigators and Juvenile Police Officers on Interrogating (Interviewing) Children have been elaborated and adopted; relevant recommendations for judges and prosecutors have been developed; the development of risk-assessment tools to be used by juvenile police officers has been initiated.

These reforms contribute to better compliance of the juvenile justice system to international standards. In particular, the approval of the new legal framework limited the pre-trial detention and detention after trial of minors, provided for the diversion measures, introduced juvenile probation, contributed to mandatory legal aid to children in conflict with the law participating in court proceedings and enlarged children's rights in educational institutions.

- Laws regulating juvenile justice in Ukraine:
- Law of Ukraine "On the Protection of Childhood";
- Law of Ukraine "On Bodies and Offices of Children's Affairs and Special Institutions for Children";
- Criminal Code of Ukraine;
- Criminal Procedural Code of Ukraine;
- Criminal Executive Code of Ukraine;
- Code of Ukraine on Administrative Offenses;
- Law of Ukraine "On the Judiciary and the Status of Judges";
- Law of Ukraine "On Probation";
- Law of Ukraine "On Preventing and Combatting Domestic Violence";
- Law of Ukraine "On the Bar and Practice of Law";
- Law of Ukraine "On Free Legal Aid";
- Law of Ukraine "On Social Work with Families, Children and Youth".

⁹<https://zakon.rada.gov.ua/laws/show/z0087-19#Text>

¹⁰http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72137

The minimum age of criminal responsibility

Under Article 22 of the Criminal Code of Ukraine, the minimum age of criminal responsibility is sixteen. However, children over 14 are held criminally responsible if they commit a crime under item 2 of Article 22. It includes the list of 21 offences, inter alia, intended murder, assault on a statesperson or public figure, a law enforcement officer, a member of a civilian public order protection or border-guard group or a serviceman, judge, assessor or juror, in connection with their activity related to the administration of justice, a defence counsel or a legal representative of any person in connection with their activity related to legal aid, or a foreign state representative, intentional infliction of grievous bodily injuries, intentional infliction of moderate bodily injury, sabotage, an act of terrorism, hostage-taking, rape, sexual violence, desire (Article 153), theft, robbery, armed robbery, extortion, etc.

With regard to children between 11 and 14, even if they are released from criminal responsibility, however, under Article 498 of the Criminal Procedure Code, if they have committed a socially dangerous act, the court may apply coercive upbringing actions to them before they reach the age of criminal responsibility, *namely*, 14 years.

Analysis of Stakeholders

Representatives of all key stakeholders that were of key importance for juvenile justice implementation in Ukraine have been interviewed during the research. The institutions listed and the professionals working there were crucial in obtaining valuable information on the practical functioning of the juvenile justice system. List of institutions and organisations:

- Ministry of Justice: the Probation Centre and the State Department for Enforcement of Criminal Sentences;
- Ministry of Internal Affairs: designated units of the National Police: juvenile police/preventive police units, investigative police units;
- Ukrainian Parliament Commissioner for Human Rights
- Councilor, Presidential Commissioner for Children's Rights;
- Courts and local court judges;
- Public prosecution authorities (Department for the Protection of Children's Rights and Combating Violence);
- Ukrainian National Bar Association;
- Coordination Centre for Legal Aid Provision;
- National School of Judges of Ukraine;
- Prosecutor's Training Center of Ukraine;
- NGOs providing services at the place of residence of children in conflict with the law;
- Children in conflict with the law on preventive registers with the juvenile police and probation services;
- Children who have served their sentence in a juvenile correctional facility.

Research Methodology

In April 2021, the Council of Europe in Ukraine involved a group of three experts to develop the Report on the Methodology of Analysing the System of Justice for Minors in Conflict with the Law in Ukraine. The Methodology Report mainly focused on one component of juvenile justice in Ukraine, i.e., the justice system's performance with regard to minors in conflict with the law in Ukraine in 2021. Another component of the "Justice for Minors in Conflict with Law" has already been analysed under a separate Council of Europe request (see the [Legal Analysis of the Barnahus Model Performane in Ukraine](#)).

This report was prepared by the consulting team in April 2021 on the basis of the following key actions and instruments:

- The analytical review of the domestic legal and policy framework prepared by the National Consultant prior to developing the Methodology Report;
- International standards of juvenile justice: the United Nations Convention on the Rights of the Child and the CRC General Comments 10, 12, 14 and 24; Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions; Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder; Council of Europe Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice; Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures; European rules on community sanctions and measures – Recommendation No. R (92) 16; Recommendation No. R (87) 20 on social reactions to juvenile delinquency; Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules); UNICEF Guidelines for Child-Friendly Justice.
- Discussion in the team of consultants who were entrusted with preparing this report.

Research objectives

- Collecting data on the availability and effectiveness of prevention programmes that are being implemented at national and local levels and target children, parents/guardians and the community;
- Assessing practices, situations and rights of children deprived of liberty;
- Evaluating whether children's rights are respected during court proceedings;
- Examining the preparedness of the justice system to apply child-friendly practices when dealing with juveniles in conflict with the law;
- The review and analysis of the effectiveness of rehabilitation programmes for juveniles in conflict with the law;
- The assessment of the availability of a specialised justice system for dealing with juveniles in conflict with the law;
- Analysing the existing independent mechanism for monitoring and submission of complaints by children deprived of liberty;
- The analysis of the quality of data collection on juvenile justice at the central level, possibly enabling the elaboration of data-driven and research-based policies.

To this end, the following data collection methods were used in the research:

- Analysis of statistics, government programmes and reports of public authorities. As part of the research, 11 enquiries regarding access to public information were sent to central executive authorities, educational institutions and organisations to obtain current statistics on the state of protection of the rights of children in conflict with the law. The responses received were used in writing this report.
- Semi-formalised in-depth interviews. A total of **34** interviews were conducted with the informants. In particular, interviews were conducted with four judges, four juvenile prosecutors, four juvenile police officers, one representative of the Coordination Centre on the provision of free secondary legal aid; two probation inspectors; two representatives of the “Probation Centre” State Institution, two lawyers, one representative of the Ukrainian National Bar Association, two minors serving their sentences, two minors under preventive juvenile supervision, four minors registered with juvenile probation sectors, four NGO representatives dealing with children in conflict with the law, one representative of the National School of Judges of Ukraine and the Prosecutor’s Training Center of Ukraine. Furthermore, the issues of equality, gender equality and the rights-based approach were taken into account in the research in a cross-cutting manner.

The data collection methods and instruments used were developed in accordance with the UN norms and standards and take into account the UNICEF Procedure on Ethical Standards in Research, Evaluation, Data Collection and Analysis, the UNEG Ethical Guidelines for Evaluation and the UNODC Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes.

1.1.1. The scope of research

The analysis was focused on the current practices of dealing with children in conflict with the law under the Ukrainian legislation that the relevant officials are engaged in.

The geographical scope of the research was expanded due to the fact that it covered the practices of dealing with children in conflict with the law throughout Ukraine. In particular, professionals and children interviewed represented Kyiv, Kharkiv, Odesa, Poltava, Rivne, Zhytomyr, Lviv, Ternopil, Zaporizhzhia, Chernihiv, Chernivtsi and Luhansk regions as well as the city of Kyiv; however, the Autonomous Republic of Crimea and the non-government controlled areas in Eastern Ukraine were excluded. Several representative areas were determined in consultation with the Council of Europe for the purposes of the best possible geographical coverage of the research. These were Kharkiv, Lviv, Kyiv and Odessa. However, this research used the concise methodology that had been developed beforehand by the Council of Europe expert team.

The research took place between June and September 2021.

Research limitations

The research has a qualitative and explorational nature. As in any qualitative research, its results are not intended to be representative and describe certain tendencies pertaining to the practice.

Findings

Section 1. Prevention of juvenile delinquency

The Order of the Cabinet of Ministers No. 1027-p dated 18 December 2018, “On Approval of the National Strategy for the Reform of the Juvenile Justice System until 2023”¹¹, identified a number of challenges in this area. These include the “lack of clear provisions on the procedural rights of children under the age of criminal responsibility” and the “insufficient effectiveness of defence counsels of suspected or accused minors within pre-trial investigations”. However, among the majority of these challenges facing the children in the criminal process in Ukraine, the most prominent one remains the lack of specialisation as the criminal process remains adult-oriented and has neither specific procedures nor professionals who can make it more sensitive to the special needs of children. Thus, the said order focuses on the “lack of uniform standards for the specialised training of defence counsels who are engaged to provide legal assistance”; “the absence of compulsory special training for investigators and prosecutors involved in proceedings concerning minors”; “the insufficient legal certainty related to the status of a teacher, psychologist, doctor, representative of the office of children’s affairs, the lack of criteria for their selection and involvement.” In other words, virtually everyone a child will meet on his or her way into the criminal justice system is likely to have neither the special training nor the skills to work effectively with minors.

It is to address these problems that the National Strategy for the Reform of the Juvenile Justice System for the Period until 2023 proposes mandatory special training for pre-trial investigators and prosecutors supervising the compliance with the law in pre-trial investigations in the form of procedural guidance in juvenile proceedings; unified standards for the training of defence counsels who are engaged in providing legal assistance to suspected or accused children; a unified approach to interviewing children regardless of their status in criminal proceedings (suspect, accused, witness, victim, etc.), in particular, using special techniques such as the “Green Room”; the legal certainty of the status of the teacher, psychologist, doctor, representative of the office of children’s affairs, and the criteria for their selection and involvement.

All these tasks have not been implemented yet as most of them still need more effort to attain the relevant goals. Therefore, the criminal justice system now continues to deal with children using the available instruments. The National Police bodies are at the forefront of this process as its officers are the first to contact child offenders and child victims and witnesses. In 2020, the police recorded almost 3,400 crimes committed against children, of which 2,200 were solved and referred to the court; children committed almost 4,400 crimes (almost half of which were grave and particularly grave crimes). In 2020, the police found 14,659 missed children. The vast majority of them left home on their own due to misunderstandings with their families. In addition, the police now have three juvenile reception centres in Kyiv, Kharkiv and Odesa. In 2020, they housed 16 children, and in the first six months of 2021 – 11 children. At the same time, it should be considered that the official statistics fail to reflect the real picture regarding child delinquency as the statistics do not even cover many of identified offences.

To date, many of those criminal proceedings where the case did not go to court are being overlooked. For example, there are petty thefts from shops where the price of stolen items implies a sanction that lies somewhere between administrative liability and criminal responsibility. The prosecution does not always agree to initiate criminal proceedings in such cases. After all, in such in-between cases, the question is whether it is reasonable to further prosecute a child if the sum of theft is, roughly speaking, 50, 40 or 30 hryvnias. It is good and right in terms of humanity; still, essential questions arise of how to protect the rights of victims

¹¹<https://zakon.rada.gov.ua/laws/show/1027-2018-%D1%80#Text>

in such cases and what conclusions a juvenile delinquent will draw, as it seems that in such cases, they are not even brought to administrative liability under Article 151 of the Code of Administrative Offences. It means that, in such cases, the investigation of such facts is terminated, or a criminal investigation, even if initiated, is closed without any legal consequences for the perpetrator and any restoration of the victim's rights. Therefore, I believe it would be, however, good if our current legislation provided for mediation or reconciliation at the pre-trial investigation stage.

From an interview with a police officer

On the one hand, this partly responds to the most current requirements for dealing with children in criminal proceedings, under which the punishment of a child offender involving harsh sanctions (deprivation of liberty) should be avoided wherever possible. If a child has committed an offence and admits responsibility without any pressure or procedural irregularities, it is suggested to divert the child offender from the criminal justice system. The police, prosecutors, or other authorities dealing with juvenile cases should be empowered to decide such cases at their own discretion, without a formal hearing, according to the criteria set out for this purpose in the relevant legal system. It follows from the provisions of the General Comment No. 10 Committee on the Rights of the Child¹², the Beijing Rules¹³ and the Riyadh Guidelines¹⁴. On the other hand, the lack of widespread and institutionalised practices of mediation and restorative justice allows a large number of child offenders to simply avoid sanctions.

Before enacting the Law “On the National Police”¹⁵, the JCM (juvenile criminal militia) units exercised police powers on dealing with children. Moreover, their subordination was always problematic as they were first assigned to the criminal cluster of departments and then to the public security cluster. According to the Order of the Ministry of Internal Affairs No. 123 dated 27 November 2015 “On Approval of the Regulation on the Department for Preventive Activities of the National Police of Ukraine”, this Department has a juvenile prevention office. It should be mentioned that even after the Law “On the National Police” became effective, the status of the preventive police itself is not, as of now, clearly defined by the law.

In particular, as of now, the Department for Preventive Activities exists that includes the Juvenile Prevention Office. The MIA Order No. 1044 “On the Approval of the Instruction on the Organisation of Juvenile Prevention Units within the National Police of Ukraine” provides for the key objectives and powers of the juvenile prevention. The tasks of the Office include “protective custody”, prevention and cessation of domestic violence, preventive work with children who may be involved in criminal activities. At the same time, the juvenile police are neither mentioned in the Law “On the National Police”, nor are its structure, functions, rights and obligations clearly defined in law. The Regulation on the Juvenile Prevention Office is lacking, which substantially diminishes the effectiveness and stability of the service required by the international standards. In a certain way it affects the number of juvenile police officers which is insufficient in the Ukrainian context. For example, according to the data received upon the request, in July 2021, from the Ministry of Internal Affairs, the staff listing of juvenile police officers includes 1,501 positions, of which 1,340 (553 men and 787 women) are staffed. It can be therefore concluded that the existing workload cannot be dealt with effectively by such a number of juvenile police officers, which, in its turn, affects staff turnover, work efficiency and staff motivation.

¹² <https://www.refworld.org.ru/category/LEGAL/CRC...4ffd3c082.0.html>

¹³ https://zakon.rada.gov.ua/laws/show/995_211#Text

¹⁴ https://zakon.rada.gov.ua/laws/show/995_861#Text

¹⁵ <https://zakon.rada.gov.ua/laws/show/580-19#Text>, effective since 2015

We were promised by the leadership of the National Police that there would be no more than 3,000–4,000 children per employee in terms of the workload. As of today, in our region, it is somewhat around 6,800–6,900 children per officer.

From an interview with a police officer

If we take the police as such, it is again the young, they have the desire to work, they are willing to work, but the amount of paperwork, the amount of who knows what bureaucracy they do, it hinders them, that's the first thing. The second thing is that they have no tools; they do not always understand what to do in this or that situation. It is no secret that often lawyers who deal with police officers are, to put it mildly, more legally trained and morally push the police to the limit, not allowing them to write anything. Or parents are also quite savvy, they start pushing, and the police officers say, "Well, okay, fine, sorry, we're off." Plus, again, excessive working hours, a vast number of appeals and a small salary also usually play a role. And a low level of training. "My job is to draw up a protocol." That's it. So, as long as police officers tell me they don't need the rule of law, we won't have it. That's how it is.

From an interview with a lawyer

Thus, the main instrument guiding the juvenile prevention officers is the Instruction on the Organisation of Juvenile Prevention Units of the National Police of Ukraine, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 1044 dated 19.12.2017¹⁶. The tasks of the juvenile police units specified in the order are, respectively:

- preventive activities aimed at averting children from committing criminal and administrative offences, identifying the causes and conditions contributing to this, taking measures within their competence to eliminate them;
- keeping the preventive register of children at risk of delinquency and taking individual preventive measures targeted at them;
- participating in locating a child in the event of his or her disappearance or obtaining information for that purpose within the limits of the criminal proceedings initiated in respect of the child's disappearance;
- taking steps to prevent and combat domestic violence perpetrated by and against children, and child abuse;
- taking measures to prevent child neglect, including the exercise of police protective custody over minors;
- actions relating to protection of a child's right to general secondary education;
- co-operating with other NPU units, public authorities and local governments in safeguarding the rights and legitimate interests of children;
- pre-trial investigation of criminal offences in the form of enquiries within the limits of their competence.

The most common work performed by the juvenile police is the detection of administrative offences and the drawing up of administrative offence reports – this is seen as both a response and preventive measure. As the research has shown, according to the police, a punished offence is less likely to be repeated, and accordingly, administrative practice is also seen as a preventive measure.

Administrative practice is practically one of the main methods of, shall we say, coercion used by our officers. Administrative practices are widespread, and predominantly only we as police officers draw up offence reports under the majority of the articles of the Code of Administrative

¹⁶<https://zakon.rada.gov.ua/laws/show/z0686-18#Text>

Offences that we use to bring people to justice. Because, for example, in cases of selling alcohol, low-alcohol drinks or tobacco to children, there are isolated instances when other services of the police, apart from us, draw up offence reports. Let's further take inducing minors into a drunken state, Article 180 of the Code of Administrative Offences. Also, here we draw up the majority of all the reports. In addition, with regard to staying in entertainment facilities after 10 p.m. by persons under 16 years of age, Article 180 with symbol 1, again, it is us who mainly draw up these reports, i.e. these are profile reports, and we are the only ones among other police departments to document them.

From an interview with a police officer

At the same time, it should be noted that the administrative practice itself is not only and not so much about minors but primarily about adults – parents or perpetrators of offences against children. Most children most often receive a warning.

In practice, we have to take these children who have committed offences to court for a decision to be obtained on some kind of punishment for them. So, other services are not broadly involved; we have more contact with children, we draw up reports regarding them, we take them to court as well. It is also one of the methods, by the way, not only of coercion but also of prevention. If you ask what kind of punishment is applied to them, most of all, the answer is a warning. We make offence reports, mainly for bullying, Criminal Code Article 173 with symbol 4; disorderly conduct, Criminal Code Article 173; drinking alcohol, Criminal Code Article 178; smoking in prohibited areas, Criminal Code Article 175 with symbol 1. It's an effective method of prevention.

From an interview with a police officer

As for the occurrence of bringing children to administrative liability in our country, I have encountered it infrequently, let's say very rarely. Well, of course, it starts from 16 years of age and mostly it is about warnings, and if it is associated with drinking alcohol, parents of children under 16 were brought (to justice) as well, but it is not widespread (to prosecute) children under Articles 184 or 178. Or, let's say, it is not actively applied, as far as I know. Mostly the sanctions are preventive, precautionary. Children, as a rule, don't have their own earnings yet, and judges don't have the guts to charge something out of their scholarship, so mostly preventive measures are taken.

From an interview with a representative of an NGO

The key powers that juvenile police officers have under the Order include:

- planning and implementing preventive measures in the children's environment to prevent negative phenomena among children;
- monitoring compliance by business entities with the legal requirements prohibiting the sale of alcoholic and low-alcohol drinks and tobacco products to minors, as well as compliance with restrictions on the night-time stay of children in entertainment and catering establishments;
- taking measures to prevent and halt any unlawful acts against children;
- bringing administrative charges against children aged 16 to 18 who have committed administrative offences, and against parents or persons in loco parentis who do not meet their legal obligation to provide the necessary conditions for the living, education and upbringing of minors;
- participation in activities aimed at preventing child neglect and juvenile delinquency;

- detention of unattended children for up to eight hours in specially designated premises until their parents or legal representatives take them or until they are placed in institutions in accordance with the law;
- informative, preventive and disciplinary talks with children and their parents, legal representatives and family members aimed at eliminating the causes and conditions which may have contributed to the commission of an administrative or criminal offence by children;
- visiting troubled children in their place of residence in cooperation with the office of children's affairs to clarify their living conditions;
- summoning children and their parents or other legal representatives in proceedings related to administrative offence committed by children;
- informing relevant local public authorities about parents or other legal representatives who are neglecting their child-rearing responsibilities, abusing their children or committing domestic violence against them;
- raising issues related to referring children to appropriate facilities to be offered required medical or psychological assistance before the offices of children's affairs, health departments of local executive authorities and local governments;
- taking individual preventive measures to children prone to committing offences;
- detecting cases of domestic violence and responding to them in a timely manner.

This document is also important as it defines the police actions that should be used by police officers to protect children. It should be noted that some of them are not such that should be taken by the juvenile police only as other National Police units, such as the patrol police and district police officers, etc., could be involved in this work as well. As the research shows, juvenile police officers complain that the work they do with children in the pre-trial stages is not used to the full extent during court proceedings. It may be indicative of low level of interaction between juvenile prevention and probation.

Of course, it would be helpful, in my opinion, if a juvenile police officer were also involved in these processes. It is not clear to me at all, for example, why it is the probation service who drafts pre-trial reports, including, so to speak, the generalised characteristics of the defendant's personality, in criminal proceedings which have come to trial and where children have committed criminal offences. I think that this should be the responsibility of juvenile police officers because, at the pre-trial investigation stage, they collect data on the offender's personality. Since we are involved in court proceedings under Article 496 of the Criminal Code, it is logical that we should both draft these generalised characteristics and support them at the trial. It is also the case in mediation, let's say, at the pre-trial stage.

From an interview with a police officer

“Police protective custody of minors” is a “preventive police measure” applied to “unattended” children. It is implemented “in order to safeguard their rights and freedoms, and its result is their transfer to their parents, legal representatives or guardianship authorities”. Often the need for such action arises when the police are notified of domestic violence committed by and towards children. It should be mentioned that in such a case, the police officer should assess risks and afterwards issue an emergency barring order and immediately inform the office of children's affairs about such a child to arrange for his/her social protection. Even though the procedure for assessing risks related to domestic violence has been developed and approved (the Order of the Ministry of Social Policy of Ukraine No. 369/180 of 13 March 2019¹⁷), in practice,

¹⁷<https://zakon.rada.gov.ua/laws/show/z0333-19#Text>

it is, unfortunately, not widely used. As the research shows, the juvenile police more often rely on other actors – social protection, education, NGOs – hoping that there will be professionals there who can apply the relevant methodologies. This also leads to risks being assessed under different criteria in different regions and even cities, as the interviewed respondent argued.

There is no particular risk assessment methodology today; although we have tried to introduce it before, there were special questionnaires that had to be filled out and determined a high level of risk. Today there is no such comprehensive system of risk assessment to be conducted under a particular form. But at the same time, the main criterion for risk assessment is repeat offences committed by a child on the register. If a child is on our registry for theft, but at the same time while being on the register, he/she gets arrested for committing administrative offences, he/she runs away from home, he/she is found late at night in places where he/she shouldn't be, then we individually approach this supervised child, we assess him/her on the basis of relevant risks as someone prone to reoffending.

From an interview with a police officer

Besides, we get a characteristic of his/her behavioural changes from the psychological school, from the psychological service of the educational institutions, or, as I have been telling you about the experience of co-operation with the educational institutions which carry out reformatory work with them, that is, they give us additional information whether he/she is prone to committing delinquent acts or not. We look at him/her from the viewpoint of his/her behaviour in the family, whether he/she is prone to recidivism; because in case he/she, for example, engages in a conflict or commits domestic violence in his/her family environment while on our register, then sooner or later he/she may re-offend. So we do not look at specific forms, but we monitor a child's way of life and behaviour and thus treat him/her as one who may re-offend or not.

From an interview with a police officer

Another measure imposed under the Order is the “prevention of administrative and criminal offences among children.” This police activity aims to identify and eliminate the causes and conditions that induce children to commit administrative and criminal offences.

Activities aimed at all children studying in the educational institutions are lectures, flash mobs, interactive classes, workshops with the same children, etc. The other, let us say, side of this work is children who are prone to deviant behaviour. It requires more measures aimed at individual work with these children and not general preventive measures. It means preventive work with children on preventive registers with the police. Another area of preventive work is interaction with the public, activities in communities, work with NGOs and non-governmental structures; well, they unite us to work both in general and individual prevention. It is so because individual work involves not only the work of a police officer, but also the work of a psychologist, and the work of social services, the provision of meaningful leisure time of children, i.e. changing their behaviour in a positive direction due to activities held in their free time. So we can't do anything in these spheres without state authorities, self-government, educational institutions, including the public, so I would highlight it as the Law on National Police highlights the interaction with the public.

From an interview with a police officer

Not only the juvenile police but also the patrol police work in this area – the officers of the latter have been appropriately trained and regularly visit schools with lectures and classes within the framework of the School Police Officer Project, working according to a methodology that was specially developed with the international partners' support. But, unfortunately, the coverage of these measures remains insufficient; this has been pointed out primarily by the children themselves who have committed offences.

I believe that first of all, to avoid something like what happened to me, the police need to communicate directly with children at schools, colleges, in general, in educational institutions; they should clearly explain, give some of these handouts, and children should take heed of the fact that criminal offences end very badly.

From an interview with a child in conflict with the law

It is the juvenile police that carries out preventive registration of children, actually registering them and putting their data into databases. It contributes to systematic work with children and, if done well, makes it possible to monitor children's life circumstances and the results of dealing with them. Preventive registration applies to children who:

- 1) have been sentenced to a non-custodial sentence;
- 2) have been released from criminal liability by a court judgment, and compulsory disciplinary measures have been imposed on them that exclude their placement in a social rehabilitation school or vocational institution for children with special educational needs;
- 3) have been released from a juvenile prison;
- 4) have committed any form of domestic violence (child abusers) under Article 173² of the Code of Ukraine on Administrative Offences and against whom an emergency barring order or a restraining order has been issued;
- 5) have been penalized two or more times within one year under administrative law;
- 6) have left home, educational and correctional institutions or special establishments for children two or more times within one year without permission;
- 7) have committed bullying (harassment) of a person involved in the learning process.

According to the Order of the Ministry of Internal Affairs No. 488 dated 25.06.2020¹⁸, the grounds for the preventive registration of children include an effective court sentence (ruling) on imposing non-custodial punishment on the child or a court judgement on releasing a child from criminal liability with further application of compulsory disciplinary measures, except cases when a child is referred to a social rehabilitation school or vocational institution for children with special educational needs. Children who have been released from juvenile prisons and children about whom there is evidence that they have committed domestic violence are also placed on preventive registers. Children who have been penalized two or more times within one year under administrative law or who have left home, an educational and correctional institution or a special establishment for children two or more times in one year without permission are also subject to preventive registration.

This registration continues until a child turns 18 or until the end of the sentence imposed by the court. Children are also removed from the register when the court imposes a sentence of imprisonment or remand in custody on them. In other cases (family abandonment, administrative responsibility, bullying), the record continues for one year if the incident is not repeated.

According to the data received upon request from the National Police, as of 1 July 2021, there were 1,844 children on preventive registers with the police, of whom 469 were girls and 1,375 were boys. Of these, only 17 children have committed criminal offences while on the register. But the effectiveness of preventive registration against the recurrence of child offences is not unequivocally proven; this is indicated by quite different data collected in different years. In 2019, for example, 68 of 3,671 children on the register re-offended. In 2020, 91 of 1,800 children on the register committed an offence.

As of now, the preventive work of the police includes:

¹⁸ http://search.ligazakon.ua/l_doc2.nsf/link1/RE35021.html

- conducting informative, preventive and disciplinary talks with children at their places of residence, study or work at least once a month;
- conducting informative, preventive and educational talks with children's parents, their legal representatives and family members to eliminate the causes and conditions which may have led to the commission of an administrative or criminal offence;
- drafting individual prevention plans based on a review of children's characteristics and their individual and psychological constitutions;
- visiting places of residence of children to ascertain their living conditions and the factors likely to influence them and prompt them to commit administrative or criminal offences.

The cross-sectoral interaction including interaction with social services and civil society organisations is a very resource that enables all types of work with children requiring professional qualification and skills as precisely the above entities should undertake correctional and preventive activities aimed at these children, individually or in groups. Today, the quality of such work depends in each specific case on the juvenile police officer's willingness to help children and his or her readiness to seek out relevant professionals, establish contact with them and engage them in cooperation. The personal data of children contain specific risks and are the reason for more attention in this case as actually they leave the protected information system of the Ministry of Internal Affairs and are transferred to other organisations.

For example, we have a project aimed at modifying children's behaviour with one of the charitable foundations; they are certified to engage in correctional counselling with children, i.e. they have the right to carry out such work. Well, at the request of these children, who are on the preventive register, or at the request of their parents, we refer these children to this NGO for such correctional counselling. It happens voluntarily and only in agreement with parents. In other words, we do not go beyond and disseminate information about children here. We do it only at their wish or at the parents' wish. When we write a letter to the charity that is our partner in this project, we don't even give a child's surname, name and patronymic, we give a code, and the code is the number of the prevention case under which the child is registered with us. Accordingly, they send us, again, information about the changes in the child's behaviour, that is, what to pay attention to, meaning that they report on the effectiveness of prevention regarding this child over time. And they also don't give us the surname, just a code as well. We try as much as possible to limit the dissemination of information about that child because it may not only be a violation of personal data protection legislation, it may also have a negative impact on the child's behaviour. If, God forbid, this information spreads and the child receives some psychological trauma, this may lead to certain consequences, including suicide, so we are very cautious about these things in practice.

From an interview with a police officer

The Beijing Rules¹⁹ make the important point that "the juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling." First and foremost, children should not be stigmatised and suffer the consequences of information disclosure about their criminal justice problems.

Another overarching focus of the juvenile police is the prevention and combating of domestic violence. In 2020, for example, the police received about 209,000 reports of domestic violence, i.e. 570 per day on average. This is 47% more than in 2019. According to statistics, women were the ones who reported domestic violence to the police the most, in over 182,000 cases. There were 3,400 such reports from children. On average, one person suffered from domestic violence every three hours. At the same time, every day the police initiated 13 criminal

¹⁹ https://zakon.rada.gov.ua/laws/show/995_211#Text

proceedings and drew up 363 administrative reports on domestic violence cases. However, experts say that the actual scale of domestic violence in families is much higher, and this phenomenon is not linked to the latency of this crime only. Experts argue that obstacles exist which the police officers may themselves create as they lack relevant resources, knowledge and tools to tackle this issue, or perform their duties ineffectively. Domestic violence witnessed by children is rather large-scale. Therefore, a timely and appropriate response by all actors including police is of crucial importance.

The effectiveness of juvenile prevention, the national police prevention agencies in dealing with domestic violence against children, is, to me, equal to zero. Of course, some officers make visits, and they at least try to get to the bottom of what is going on. Still, given that juvenile prevention should be one of the first to respond to domestic violence, it is difficult for them to determine whether there has been violence. Or was there psychological violence only? We can at least identify physical violence, but psychological violence is a totally difficult issue, and they need to be able to identify it. Even physical abuse is not always noticed in our country, especially if parents turn a blind eye and say, “No, the child made the whole thing up.”

From an interview with a representative of an NGO

Although under the Law of Ukraine “On Preventing and Combating Domestic Violence” and departmental regulations, bodies that should respond to the instances of domestic violence are not limited to the juvenile police only, however, this entity is crucial in protecting children in cases of domestic violence, and the mandate of juvenile police units in preventing and combating domestic violence extends to cases where a perpetrator or a victim or a witness to domestic violence has not reached the age of 18. For this very purpose, the juvenile police officers:

- identify instances of domestic violence committed by and against children and respond to them in the manner prescribed by law;
- receive and investigate statements and reports of domestic violence committed by and against children, take measures to stop it and provide assistance to the victims;
- issue emergency barring orders against perpetrators;
- take steps to place child perpetrators on a preventive register and conduct preventive work with them;
- supervise whether child perpetrators perform special actions aimed at combatting domestic violence during the term of such actions;
- inform victims of their rights, as well as actions and social services available to them;
- co-operate with other actors involved in preventing and combating domestic violence in the manner prescribed by law;
- exercise powers to prevent and combat domestic violence with due regard to international standards for law enforcement response to domestic violence and risk assessment;
- assess the risks of domestic violence under the procedure prescribed by the Ukrainian laws.

The most significant powers given to the juvenile police are their right to enter a person’s home without a reasoned court order in urgent cases related to stopping an act of domestic violence in case of immediate danger to the life or health of a victim. It is these powers that greatly enhance co-operation with social services and local authorities if a report on a child in danger is received. With these powers, juvenile police officers can ensure immediate action to rescue children and contribute to removing them from danger. To this end, juvenile police units co-operate with other authorised bodies and units of the national police, public authorities and local governments, territorial communities, international and civil society organisations, according to the scope of work of each of them.

We arrive at the place, make an assessment, make decisions, as provided for by that same Resolution 585 of the Cabinet of Ministers, which stipulates that we must immediately go to the place where a child is in a dangerous situation, must decide on whether it would be appropriate to remove this child; hence such things require both coherence and co-operation. And it turns out that for a young social worker who has been appointed to this position, removing a child is new to him; he does not know what to be guided by, he even does not know this regulation 585. Here we, in our turn, let's put it in that way, initiate some things, and we explain to social services what should they pay attention to and why in this case, our actions are legal and why it is necessary to act that way.

From an interview with a police officer

However, in practical terms, it is not always possible to decide on removing a child into a safe environment as the number of such institutions and places in them is limited. Very often, solving this issue requires considerable administrative and organisational resources and different partners – first of all, social services – to be involved.

We have one centre for social and psychological legal assistance to children, a former shelter. We have only one such centre for the whole region and no other shelters. That is why, for example, a certain number of children were removed from life- and health-threatening environments and only 10% of that number were placed in the social and legal assistance centres. We try to place in the former shelter only those children who, first, experienced domestic violence and, second, whose parents have committed a crime against a child. In such cases, we definitely insist that children be placed there as rather qualified psychologists are available there. One of them is permanently involved as an expert in criminal cases where children have suffered sexual violence or domestic violence. In all other cases, it's about either relatives or, recently, foster families. We already try to place them there, and sometimes, we place them in educational institutions, i.e. we also have boarding schools, orphanages and dormitories in the region. If we were to place everyone in the shelter, they would simply not have a place to sleep.

From an interview with a representative of an NGO

Thus, in the context of limited resources and the gradual decentralisation that is taking place in the country, the role of partnership between the juvenile police and other bodies and organisations involved in the protection of children's rights is constantly increasing. Interaction with other authorities and self-governments takes place to prevent delinquency among children, to counteract domestic violence and child neglect; to secure children's rights and interests; to improve the professional level, to acquire knowledge, skills and abilities through participation in seminars, training sessions and other practical and theoretical activities.

Such an interaction should be step-by-step increased as it is one of the crucial prerequisites for enhancing the effectiveness of juvenile criminal justice. The respondents think that actions towards the protection of children should be taken jointly by all actors and in close collaboration. However, the respondents argue that as police registers very sensitive information concerning children, all actors involved should consider the transfer of child data to other entities and their protection as high priority.

Today, following the decentralisation reform and certain changes in our work, we depend more on specific territorial communities. And our employees and our employees' workplaces are no longer concentrated in the former district centres but in the territorial communities. Regarding whether we now have more contacts with social services being closer to children, I can say that, yes, it is so. Even though these services are not established everywhere yet, they are not always as professional as we would like them to be or as the situation so requires, there is a

definite fact, however, that there are more of them today in pure numerical estimation and we are co-operating with them more intensely and closer to the community.

From an interview with a police officer

We haven't received any complaints about privacy from parents or persons in loco parentis, but we try not to advertise these things except for those facts. If we involve educational authorities in preventive actions towards children, within a preventative case, they already knew that a child had committed an offence and would be registered, because they provide data that describes such child. So, anyway, we don't involve more people or actors than those who were involved at the time of initiating criminal proceedings.

From an interview with a police officer

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers on 17 November 2010 at its 1098th meeting of the Ministers' Deputies provide for basic standards of police's attitudes towards children. Hence, the compliance of the juvenile police with the provisions of this document is an important indicator of how child rights are respected in the criminal justice system.

For example, the Guidelines point out that “*police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties.*” However, in practice, as respondents state, their vulnerability is rather often mistreated.

The right to confidentiality and privacy is poorly respected. Children are not protected at all in this respect. Why? Firstly, it is because every adult is, a priori, an authority figure for a child. So when an adult, be it a teacher, a police officer or someone else, says, “Give me your phone back here”, he or she gives it to them. Where does the investigator go as soon as a child commits a crime? They go to the school because they need the characteristics of the child for some reason. As soon as they come to school, the whole school knows everything. They do not sign any non-disclosure obligations.

From an interview with a head of an NGO

It can manifest itself in a disregard for children's needs or particular aspects of their development, the subordination of children's needs to the needs of the police officers. Such things are often aggravated by the indecisiveness of people representing children – their parents, guardians or social workers, or their lack of opportunities to defend children. According to the interviewed respondents, in practice, when children end up with the police, they highly depend on the will of a police officer. If the officer has children's interests and rights as a priority, then children are in safety; otherwise, children's rights are seriously violated.

The guidelines also emphasize that “*Whenever a child is apprehended by the police, the child should be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been taken into custody. Children should be provided with access to a lawyer and be given the opportunity to contact their parents or a person whom they trust*”. However, in practice, challenges remain related to informing children of their rights, reasons for apprehension, persons with whom they may contact and modes of such contacts, and possible further actions, in line with international standards.

Interviewer: When you were brought to the police, how did the police treat you?

Respondent: They did not threaten or intimidate me. I knew the investigator and he explained everything to me, he said that there was no point in hiding anything. But I wasn't going to hide it either. And I admitted that I had done it myself. So I was, to be fair, 16 years old at the time. I was still young and completely stupid. I didn't understand why, I thought, well...well, it'll pass,

and people would have pity for me. I was really foolish; I did not understand what I was really doing. So he brought me in and made me understand that I shouldn't hide anything, everyone would find out anyway, sooner or later.

Interviewer: Did he explain your rights or obligations in this new status, the status of a suspect, an accused person?

Respondent: No. He didn't.

From an interview with a child in conflict with the law

An important requirement observed by the police is that “*parent(s) should be informed of the child's presence in the police station, given details of the reason why the child has been taken into custody and be asked to come to the station.*” There is also a requirement that “*a child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child's parents or, if no parent is available, another person whom the child trusts.*” At the same time, lawyers point out that such informing can be delayed to the point when children have already been dealt with in the course of certain procedural steps and have provided required information or evidence. The lack of access to timely legal aid for children and their representatives is a problem in this context. The most strictly respected rule in the police today is the requirement of separate custody of juveniles and adults in places of detention. For example, the Guidelines emphasise that “*police should ensure that, as far as possible, no child in their custody is detained together with adults. Authorities should ensure that children in police custody are kept in conditions that are safe and appropriate to their needs.*” This requirement is almost always complied with as this international standard is enshrined in the national law and the legal framework for the police; besides, it is thoroughly monitored and its violations are severely punished.

The situation is more complex with the requirement in the Guidelines that “*interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals*” and that “*every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.*” The Beijing Rules also state that “*police officers shall be specially instructed and trained in the children's rights.*” Since it is the police who are the first contact of a child in the juvenile criminal justice system, there are significant requirements as to how they operate, how they are informed and what skills they have.

For more than ten years, certain efforts have been taken to create a child-friendly environment as “green rooms” were opened, relevant measures were taken, and relevant training was performed. In particular, the “green rooms” term appeared for the first time in the official documents of the Ministry for Internal Affairs in 2008, when the Department for Criminal Militia of the Children's Affairs issued the Methodological Recommendations on Arranging for and Functioning of a “Green Room” for Children in Need of Social and Psychological Protection. According to these Methodological Recommendations, “green rooms” should be suited for preventive activities involving the following categories of children between 5 and 18: homeless and neglected children; children living in dysfunctional families; those who systematically leave their families and education institutions; those engaged in vagrancy and begging; child victims of violence or child perpetrators of violence in families; children on the police register; those who committed socially dangerous acts before reaching the age of criminal responsibility; children released from punishment and subject to mandatory disciplinary measures; children who committed crimes; children released from prisons; children released from special social rehabilitation institutions; children prone to alcohol, narcotics and psychotropic drugs. Unfortunately, child victims and witnesses of crimes and, in particular of

sexual abuse and exploitation were not included in this category list. The 2008 Methodological Guidelines on the arrangement of such rooms were also far from international standards and were limited only by the requirements for the color of walls, wallpaper, floors, carpeting, furniture (should be of a green colour), appropriate temperature and fresh air, sound insulation quality, the proper lighting and the availability of artificial lighting, indoor flowers, toys and fiction books, appropriate sound design, the availability of soft chairs. They also recommended that two rooms separated by the glass for non-visual surveillance be arranged and video equipment be installed. These Methodological Recommendations were not approved by any MIA order or resolution.

In particular, according to the Order, that approved the Instruction on the organization of the work of units of the juvenile prevention of the National Police of Ukraine ²⁰, “green rooms” perform the following functions:

- 1) collecting evidence of crimes or offences where children have been victims or witnesses of a crime or offenders;
- 2) adaptation of children after they suffered violence;
- 3) restoring the psycho-emotional status of children under stress as a result of a conflict, accident or other extreme situation;
- 4) blocking the children’s acute stress reactions;
- 5) preventing children’s psycho-emotional stress, mitigating the effects of psycho-traumatic situations and psychophysical stress;
- 6) eliminating physical discomfort and emotional tension, and normalising the life process;
- 7) short-term or long-term psychological treatment;
- 8) psychological counselling for people with addictive tendencies;
- 9) psychological counselling for the readjustment of relationships in the family, educational institutions and children’s groups;
- 10) prevention and correction of the negative consequences of behavioural deviations and psychological deformation of children prone to committing offences and crimes;
- 11) helping children to understand and recognise the reasons for their poor adjustment to reality and helping them to adapt and build more realistic communication.

However, experience of using such approach has shown that interrogating/interviewing children in these rooms is now a challenge for all actors, including the police. As of 1 June 2021, 47 “green rooms” have been established and function within police units²¹. They cover over 650 police units and stations. In practice, “green rooms” are still used to a minimal degree, even if they are available in certain regions. The number of police officers having special knowledge of interrogating/interviewing children remains unessential. Training sessions and education events are held predominantly by international and civil society organisations.

Interestingly, we started to deal with this “green room” methodology a long time ago, since 2010 by and large, well, seriously. In 2012, methodological guidelines were being prepared, and then La Strada prepared their methodological guidelines. Later, the National Academy of Internal Affairs prepared its methodological guidelines. In 2019, the National Academy of Internal Affairs opened a “green room” training ground. And to date, another one is already equipped in the training centre. So you cannot say that there is no progress at all, but as soon as

²⁰ <https://zakon.rada.gov.ua/laws/show/z0686-18#n7>

²¹ <https://www.npu.gov.ua/news/preventivna-robota/vidsogodni-v-naczpolicziji-stvorenij-sektor-yuvenalnix-slidchix-Igor-klimenko/>

it comes to practice, it all boils down either to the unwillingness of the authorities or the desire to save some money somewhere. That is, I can say for sure, in all sincerity – Kyiv, Odesa, Rivne..., Kharkiv had it but doesn't have anymore... There are only four rooms in the country that really function. Why? The methodology is available. Even the police officers have methodological materials. Even the professional development program covers this issue. But as soon as it reaches the local level, it is not applied, because in most cases, it is a problem of juvenile prevention, but not of the investigator. And the investigator does not care where to interview, they just need to interview. So they have to take the child and go somewhere... although, as we said, one such room at the regional level would be enough for an investigator to take the child and go to the regional capital and interview them, or their parents can take them there or the office of children's affairs can do this.

From an interview with a representative of an NGO

Conclusions:

- Although there is a certain regulatory framework, there are plans and concepts in place in Ukraine to protect the rights of the child in criminal proceedings, some important aspects still remain unresolved. For example, even after the Law “On the National Police” became effective, today, the status of the preventive police is still not adequately regulated by the legislation. For this reason, the staffing structure, functions and powers of the preventive police can be changed by ministerial orders and to some extent that is a challenge.
- Despite the high social importance of its activities, unfortunately, the development of the juvenile police is not a priority for the National Police. First and foremost, there is a lack of professionals in this field. Because of that, the workload of over 7 million children per 1,340 juvenile police officers means their inability to exercise their powers effectively. Such a workload makes it impossible for the above number of juvenile police officers to effectively exercise powers vested upon them, affecting staff turnover and motivation.
- The most common work done by the juvenile police today is the detection of administrative offences and the drawing up of administrative protocols – this is seen as more than just a response measure. As the research has shown, a punished offence is less likely to be repeated, and accordingly, administrative practice is also seen as a preventive measure.
- The lack of widespread and institutionalised mediation and restorative justice practices allows a large number of child offenders to simply avoid punishment.
- Unsystematized approach to risk assessment. The practice shows that risks are assessed under different criteria in different regions and even cities, and the interviewed respondents also confirmed it.
- The cross-sectoral interaction, including interaction with social services and civil society organisations, is a vital resource that enables the high-quality performance of all types of work with children that require professional qualification and skills as precisely the above entities should undertake corrective and preventive activities aimed at these children, individually or in groups. Today, the quality of such work depends in each specific case on the juvenile police officer's willingness to help children and his or her readiness to seek out relevant professionals, establish contact with them and engage them in cooperation. The personal data of children contain specific risks and are the reason for more attention in this case as actually they leave the protected information system of the Ministry of Internal Affairs and are transferred to other organisations.

- Today, interviewing/interrogating children in these rooms remains a challenge for all actors, including the police. In practice, “green rooms” are still used to a minimal degree, even if they are available in certain regions. The number of police officers having special knowledge of interrogating/interviewing children remains unessential. Training sessions and education events are held predominantly by international and civil society organisations.
- Disregarding children’s needs or particular aspects of their development and subordinating children’s needs to the needs of police officers are repeated problems; the respondents admitted their existence. In its turn, it is aggravated by the indecisiveness of people representing children – their parents, guardians or social workers, or their lack of opportunities to defend children. According to the interviewed respondents, in practice, when children end up with the police, they highly depend on the will of a police officer. If the officer has children’s interests and rights as a priority, then children are in safety; otherwise, children’s rights are seriously violated.

Section 2. Re-characterisation of charges against a minor during court proceedings

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice include²² the following recommendations as to recharacterisation and/or the broader notion of diversion.

The minimum age of criminal responsibility should not be too low and should be determined by law.

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

Children should be thoroughly informed and consulted on the opportunity to have recourse to either a court proceeding or alternatives outside court settings. This information should also explain the possible consequences of each option. Based on adequate information, both legal and otherwise, a choice should be available to use either court procedures or alternatives for these proceedings whenever they exist. Children should be given the opportunity to obtain legal advice and other assistance in determining the appropriateness and desirability of the proposed alternatives. In making this decision, the views of the child should be taken into account.

Alternatives to court proceedings should guarantee an equivalent level of legal safeguards. Respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")²³ recommend that juvenile criminal proceedings be terminated at every legal opportunity:

Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.

The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practiced on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school

²²<https://rm.coe.int/16804c2188>

²³https://zakon.rada.gov.ua/laws/show/995_211#Text

or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

Diversion may be used at any point of decision-making by the police, the prosecution, court (judge) or other agencies with the relevant competence. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems. Diversion need not necessarily be limited to petty cases, thus it can be an important leverage point to change the behaviour of juveniles.

Similarly, the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s) should be secured. However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes.

Rules recommend the provision of viable alternatives to juvenile justice processing in the form of community-based diversion and the application of educational and corrective measures. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

Modern legal systems in the European countries try as much as possible to adopt an approach whereby children are diverted from the formal criminal justice system, and namely this approach is called **diversion**.

Diversion is a process that seeks to avoid a first or early contact with the criminal justice system and find community support or provide appropriate services or interventions²⁴.

Ukrainian legislation *does not fully provide for diversionary measures*. Besides, the Criminal Procedure Code of Ukraine²⁵, in Chapter 38 (Criminal Proceedings against Minors), provides for the application of disciplinary measures to juvenile accused. In particular, Article 497 of the Code of Criminal Procedure²⁶ provides that if **during the pre-trial investigation the prosecutor concludes** that a minor accused of a first-time criminal misdemeanour or an imprudent minor offence can be corrected without a criminal sentence, they shall fill a motion for application of compulsory disciplinary measures to the juvenile defendant and refer it to the court.

Well, look, when we see that a child has committed a minor crime, it is clearly the case where disciplinary measures are considered at first. I can speak for my region, and I can say that we, juvenile prosecutors, do not have such a requirement, perhaps some do, but we definitely do not, no one is forcing us to refer indictments to court against minors and give them either a real sentence or the one with probation. For us, the indicator of our work is when a child does not come into conflict with the law in the future. This is our priority and this is an indicator of our work, as pathetic as it may sound, but it really is. We even have such a column in our reports – the number of motions referred to the court, which is an absolutely equal result of the prosecutor’s work. If we talk about recharacterisation, there are cases when it happens both in pre-trial investigation and in court, if circumstances are established that constitute grounds to apply, for example, Article 105 of the Criminal Code and select one or more

²⁴https://cdn.penalreform.org/wp-content/uploads/2013/11/CR_TrainingManual_RUSSIAN_WEB.pdf

²⁵<https://zakon.rada.gov.ua/laws/show/4651-17>

²⁶<https://zakon.rada.gov.ua/laws/show/4651-17#Text>

measures of disciplinary nature. Since 2014, a special social rehabilitation school has been functioning in our region, you know, it is also a disciplinary measure, and we successfully apply it. And colleagues from other regions apply it as well because I can see the periodic occupancy rate there. A caution or supervision are very common measures now that the court applies and, for some reason, the parties to criminal proceedings ask for. Either it's about a school team or somebody from the child's relatives. We refer more of these desperate kids to special schools and special colleges, those who have already committed crimes several times, as we don't want them to end up in some detention facility or serve their sentence somewhere, so we ask for a lenient option of a place where children can serve their convictions. But they are a small percentage, as in general, more lenient disciplinary measures are applied to such children. We can talk to probation officers too.

From an interview with the prosecutor of the regional prosecutor's office

A juvenile who has committed a minor offence for the first time may be released from criminal liability with the application of compulsory disciplinary measures if their correction is possible without punishment or it is recognised that as a result of their effective repentance and subsequent flawless behaviour, there is no need for punishment at the time of sentencing.

In such cases, the court applies to the minor the compulsory disciplinary measures provided for in Articles 97 and 105 of the Criminal Code of Ukraine²⁷, namely:

- 1) Warning;
- 2) Restriction of leisure time and special requirements to a minor's conduct;
- 3) Placing a minor under the supervision of his/her parents or persons in loco parentis, or school teachers or co-workers upon his or her consent, or other individuals at their request;
- 4) Obliging a minor, who has attained 15 years of age and possesses any property, money or has any earnings, to compensate for any pecuniary damages;
- 5) Referring a minor to a special educational and correctional institution for children and teenagers until the minor's correction, however, for no longer than three years.

Where a minor, who has committed a criminal offence, evade compulsory disciplinary measures, such measures shall be cancelled, and he/she shall be criminally prosecuted.

All these diversion measures may be applied in the Ukrainian criminal justice system only when ***a pre-trial investigation has been completed and the case has been referred to a court with a prosecutor's motion for compulsory disciplinary measures***. The procedure for the court proceedings on the imposition of compulsory disciplinary measures follows the general rules of a court hearing (Article 500 of the Code of Criminal Procedure of Ukraine), with the mandatory participation of the prosecutor and the defence counsel, as well as the representatives of the Office of Children's Affairs and the relevant unit of the National Police, if they appeared or have been summoned to attend the court hearing. Having heard the opinions of the prosecutor and the defence counsel on the referral of the case to court to release a minor from liability, the court goes into the deliberation room to make a ruling and resolves the following issues:

- Whether a socially dangerous act investigated before the trial has been actually committed;
- Whether the person involved in the case that is being considered is at fault for this act;
- What kind of compulsory disciplinary measures should be applied to the person in question.

²⁷<https://zakon.rada.gov.ua/laws/show/2341-14#Text>

In fact, the criminal proceedings against an accused juvenile fully meet the requirements of the ordinary criminal proceedings, except for the very last stage when the ruling is announced; however, such ruling is essentially a sentence with certain consequences and limitations of a criminal law nature. It should be noted that there is no full-fledged release/diversion of children at the early stages of contact with the criminal justice system, as evidenced by the statistics of closed proceedings and rulings made by courts for compulsory disciplinary measures. In particular, the Prosecutor General’s Office informed the Kharkiv Institute for Social Research that, in 2020, only 8 cases against children were closed, prosecutors performed procedural guidance in over 4,000 proceedings, and compulsory disciplinary measures were imposed on 400 minor defendants²⁸.

These statistics show that diversion is hardly applied in Ukraine, and child offenders go through the same traumatic path of criminal justice as adult offenders with the corresponding consequences for their psyche and future. Having initiated criminal proceedings against children, the criminal justice system, from the police to the courts, takes no steps to release/divert children from the criminal justice process. Formal, i.e. strict compliance with the requirements of the procedural law, leads to the fact that the *system, step by step, shifts the responsibility for decision making to a later stage* until it reaches the court/judge, who in their decision delivers a guilty verdict applying Art. 75 of the Criminal Code of Ukraine providing for probation. Thus, during the nine months of 2021, the courts adopted 689 sentences against minors applying Article 75 of the Criminal Code of Ukraine. As some respondents admitted, for the majority of minors, this will in no way affect their way of life because the restrictions include only the prohibition to leave the territory of Ukraine and the obligation to report a change in the place of residence. As a result, after going through all the stages of the criminal process, child offenders do not always understand what happened and, more importantly, how this will affect their future adult lives.

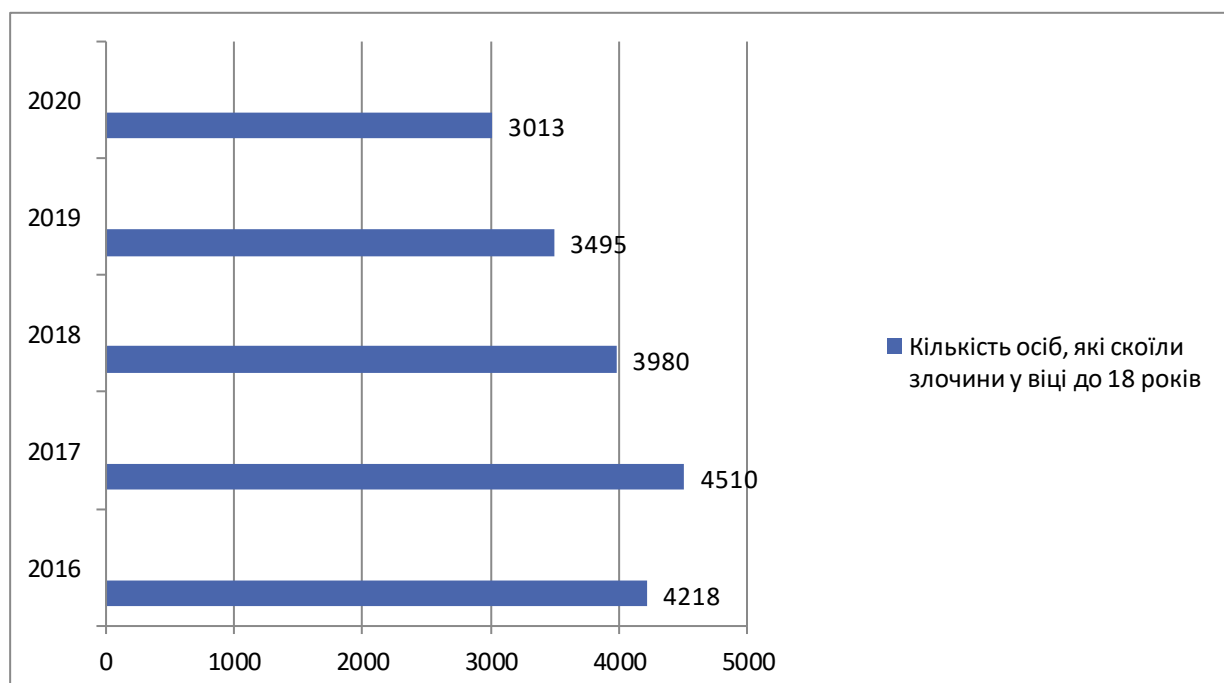


Fig. 1 Number of offenders under 18 years of age in the last five years

Analysis of criminal statistics²⁹ for 2016–2020 suggests that the number of children committing criminal offences is gradually decreasing.

²⁸The Report on the Work of the Public Prosecutor’s Office in 2020 (under Article 6 of the Law of Ukraine "On the Public Prosecutor’s Office), Kyiv, 2021

²⁹https://www.gp.gov.ua/ua/stat_n_st?dir_id=114140&libid=100820&c=edit&c=fo#

Permanent reforming of courts, police, justice bodies leads to the fact that “at the point of entry to the system”, the police is unable to redirect children capable of changing their behaviour elsewhere and convince them without applying criminal measures. Upon each report, the police enter data in the United Register of Pre-Trial Investigations and start investigating them. At the same time, a thorough risk assessment, application of restorative justice methodologies and referring children to correctional programmes would constitute, at this stage, actions that comply with international juvenile justice. One of the facts supporting this thesis are grounds for registering children within the juvenile prevention bodies when children:

- 1) have been sentenced to a non-custodial sentence;
- 2) have been released from criminal liability by a court judgment, and compulsory disciplinary measures have been imposed on them that exclude their placement in a social rehabilitation school or vocational institution for children with special educational needs;
- 3) have been released from a juvenile prison;
- 4) have committed any form of domestic violence (child abusers) under Article 173-2 of the Code of Ukraine on Administrative Offences and against whom an emergency barring order or a restraining order has been issued;
- 5) have been penalized two or more times within one year under administrative law;
- 6) have left home, educational and correctional institutions or special establishments for children two or more times within one year without permission;
- 7) have committed bullying (harassment) of a person involved in the learning process³⁰.

Under the current laws and regulations, all these grounds are based on facts meaning that the offence has already occurred. In such cases, the function of the juvenile police to prevent such offences is diminished and cannot be properly performed. It is because of this situation and because of the juvenile police’s status leading to narrow prevention responsibility of the police that the courts take all decisions. However, the courts are strongly overloaded and suffer from understaffing stemming from the court reform. However, there are examples of the judge’s conscious and responsible attitude, such that complies with the international standards of child-friendly justice, towards, for instance, a minor who committed theft and returned to the crime scene for the backpack with the documents he left there. Thus, the judge of the Malynovskiy District Court of Odesa noted the following in his reasoning:

“4.3. The defendant has 19 years³¹. On 11 June 2021, he got married and has a child in common. He has no previous convictions and no administrative record. He has only uncompleted secondary education. He did not study because he immediately went to work. At present, he is working as an unskilled worker on the farm “Kolos” and keeps his family. He grew up in a family consisting of two parents, his mother and stepfather. His father died when he was 6 years of age. He grew up with three younger brothers, who are currently in the 4th grade. There were no previous convictions in the family.

4.4. In assessing the personality of both defendants, the court holds that they are not socially dangerous persons capable of committing systemic criminal offences against property. Having questioned the defendants during the court hearing, the court found that they were, in fact, still underage in their development, although of the appropriate age. When answering the questions of the parties and the court, the defendant obviously did not understand all the consequences of possible criminal liability for committing an offence against property. In general, property relations for both defendants are a particular gap in their knowledge. It is not surprising as the upbringing of both defendants was obviously not sufficient. It is also evidenced by the speech, the

³⁰<https://zakon.rada.gov.ua/laws/show/z0686-18#Text>

³¹ He was a minor at the time of committing offence.

construction of sentences, small vocabulary, the statements themselves, the mode of creation of complex sentences to explain their thoughts, or rather the lack of the ability and even skills to build a complex sentence in mind. A certain measure of childish behaviour, almost unreasonable for an adult, is also evidenced by the circumstances of the offence, which show that the defendants committed the theft in possession of all their identity documents (passports and other documents). Moreover, these documents were left in the backpack at the crime scene.

4.7. Turning to the determination of the type and measure of punishment, the court considers it necessary, taking into account the personality of both defendants, their very limited development and education, their lack of understanding of property relations, human relations and lack of understanding of universal human values, including those implanted by the child's parents in childhood, to impose penalty with certain specifics. The court considers that a sentence of imprisonment for both defendants is too severe. It would not be commensurate with the offence committed or the personality of the defendants. However, the Article does not provide for any other type of penalty. In addition to justice as a universal value, the court's sentence should also bring respect for the rule of law into society. Accordingly, the court imposes on both defendants the penalty that the article provides for in the form of imprisonment.

4.12. Summing up the opinions on the sentence with probation, the court considers that, in addition to the general obligations provided for in Article 76 § 1 of the Criminal Code, the defendants should be additionally charged with the obligation provided for in Article 76 § 3(6) of the Criminal Code by complying with the requirements laid down by the court to perform certain acts, which would consist in reading books.

*4.13. Since according to Fyodor Dostoevsky, to stop reading books means to stop thinking, reading certain works determined by the court will be a stimulus for the defendants to think and know the world without committing socially harmful actions. The works determined by the court and referred to as children's literature (5th-grade foreign literature lessons) are precisely intended to shape in children all kind, heartfelt and unmalicious feelings towards themselves and the world around them. They also show how people have coexisted over the years, not only without enmity and hatred towards one another but also with the socially necessary respect for both the values of life and the rules established in society. For example, in *The Adventures of Tom Sawyer* (1876), its author Mark Twain, apart from humorous adventures of a remarkable boy, very aptly shows what human values exist in society: "...an improving lecture upon the added value and flavor a treat took to itself when it came without sin through virtuous effort" (Chapter Three); "He had discovered a great law of human action, without knowing it — namely, that in order to make a man or a boy covet a thing, it is only necessary to make the thing difficult to attain"; "Work consists of whatever a body is OBLIGED to do..."*

4.16. Other works to be assigned for reading in the opinion of the court also relate to self-education in respecting the rules established in society and defining one's role in society."³²

This case is an example of a judge who, in the face of a huge workload, makes significant personal efforts to examine the circumstances of the case and the personality of the minor defendant to deliver a fair sentence compliant with international standards. However, it is important to note that this case is rather an exception and not the rule that is being applied.

CONCLUSIONS

1. As the case-law demonstrates, minors' cases are hardly ever recharacterised in court sessions. The main reason for this is the lack of opportunity to change the scope of the charges brought during the pre-trial investigation.

³²<https://reyestr.court.gov.ua/Review/100432616>

2. Diverting children from criminal justice is only possible at the stage when data is entered into the Unified Register of Pre-Trial Investigations and an informed decision is made on the possibility of correcting a child without triggering the criminal justice mechanism.
3. As the statistics demonstrate, almost all opened cases that go to court end mostly with convictions.
4. The juvenile justice that should prevent children from entering the criminal justice system has, in fact, no possibility of such impact and starts functioning only when a child has committed a criminal offence.
5. In fact, the system that should provide services for children in conflict with the law functions inappropriately. As a result, recharacterisation or diversion is hardly applied to substitute the repressive impact of criminal justice with other forms of responsibility and sanctions.

Section 3. Applying sanctions to children

Alternative sanctions

Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures

Under the Council of Europe standards, juvenile offenders subject to sanctions or measures shall be treated with respect for their human rights. The sanctions or measures that may be imposed on juveniles and the manner of their implementation shall be specified by law and based on the principles of social integration and education and of the prevention of re-offending. Sanctions and measures shall be imposed by a court or if imposed by another legally recognised authority they shall be subject to prompt judicial review. They shall be determinate and imposed for the minimum necessary period and only for a legitimate purpose.

The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.

In order to adapt the implementation of sanctions and measures to the particular circumstances of each case, the authorities responsible for the implementation shall have a sufficient degree of discretion without leading to serious inequality of treatment.

Sanctions or measures shall not humiliate or degrade the juveniles subject to them. Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm. Sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary (principle of minimum intervention).

Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention. Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).

Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.

Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.

Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile. Where the offender is over the age of majority, the participation of parents and legal guardians is not compulsory. Members of the juveniles' extended families and the wider community may also be associated with the proceedings where appropriate.

Any justice system dealing with juveniles shall follow a multi-disciplinary and multi-agency approach and be integrated with wider social initiatives for juveniles in order to ensure a holistic approach to and continuity of the care of such juveniles (principles of community

involvement and continuous care). Young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.

The juvenile's right to privacy shall be fully respected at all stages of the proceedings. The identity of juveniles and confidential information about them and their families shall not be conveyed to anyone who is not authorised by law to receive it.

All staff working with juveniles perform an important public service. Their recruitment, special training and conditions of work shall ensure that they are able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them.

Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the infringement of the human rights of juveniles. The execution of any sanction or measure shall be subjected to regular government inspection and independent monitoring.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)³³

The disposition [sanctions] of the competent authority shall be guided by the following principles:

- the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- the well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

Capital punishment shall not be imposed for any crime committed by juveniles.

Juveniles shall not be subject to corporal punishment.

The competent authority shall have the power to discontinue the proceedings at any time.

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- a) rehabilitation versus just desert;
- b) assistance versus repression and punishment;
- c) reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- d) general deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

³³https://zakon.rada.gov.ua/laws/show/995_211#Text

Rules encourage the use of alternatives to institutionalisation to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions, and new alternative sanctions should be developed, bearing public safety in mind. Probation should be granted to the greatest possible extent via suspended or conditional sentences.

As regards domestic law, under Article 22 of the Criminal Code of Ukraine³⁴, persons who had reached the age of sixteen before committing a criminal offence shall be criminally liable.

Persons who have committed criminal offenses at the age of fourteen to sixteen shall be criminally liable only for intended murder (Articles 115-117), assault on a statesperson or public figure, a law enforcement officer, a member of a civilian public order protection or border-guard group, or a serviceperson, judge, assessor or juror, in connection with their activity related to the administration of justice, a defense counsel or a legal representative of any person in connection with their activity related to legal aid, or a foreign state representative (Articles 112, 348, 379, 400 and 443), intended grievous bodily injury (Article 121, paragraph 3 of Articles 345, 346, 350, 377 and 398), cruel treatment of animals (Article 299), intentional infliction of moderate bodily injury (Article 122, paragraph 2 of Articles 345, 346, 350, 377 and 398), sabotage (Article 113), gangsterism (Article 257), act of terrorism (Article 258), hostage taking (Articles 147 and 349), rape (Article 152), sexual abuse (Article 153), theft (Article 185, paragraph 1 of Articles 262 and 308), robbery (Articles 186, 262 and 308), armed robbery (Article 187, paragraph 3 of Articles 262 and 308), extortion (Article 189, 262 and 308), willful destruction or damaging of property (paragraph 2 of Articles 194, 347, 352 and 378, paragraphs 2 and 3 of Article 399), damaging communication routes and means of transportation (Article 277), theft or seizure of railroad rolling stock, air-, sea- or river-craft (Article 278), misappropriation of transportation means (paragraph 2 and 3 of Article 289), and hooliganism (Article 296).

Under Article 12 of the Code of Ukraine on Administrative Offences, persons who had reached the age of sixteen at the time of committing an administrative offence shall be administratively liable³⁵. Under Article 13 of the Code, persons aged sixteen to eighteen who have committed administrative offences are subject to the punitive measures provided for in Article 24¹ of the Code.

Persons of sixteen to eighteen years of age that committed administrative offences under Articles 44, 51, 89, 121-127, 130, Article 139, paragraph 3 of Article 154, paragraph 2 of Article 156, Articles 173, 173⁴, 174, 183¹, 185, 190-195 of the Code, shall be administratively liable on general grounds. In view of the nature of the offence committed and the offender's personality, the persons in question (other than those having committed an offence under Article 185) may be subjected to the punitive measures provided for under Article 24¹ of the Code of Ukraine on Administrative Offences.

For most administrative offences, minors are subject to administrative liability and special punitive measures (Article 24-1 of the Code of Ukraine on Administrative Offences). These include:

- 1) the obligation to publicly or otherwise apologize to a victim;
- 2) warning;
- 3) reprimand or severe reprimand;

³⁴<https://zakon.rada.gov.ua/laws/show/2341-14>

³⁵<https://zakon.rada.gov.ua/laws/show/80731-10#Text>

4) placing a minor under the supervision of his/her parents or persons in loco parentis, or under the supervision of school teachers or co-workers upon their consent, or other individuals at their request;

National legislation does not fully meet the requirements of international and European standards in spite of numerous changes and harmonisation during decades.

Where minors aged 16-18 have committed certain administrative offences which are of a dangerous nature and require a particular response from the State, they are subject to administrative liability on general grounds, and the following administrative penalties (Article 24 of the Code of Ukraine on Administrative Offences) may be imposed on them:

- warning;
- fine;
- seizure, against compensation, of the item which served as an instrument for the commission or as a direct target of the administrative offence;
- forfeiture: of the item, which served as the means or a direct target of the administrative offence; and of the money obtained as a result of the administrative offence;
- deprivation of a special right granted to the citizen (right to drive vehicles, right to hunt);
- deprivation of the right to occupy certain positions or engage in certain activities;
- community service;
- correctional labour;
- arrest with detention in the military detention facility.

The list of administrative sanctions, as well as the manner in which juveniles are held liable for certain administrative offences, is outdated and ineffective. In particular, there is a procedure for holding parents, guardians and educators administratively liable for administrative offences committed by children. For example, Article 184 of the Code of Ukraine on Administrative Offences provides for a procedure for holding parents, guardians or educators liable for administrative misdemeanours and criminal offences of children aged between 14 and 16. Subsidiary or joint liability of parents when children are held administratively liable is archaic in its nature and hardly can influence/change the behaviour of the child offender. The Beijing Rules underline the need to keep a balance in the prosecution of a juvenile between rehabilitation and just desert. If parents are liable for the misdemeanors of their child, it is never about either rehabilitation or just desert.

Criminal sanctions are applied for committed criminal offences. 3,000 juvenile offenders were prosecuted in 2020³⁶. It is still very rare for juveniles to be actually imprisoned. According to the data from the State Department for Enforcement of Criminal Sentences of the Ministry of Justice, 66 minors were serving their sentence in 2020 and 71 minors in the first half of 2021 in two juvenile prisons, the Kremenchuk Juvenile Correctional Facility (boys) and the Melitopol Penitentiary Institution, Sector No. 144 (girls).

These statistics are encouraging as it shows the decrease in the rate of imprisonment of juveniles. From 2013 to 2020, the number of children serving sentences in juvenile correctional facilities decreased from 890 to 66³⁷. On the one hand, the number of children deprived of liberty has decreased by more than 10 times, but the number of children brought to criminal liability is almost the same (4,000–5,000 juveniles each year). These numbers demonstrate the widespread

³⁶https://www.gp.gov.ua/ua/zvit_prok? m=publications& t=rec&id=289668

³⁷https://www.gp.gov.ua/ua/zvit_prok? m=publications& t=rec&id=289668

application to minors of the provisions of Article 75 of the Criminal Code of Ukraine “Release from serving a sentence” and Article 76 of the Criminal Code of Ukraine “Obligations imposed on a person released from serving a sentence on probation”. Where Article 75 of the Criminal Code of Ukraine is applied to a juvenile offender, probation is established for a period of up to two years, and the following obligations are imposed:

- 1) regular visits to the authority responsible for probation to register there;
- 2) notification of the authority responsible for probation of any change in the place of residence, employment or studies;
- 3) A court may impose on persons convicted of domestic violence other obligations and prohibitions stipulated by Article 91 of the Criminal Code of Ukraine.

A court may impose the following obligations on the persons released from serving the sentence on probation:

- 1) apologize to a victim publicly or in any other way;
- 2) refrain from leaving the territory of Ukraine without the consent of the relevant probation authority;
- 3) get employed or, upon referral of the relevant probation authority, apply to the state employment service bodies for registration as unemployed and to be employed if offered a relevant position (job);
- 4) take measures provided by the probation programme;
- 5) undergo treatment for mental and behavioural disorders due to the use of psychoactive substances or a disease that poses a threat to the health of others;
- 6) comply with the requirements established by the court regarding the performance of certain activities, restrictions on communication, movement and leisure activities.

In the view of the interviewed criminal justice professionals, such measures are too formalistic and often do not result in a real impact on the behaviour and change in the worldview of children who have committed offences.

A system of alternatives to juvenile criminal punishment, such as the use of mediation and other forms of restorative justice, could be a powerful substitute and lead to the development of the juvenile sanctions system.

To this end, on 21.01.2019, the Prosecutor General and the Minister of Justice of Ukraine signed a joint order No. 172/5/10 on the implementation of the pilot project “Recovery Programme for Juveniles Suspected of Committing a Crime”, which became the basis for the introduction of restorative justice practices in Ukraine. In 2020, juvenile prosecutors involved 176 juvenile offenders that failed for the first time and committed minor offences, of whom 98 have already been released from criminal liability by the court, in this project. According to preliminary projections alone, over 1,500 juveniles may be diverted from prosecution and return to normal life.

Juveniles deprived of their liberty

The **United Nations Rules for the Protection of Juveniles Deprived of their Liberty** (1990) are the basic document that sets out the standards for imprisoned children.³⁸

Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. In all detention facilities, juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

Sleeping accommodation should normally consist of small group dormitories or individual bedrooms while bearing in mind local standards. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected.

To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating.

Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

The domestic legislation on imprisonment and serving custodial sentences in Ukraine conforms in general to the requirements of international standards.

The procedure for and special aspects of serving a sentence of imprisonment by juveniles, as well as the facilities where it occurs, are provided for in the Code of Criminal Procedure of Ukraine.³⁹

In particular, in accordance with Art. 19 of the Criminal Executive Code of Ukraine, juvenile correctional facilities shall execute sentences of imprisonment of convicted minors for a determined period.

Serving sentences in juvenile correctional facilities have some particularities, with fewer restrictions and more opportunities for development while juveniles are serving their sentences. In particular, under Art. 143 of the Criminal Executive Code of Ukraine, in juvenile correctional facilities, convicts shall have the right to:

³⁸https://zakon.rada.gov.ua/laws/show/995_205#Text

³⁹<https://zakon.rada.gov.ua/laws/show/1129-15#Text>

- spend, without limitation, the money earned in the correctional facility, received as money transfers, from pensions and other income, to purchase food, clothing, footwear, underwear and basic necessities;
- have short visits without limitations and one long visit every month;
- receive a secondary education free of charge;
- be visited by defence counsels, without restriction as to time or number, at any time between 8 a.m. and 8 p.m. on weekdays, weekends, public holidays and non-working days in order to receive legal assistance or confidential legal advice promptly organised by the penitentiary institution administration on the initiative of convicts, their relatives and/or persons specified in the Article in question;
- if they are conscientious about their behaviour and their attitude to work and study, after serving at least one-fourth of their sentence, convicts shall be entitled to improved conditions of detention and may be allowed to have a short visit outside the facility once every three months by a resolution of the head of the juvenile correctional facility.

Given the vulnerability of the transitional period during the coming-of-age, the law provides for the possibility that convicts who have reached the age of eighteen may be retained in a juvenile correctional facility until the end of their sentence, but not longer than the time they reach the age of twenty-two (Art. 148 of the Criminal Executive Code of Ukraine).

Currently, there are two juvenile penitentiary institutions in Ukraine, or, to be more precise, only one such institution, that is, the Kremenchuk juvenile correctional facility for boys. The juvenile correctional facility for girls is actually arranged as a sector within the Melitopol penitentiary institution No. 144 for women. The Kharkiv Institute for Social Research, together with the Ukrainian Parliament Commissioner for Human Rights, prepared a special report on the observance of the rights of minors serving sentences in juvenile penitentiary institutions of the State Penitentiary Service in 2014⁴⁰. In May 2014, there were seven institutions in the penal system with 823 juveniles. Now, there are between 60 and 70 children in juvenile correctional facilities. There has been a significant, more than 10-fold, decrease in the number of juveniles serving custodial sentences.

⁴⁰<https://khisr.kharkov.ua/wp-content/uploads/2021/06/1419178922.pdf>

Conditions of detention

The decrease in the number of children in correctional facilities has significantly improved the conditions of stay and education of children in such institutions, as evidenced by monitoring visit reports by independent NGOs⁴¹ and the Ukrainian Parliament Commissioner for Human Rights.⁴²

My friends, who were still at liberty, my acquaintances, and even the police, when I was detained, told me that things were bad there. They said so. They said there was no food at all, that there were worms in the food, that it was rotten. But it was all a lie – it was really not as they told me. In principle, it's fine there, the refurbishment is normal. The guys haven't finished the decoration in the first unit yet; it was the first unit before, a standard room; stretched ceilings were installed; in principle, everything looks not like a correctional facility.

They gave us normal food three times a day. I don't even remember anyone complaining about underfeeding. We also have showers. In winter we have showers inside, one stall. There are a few of us, and we take turns bathing; we have a special time for that. There were different numbers of people in our unit: we were 26, and we were 30. Maximum as I remember was 33.

An extract from an interview with a person who had served a sentence in a juvenile correctional facility

We lived in the unit with the guys, I can tell you that not everyone had the same conditions on the outside. The unit was renovated, everything was up to the mark, and I would rate it the highest. There were 15 of us in one room.

We woke up in the morning, did our exercises, went to school or vocational school, had football practice in the afternoon, then someone could work. Then we went back to the unit, had free time or cleaned up and got ready for lights out.

An extract from an interview with a person who had served a sentence in a juvenile correctional facility

Monitoring reports, research interviews confirm a gradual improvement in the conditions of juveniles in correctional facilities. It is taking place against the background of a significant decrease in sentences that impose actual imprisonment as a punishment, as well as a decrease in the number of persons under the age of 18 committing criminal offences. But it is still too early to talk about a steady downward trend in the number of crimes committed by children. This is due to many factors:

- reform of the criminal justice system;
- a shrinking child population;
- reform of child services, etc.

Because of these and several other factors, the juvenile penal system should not respond only by closing institutions and selling off⁴³ the abolished juvenile correctional facilities but should concentrate on developing a system of rehabilitative services for children who have committed criminal offences.

Another significant issue, in our view, is that there are only two institutions for children in the whole country: the Kremenchuk juvenile correctional facility for boys and a sector within the Melitopol penitentiary institution No. 144. For a country as large as Ukraine, with distances of

⁴¹<https://khpg.org/1529309746>

⁴²<https://www.ombudsman.gov.ua/ua/all-news/pr/dotrimannya-prav-vixovancz%D1%96v-v-umovax-karantinnix-zaxod%D1%96v-u-kremenchucz%D1%96j-vixov%D1%96j-kolon%D1%96%D1%97/>

⁴³<https://privatization.gov.ua/product/oreme-majno-derzhavnoyi-ustanovy-kovelska-vyhovna-koloniya/>

hundreds of kilometres, it is a serious challenge for families to continue to maintain contact with their children in detention. Over the past two years, it has been aggravated by the restrictions related to the spread of the coronavirus disease COVID-19. To comply with quarantine measures, juvenile correctional facilities have banned all visits to inmates.

During the entire two years of my sentence, my aunt from Rivne came to visit me only once. And then they enforced quarantine and banned all visits, and I met her already on release.

From an interview with a person who had served a sentence in a juvenile correctional facility

Conclusions:

1. A more than 10-fold decrease in the number of children in juvenile correctional facilities has made a generally positive impact on their conditions of stay and rehabilitation in the facilities.
2. There is still a mass or group approach to providing rehabilitation services for children serving their sentences in juvenile correctional facilities. Work has just begun on individual assessment of needs and risks of re-offending, and rehabilitation and testing programmes are being developed and tested. This approach does not yet allow us to speak about the effectiveness of children’s correction in detention which, since Soviet times, has only consisted in isolating a convicted person for a certain time.
3. There is no systematic work to provide rehabilitative services to children while they are on the justice “path” along the “liberty–prison–liberty route”. The agencies and services responsible for providing services to children are often poorly coordinated and have limited resources. This is particularly the case in the postrelease phase where children, and often already young people, have only involuntary contacts with police and probation authorities.
4. The detention system for children, like many other elements of juvenile justice, proved to be unprepared for the challenges posed during the COVID-19 pandemic. While in isolation when serving their sentences, juveniles received additional restrictions on contacts with the outside world in the form of cancelled visits, reduced visits by professionals, cancellation of mass/group sports and cultural events. All this negatively affects the re-socialisation process and is bound to affect these young people’s development in the future. The state should develop a range of measures to reduce the negative impact of restrictive measures on the re-socialisation process of children serving sentences in correctional facilities.

Section 4. The rights of children during court proceedings

International standards on the rights of the child during court proceedings are enshrined in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).

The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice also provide recommendations on the administration of justice for children.

Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child’s level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard. Due weight should be given to the child’s views and opinion in accordance with his or her age and maturity⁴⁴. In paragraph 45 of General Comment No. 24 (2019) on children’s rights in the child justice system, the Committee explained the basic right of the child to be heard in the context of justice for children. Children have the right to be heard directly, not only through a representative, at all stages of the process, starting from the moment of contact. The child has the right to remain silent and no negative inference should be drawn when they themselves choose not to make a statement⁴⁵.

As far as **Ukrainian law** is concerned, the rights of a juvenile suspect or accused are not specifically provided for in the Code of Criminal Procedure of Ukraine.

In particular, Article 42 of the Code defines that the accused (defendant) is the person against whom an indictment has been brought before the court in accordance with the procedure. The suspect, accused shall have the right to:

- 1) know which criminal offence he/she is suspected or accused of committing;
- 2) be informed, expressly and promptly, of his/her rights as laid down in this Code and have such rights explained;
- 3) have, upon the first request, a defence counsel and a meeting with them regardless of time, on weekdays, weekends, public holidays or non-working days prior to the first interview under conditions ensuring the confidentiality of communication, and also upon the first interview – to have such meetings with no limits as to their number or duration on weekdays, weekends, public holidays or non-working days; to the presence of a defence counsel during interviews and other procedural actions; to refuse from services of a defence counsel at any time in the course of criminal proceedings; to receive legal assistance from the defence counsel at the cost of the State in the cases provided for in this Code and/or the law governing the provision of free legal aid, including due to lack of funds to pay for such assistance;
- 4) keep silent about suspicion, charge against him/her or waive answering questions at any time;

⁴⁴Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

⁴⁵General Comment No. 12 of the UN Convention on the Rights of the Child.

5) give explanations, testimony with regard to suspicion and charge against him/her or waive giving explanations, testimony at any time;

6) demand that the validity of the detention be verified;

7) when apprehended or when a preventive measure such as putting into custody has been applied, to have his/her family members, close relatives or other persons promptly notified of his/her apprehension and whereabouts;

8) collect and submit evidence to the investigator, public prosecutor, investigating judge;

9) participate in procedural actions;

10) in the course of procedural actions, ask questions, submit his/her comments and objections in respect of the manner in which procedural action is conducted, which should be put on the record;

11) in keeping with the requirements of the present Code, use technical means in the course of procedural action he/she participates in. The investigator, public prosecutor, investigating judge, the court may disallow using technical means in the course of a specific procedural action or at a specific stage of criminal proceedings in order to prevent disclosure of privileged information protected by law or related to the intimate life of the person concerned, and a reasoned decision (ruling) should be taken (adopted) thereon;

12) submit motions to conduct procedural actions, ensure protection for him/herself, family members, close relatives, property and house, etc.;

13) request recusals;

14) review records of pre-trial proceedings and request disclosure of records;

15) obtain copies of procedural documents and written notices;

16) challenge decisions, actions, and omissions by an investigator, public prosecutor, investigating judge in accordance with the procedure specified by the present Code;

17) demand that damage caused by illegal decisions, actions or omissions of the agency conducting criminal intelligence actions and pre-trial investigation, prosecutor's office or court, be indemnified, in accordance with the procedure set forth in the law, as well as have his/her reputation restored if the suspicion or accusations have not been confirmed;

18) use his/her native language, obtain copies of procedural documents in same language or any other language of which he/she has command and, where need be, benefit from translation services at the State expense.

The accused person shall also have the right to:

1) participate, during the trial, in the examination of witnesses for the prosecution or request that they should be examined, as well as request that witnesses for the defence be summoned and examined at the same conditions as witnesses for the prosecution;

2) collect and produce evidence to court;

3) express in court session his/her point of view with regard to motions of other participants to trial;

4) speak in pleadings;

5) review journal of the court session and technical recording of the process which must be made available to him/her by authorised court employees, and submit comments thereon;

6) challenge, in accordance with the procedure laid down in the present Code, court's decisions and initiate review thereof, and be aware of appeal and cassation complaints lodged against court's decisions, submissions on a review thereof, and submit objections thereto.

7) receive explanations on how to prepare and use a pre-trial report, refuse to participate in the preparation of a pre-trial report

8) participate in the preparation of a pre-trial report, provide the representative of the probation agency's staff with information necessary for the preparation of such report, read the text of the pre-trial report, and submit their comments and clarifications.

There is a separate provision for the right to defence of a suspect, accused person, enshrined in Article 20 of the Code of Criminal Procedure:

A suspect, an accused, acquitted or a convicted person shall have the right to defence consisting in the opportunity to give oral or written explanations in respect of the suspicion or accusation, collect and produce evidence, attend the criminal proceedings personally, as well as benefit from the legal assistance of a defence counsel, as well as exercise other procedural rights as set forth in this Code. It should be stressed that, in accordance with the requirements of Article 52 of the Code of Criminal Procedure, the participation of a defence counsel in cases involving minors is compulsory.

All of the above rights are not "child-specific," in fact, the Ukrainian criminal procedure has not been interpreted and adapted for children, despite the existence of a specialised **Chapter 38 "Juvenile Criminal Proceedings"** of the Code of Criminal Procedure, where Article 484 immediately states that the procedure for criminal proceedings against juveniles is determined by the *general rules* of the Code of Criminal Procedure of Ukraine, with taking into account the particularities provided for in Chapter 38. And these particularities mainly consist in carrying out additional procedural actions that would help clarify the circumstances of the crime and listen to experts on this matter.

A child takes it all [the criminal procedure] much harder, and there are fewer people sitting and saying they are not guilty. So, mostly they sit in silence and the formal explanation of their rights –that they have the right to a lawyer, they have the right to express their own vision of the event, etc. – this happens very rarely and only in cases where children can really express his/her own point of view. Thus, children being questioned in civil proceedings go into their shells. But as for children who are questioned in criminal proceedings, you have to be very, very open to children, and you have to be very empathic so that children could talk to you and share something with you.

From an interview with a lawyer

To be honest, it was the first time, and I didn't even try to say anything there [in court]; I really understood that it was entirely my fault, that I did it with my hands, with my brain. That is, I did it, and I should be punished for it.

From an interview with a person on probation

Formal requirements stipulated by law are not always successfully introduced in court proceedings involving children. Often in practice, the judges do not have sufficient motivation to interview children in court properly; they use primarily pre-trial investigation materials.

The child's legal personality is not taken into account. Therefore, this is the main problem, and it is on this basis that we should move to the fact that there are related problems. In particular, they do not want to question children in court, they do not provide children with professional legal assistance, psychological help and so on. So there are certain problems.

From an interview with a lawyer

Children should always have the right to a fair trial. This includes the right to be interviewed by a competent authority in the presence of a lawyer and with parents in an atmosphere of understanding that is in the best interests of the child. Children in the judicial process should be involved in the decision-making process. The responsibility of the court or judge includes:

- Ensuring that children understand the charge;
- Explaining to children the implications and procedures of the court proceedings;
- Explaining, if necessary, the possibility of admitting or not admitting guilt.

This information should be given in child-friendly language so that children understand what is expected of them. It should be remembered that the court environment is intimidating for a child who appears before a judge in a gown, on a high bench, surrounded by unknown persons. Thus, the judge's explanation of court procedures to children at the beginning of the hearing becomes even more important. Children need to know the procedures of the court hearing and the next steps, and what role certain facts or actions established by the court can play in it.

Unfortunately, this is not an established practice for the criminal justice system in Ukraine. Overburdened courts, constantly postponed hearings lead to forced neglect of certain aspects of children's perceptions. The main point for criminal justice agents is to comply with the requirements of procedural and substantive criminal law, which in many aspects do not take into account the special age needs of children.

Yes, there are situations when you interview someone, in other cases, not criminal ones, you take the mantle off there. We have such special memos. So here the question is how to explain the rights. We often have judges come in and quickly read out: "The court is hearing the proceedings, some 10 numbers, with the participation of so-and-so...", well, it's hard to perceive, and here we need to simplify. I am in favour of this, and we tried to get this across to the judges so that they explain this information to children. That is, the prosecutor is here, the lawyer is here, the secretary is here, it's all kind of mandatory. And it all has to be done in a different, understandable language. But I think there's no violation of the Code of Criminal Procedure here, we have no obligation to announce all the numbers of the proceedings there, and it won't affect anything if you talk to children more simply.

From an interview with a district court judge

During interviews with lawyers, another problem became apparent: the deficit or absence of professionals – social and educational workers, psychologists, psychiatrists, experts in children's affairs – who could help the criminal justice system better understand the motives of a child's behaviour, reveal the child's mental state, make the intervention in the child's psyche less traumatic, etc.

And the situation with psychologists today, in Ukraine, is just helplessness. We do not have the necessary request for psychologists because when we say, for example, "Remove the formal guardianship and custodianship bodies, it's a Soviet rudiment, it is irrelevant today," they say, "And what to replace it with?" We say, "Let's replace it with psychologists," and they tell us, "But there are regions where there are no psychologists at all, not a single one." There was a complicated process in Mykolaiv region, and they took a child to Kyiv because there were no psychologists nearby. Well, this is really sad for our country, because we have a total failure here. And a large number of, for instance, problems with children are sometimes artificially provoked by the lack of professionals.

From an interview with a lawyer

Conclusions:

1. Like the rest of the criminal process, the trial is not adapted to the needs of children. The existence of many of the listed rights of the child as a party to court proceedings is, for the most part, formal in nature and is only taken into account when drafting procedural documents, which must clearly meet the requirements of the procedural law.
2. In fact, children are deprived of an opportunity to independently exercise the procedural rights granted to them. It means that instead of children, parents/guardians, lawyers, teachers, representatives of the offices of children's affairs, etc., act on behalf of children and not always in their favour.
3. On the other hand, the lack of qualified professionals and interdisciplinary and cross-sectoral interaction does not allow prosecutors and judges to deeply understand the behaviour of a child offender. Some sentences, on the contrary, show a lack of effort on the part of judges to understand the motives behind children's behaviour. It leads to mass sentencing with probation with little or no real restraint on children. It, in turn, can lead to a failure to achieve the purpose of the sentence, namely to change children's behaviour and avoid reoffending.

Section 5. Reintegration of children in conflict with the law

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) ⁴⁶emphasize that the juvenile justice system shall first and foremost emphasise the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible. Such measures, some of which may be combined, include:

- a) care, guidance and supervision orders;
- b) probation;
- c) community service orders;
- d) financial penalties, compensation and restitution;
- e) intermediate treatment and other treatment orders;
- f) orders to participate in group counselling and similar activities;
- g) orders concerning foster care, living communities or other educational settings;
- h) other relevant orders.

No juvenile shall be removed from parental supervision, whether partly or entirely, unless her or his case circumstances make this necessary.

The main public body in Ukraine dealing with the reintegration of children in conflict with the law is the Probation Centre established in 2017. The purpose of probation is to ensure the safety of the society by correcting convicts, preventing them from committing repeat criminal offences and providing courts with information on the accused in order for the courts to decide on the degree of their liability.

Probation for juveniles begins at the age of 14. Probation agencies, as in the case of adults, are involved in drawing up pre-trial reports on accused juveniles, carrying out supervision and social and educational activities applied to convicted juveniles, enforcing certain types of non-custodial criminal penalties, and preparing persons who are serving sentences of restriction of liberty or deprivation of liberty for a specified period to be released.

The Law of Ukraine “On Probation”⁴⁷ briefly outlines the special features of juvenile probation. In particular, it shall be age and psychologically appropriate and directed at ensuring the juveniles’ normal physical and mental development, preventing violent behaviour, motivating positive personality changes, and improving their social relations.

It should be noted that the National Strategy for the Reform of the Juvenile Justice System until 2023⁴⁸ envisages a range of measures, including those concerning the functioning of the probation agencies in Ukraine. In particular, the Action Plan for the implementation of this Strategy (Order of the Cabinet of Ministers of Ukraine No. 1335-p dated 27.11.2019)⁴⁹ provides for:

- Increasing the application of non-custodial sanctions to juveniles by supplementing their existing list, as well as improving the practice of applying existing sanctions, including community service, correctional work and fines.
- Ensuring the specialisation of judges dealing with administrative offences involving juveniles and of other professionals of the justice system concerning children

⁴⁶https://zakon.rada.gov.ua/laws/show/995_211#Text

⁴⁷<https://zakon.rada.gov.ua/laws/show/160-19#Text>

⁴⁸<https://zakon.rada.gov.ua/laws/show/1027-2018-%D1%80#Text>

⁴⁹<https://zakon.rada.gov.ua/laws/show/1335-2019-%D1%80#Text>

(prosecutors, lawyers, social workers, teachers, psychologists, police officers, probation officers, etc.).

- Increasing the professional capacity of social and psychological staff of penitentiary institutions and probation agencies to ensure resocialisation of juvenile offenders through developing and implementing relevant professional development programmes.
- Increasing the effectiveness of programmes aimed at building life skills, legal awareness, self-esteem, leadership, the formation of an independent and balanced own position, with due account for the individual and group characteristics of juvenile convicts, rehabilitation programmes for children under high levels of stress, children experiencing violence and prone to the use of substances, and ensuring that juvenile convicts' communication strategies be developed, in particular, with due regard to gender sensitivity, to make them maintain relationships with their kin.

As of 1 January 2021, there are 24 branches and 576 units of the probation service in Ukraine. Fourteen standalone juvenile probation sectors have been set up (in Dnipro, Zhytomyr, Zaporizhzhia, Kyiv, Kryvyi Rih, Kropyvnytskyi, Lviv, Mariupol, Melitopol, Mykolaiv, Odesa, Poltava, Rivne and Kharkiv). According to the data of the Probation Centre, as of 1 November 2021, 143 juvenile probationers were registered in the juvenile probation sectors, which is 20,4% of the total number of juveniles registered as probationers all over Ukraine (701 juveniles). Every year there is some decrease in the number of children involved in probation. In particular, 756 children as of 1 November 2020 and 883 children as of 1 November 2019 were registered for probation, of which, respectively, 17,7% (134 children) and 20,8% (184 children) were registered in the juvenile probation sectors. The largest number of juveniles are registered in the juvenile probation sectors in Kyiv, Odesa and Kropyvnytskyi, the smallest are in Melitopol, Poltava and Rivne.

Sectors are located in premises specially equipped for work with juveniles and with limited access for adult probationers to ensure that the State Penitentiary Service of Ukraine performs its duties and objectives defined in the probation legislation are implemented as well. Sectors are staffed by heads, senior inspectors, social work professionals and psychologists. And although such sectors usually work only with children registered in the cities mentioned above, they also provide information and legal and methodological support to probation service professionals in the regions.

We provide methodological assistance, i.e. if inspectors handle child cases in the regions, they can always call us by phone and consult us on how to fill in documents and interact with parents and children, i.e. those issues that we can specifically help them with.

From an interview with a probation officer

Juvenile probation sectors now provide practical and methodological advice to other juvenile units. Why was such a decision taken? Because, firstly, it is a more highly specialised unit that can promptly inform other units and tell them how to work with minors and share some of their own, if I may say so, "lifehacks" on how to conduct routine work with minors so that it does not get bogged down.

From an interview with a member of staff at the Probation Centre

Moreover, the Probation Centre also develops instructions on various issues to provide organisational and methodological support to the probation agencies. During the year 2020, instructions were prepared on:

– issues pertaining to the risk assessment of juvenile probationers (letter No. 2166/6/ЯН-20 of 17.06.2020);

- certain issues of supervisory and pre-trial probation of juveniles (letter No. 3220/6/ЯН-20 of 07.08.2020)
- problematic issues of implementing probation programs targeting juveniles (letter No. 5939/6\ЯН-20 of 08.12.2020)⁵⁰.

One of the key activities of the probation agencies is to provide courts with formalised information describing the accused in order for the court to decide on the degree of his/her liability. The pre-trial report on a juvenile also has some special aspects. The Beijing Rules (Rule 16) state that in all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority. The competent authorities should be aware of relevant facts about the minor, such as his or her social and family environment, schooling, upbringing, etc. In Ukraine, these standards are met, and pre-trial reports on juvenile defendants contain:

- a social and psychological profile (history of offending, social and domestic conditions, education, employment, health, substance use, alcohol consumption, social and family relationships, leisure and recreational activities, personal qualities and behaviour, and attitudes towards offending);
- an assessment of the risk of reoffending;
- an opinion on the possibilities of correction without restriction or deprivation of liberty for a certain time;
- information on the influence of criminogenic factors on the personality's behaviour;
- recommendations on measures designed to minimise the risk of a juvenile committing a repeated criminal offence.

The procedure for drawing up a pre-trial report (Order of the Ministry of Justice of Ukraine No. 200/5 of 27.01.2017⁵¹) provides for an interview with a juvenile in the probation agency in the presence of at least one of his/her parents or other legal representatives. The juvenile defendant, his/her parents or other legal representatives shall be acquainted with the content of the information specified in the description of the interview, against signature. A representative of the probation agency's staff also talks with the minor's parents or other legal representatives.

According to the Probation Centre⁵², in 2020, a methodological guide for probation agencies on writing pre-trial reports was published and distributed in co-operation with the Ukrainian-Norwegian NORLAU project to improve the practice of drafting pre-trial reports. A professional standard for implementation of pre-trial probation and the form to be filled at its inspection were also developed within the framework of the PravoJustice project and piloted at the branches of the Probation Centre in the Vinnytsia, Donetsk, Khmelnytskyi and Kharkiv regions. The inspection forms have been adjusted based on suggestions from pilot regions and they are planned to be approved in the near future. Representatives of the Probation Centre noted in an interview that such internal monitoring is not so much intended to punish staff but rather to understand the effectiveness of probation programmes and help improve the work of probation agencies.

We are just now piloting professional probation standards; we have developed such specific inspections. There are now four pilot regions, in principle, this will be a performance evaluation of juvenile probation as a phenomenon, as a practice. Thus, the way my juvenile card is

⁵⁰Overview of the performance of the state institution “Probation Centre” in 2020. https://www.probation.gov.ua/?page_id=3667

⁵¹<https://zakon.rada.gov.ua/laws/show/z0121-17#Text>

⁵²Overview of the performance of the state institution “Probation Centre” in 2020. https://www.probation.gov.ua/?page_id=3667

structured is as follows: it is broken down into clusters, i.e. timelines, drawing up risk assessments, social and educational work, pre-trial reports, probation programmes, unified register and specifically case management. That is, case management is about whether the case is kept neatly, the pages are stitched, numbered, whether the document follows the chronological order and the like. In principle, we have now piloted it; the feedback from the units and branches is good in principle because these inspection cards objectively evaluate the work of the unit.

From an interview with a member of staff at the Probation Centre

According to the Probation Centre's Order No. 51/OД-20 of 27.01.2020 "On improving the process of collecting and processing statistical information on the progress of pre-trial probation," electronic reporting has been recently introduced, which made it possible to improve the process of collecting and processing statistical information on the progress of pre-trial probation. A more detailed analysis of the progress of pre-trial probation is now possible, and reporting data for any period for each probation agency and branch office can be obtained more quickly⁵³.

According to the interviewed experts, the writing of a quality pre-trial report depends on several aspects – on the one hand, it is the willingness of the accused, their kith and kin, teachers and social workers to come into contact with the probation agencies and, on the other hand, it is the lack of a formal approach to completing relevant documentation by the probation officer. While the latter, as noted above, is sought to be achieved through the organisation of internal inspections, the former is not always practicable.

Often children in conflict with the law come from troubled families that cannot independently overcome or at least minimise their negative impact (no permanent job for parents, no housing adapted to living, prolonged illness of parents, etc.) and commit criminal offences. As of 1 January 2021, 417 (56.4 %) minors were being raised in single-parent families, and 155 (21 %) were living in troubled families. Often such circumstances have a negative impact on the fulfilment of parental responsibilities and lead to inadequate support and care for children. There is little parental involvement in the re-socialisation of children on probation.

If we take those children who are registered with us, most of them are children from families with many children, from low-income families, where the parents may not lead a very healthy lifestyle.

Well, as practice shows, parents are more likely to take the position of either observers or people who say, "just don't touch us."

There are parents who come from troubled families, parents who drink alcohol, and they do not bring up their children. There were cases, when we had a child on probation, just by the end of the probation, or after the probation period, the parents were deprived of their parental rights. Such parents do not take part in anything. There are parents who try to shift responsibility to probation, they may say, "Here is a child, he visits you, you do with him what you want, I allow it, but I need to earn money, I can't." And there are other parents; when you say, "Please, come up to us together with the child, we will talk to all of you, or separately," they come and we talk to them. In other words, parents are totally different.

From interviews with probation officers

From the total number of minors registered with the authorised probation agencies, 619 (84%) studied in secondary education schools and other educational institutions, 10 (1%) were employed, 110 (15%) neither worked nor studied. A problem of violation of children's right to confidentiality and privacy exists when data are collected from places of employment and study.

⁵³Overview of the performance of the state institution "Probation Centre" in 2020. https://www.probation.gov.ua/?page_id=3667

In the process of probation officers' interaction with different authorities and institutions regarding a particular child, inappropriate disclosure and further stigmatisation of the child can occur, which only harms the process of re-socialisation. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice⁵⁴ point out that the privacy and personal data of children who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. This generally implies that no information or personal data may be disclosed or published, including images, detailed descriptions of children or their families, names or addresses, audio and video records, etc. Therefore, confidential information transfer should be guaranteed when different actors are engaged in the cross-sectoral interaction.

There are situations when the class teacher finds out that a child is on probation, for example, and starts to oppress the child in every way, i.e. showing by his/her behaviour that the child is not like other children and falls short of people's expectations.

From an interview with a probation officer

During 2020, probation agencies received 1,974 (8% of the total number) court rulings ordering that pre-trial reports on minors be compiled. The majority of such reports indicate that the accused can be corrected without deprivation or restriction of liberty for a determined period.

Article 37 of the UN Convention on the Rights of the Child⁵⁵ notes that imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time. It should be noted that in Ukraine the imprisonment of juveniles is rarely used and non-isolation sentences are more common, mainly through the application of Article 75 of the Criminal Code of Ukraine (release from serving a sentence on probation). Thus, as of 01.07.2021, 721 minors were registered with probation agencies. By types of punishment, 678 (94%) juvenile probationers were released from serving the sentence of imprisonment on probation, 33 (5%) were sentenced to community service, and 9 (1%) were sentenced to a fine. It is also important to keep gender-disaggregated statistics. Thus, of the total number of juvenile offenders, 697 (94 %) were men and 42 (6 %) were women.

Government officials interviewed also pointed to a steady decline in the application of custodial sentences to juveniles.

If a child has committed an offence, we always give him or her a chance for correction. Not at once, "that's it, run to prison!" Absolutely not. We try to understand the reasons that prompted the crime, and we also look at every such criminal proceeding to see if the child was influenced by adults or if someone else involved him or her in it. We do that because children are still being led by someone and in every such case, we have to ask questions: find out, question carefully, understand the reasons and who of the adults is guilty of it. In other words, we should not go off half-cocked. Of course, if he/she admits guilt, repents, repays the damage to the victim and so on, we give him/her a chance to be corrected, and we use the law, of course, and Articles 75, and 69, and hope that we will redirect him/her towards the right path and he/she will not go to prison.

From an interview with a prosecutor

At the same time, the experts interviewed pointed out that an important result of the correction should be that children are aware of what they have done, rather than simply being exempted from punishment. This is only possible if the juvenile is actively engaged in his or her correction. More use should be made of community service, reintegration programmes, compulsory return to education, reading books, etc. The existing list should be supplemented

⁵⁴<https://rm.coe.int/16804c2188>

⁵⁵https://zakon.rada.gov.ua/laws/show/995_021#Text

with sanctions that are not related to children's isolation but provide an effective social and educational function in relation to children who have committed offences.

Today the probation agencies have approved and are implementing four probation programmes for juveniles which are being ordered by the courts and are aimed at the correction of social behaviour or its individual manifestations, the formation of socially favourable changes of personality:

- *Changing pro-criminal thinking* (achieving positive changes in the behaviour of a minor by developing and maintaining constructive and critical thinking skills; developing reflexive skills; planning and setting goals; promoting co-operation in relations with others and socially accepted norms of behaviour);

- *Overcoming aggressive behaviour* (achieving positive change through the development of self-regulation skills; managing anger and aggressive behaviour; enhancing the tools of effective interaction; developing readiness to observe socially acceptable norms and non-violent behaviour patterns);

- *Preventing substance use* (achieving positive change through developing and maintaining effective self-control skills; awareness of the need for harm reduction strategies as regards to the use of substances; increasing motivation to stop using substances);

- *Developing life skills* (achieving positive change through developing and maintaining successful communication skills; promoting pro-social values and effective family relationships; education and employment; setting goals and building life plans based on universal values).

At the end of 2020, 73 juveniles had undergone probation programmes; in the first half of 2021, 113 had done so. A total of 5,553 juveniles have undergone probation programmes since 2019 (2,248 of them in 2019, 1,918 in 2020 and 1,387 as of 01.08.2021).

The statistical data presented in the Overview of the performance of the state institution "Probation Centre" show substantial performance results. Thus, as of 01.01.2021, probation programme result assessments which are made upon completion of the activities envisaged by the probation programme indicate the following: low result (1 – 0.7%); average result (35 – 25.4%); high result (102 – 73.9%)⁵⁶.

The interviewed children also positively assessed the effectiveness of the programmes they attended.

You won't hear bad things, because I'm here, everybody loves me here, I love everybody, because from day one they didn't treat me as a criminal, but as a human being and helped me. I had problems with overcoming aggression, I was very quick-tempered, I could easily get into a fight, into anything. Here they taught me how to suppress aggression, how to manage it. We had a lot of training, we drew a curve of emotions going upwards, then an explosion, and then everything fades away.

From an interview with a minor who was on probation

The interviewed experts confirmed that they see a need for probation programmes, which they believe reduce recidivism and re-offending by children.

It is both good and important that the courts have started to prescribe these programmes in their sentences. They prescribe what kind of program is needed. We, well, do not force them, but ask these probation officers to tell the judges about this possibility. After all, we've had

⁵⁶Overview of the performance of the state institution "Probation Centre" in 2020. https://www.probation.gov.ua/?page_id=3667

⁵⁶<https://rm.coe.int/16804c2188>

judges in remote areas who didn't know that there's a programme, for example, to overcome criminal thinking, and there's a programme on substances.

From an interview with a prosecutor

The recidivism rate, in general, is one of the key indicators of probation performance. At the end of 2020, 1,918 juvenile probationers had been registered by the probation authorities and 42 of them had committed new criminal offences while on the register. The overall recidivism rate in Ukraine was 2.2%. However, the methodology for calculating the recidivism rate is based on and calculated exclusively for the period when children are on probation and only for criminal offences for which the law provides for the sanction of imprisonment. Therefore, given the European experience, where recidivism is assessed within five years of serving a sentence, in reality, it may be somewhat higher.

Our recidivism rate fluctuates around 3%. Of course, there are small increases there, and it can be after the summer holidays when someone has had a good time there and forgotten that he/she is on probation. I'm talking about recidivism specifically with regard to those being on probation. I mean, you know, compared to adults, this is a low level of risk, and in general, if you take it like this, if you count out the adults, 3%, well, unfortunately, we do not have at least a 100% safeguard so that the person does not commit an offence at all. This means that is, in principle, we can do everything depending on us, everything that depends on our regulations, on the law and on our methods.

From an interview with a member of staff at the Probation Centre

Probation officers themselves also praise their work, noting that they conduct many activities for children. According to the Probation Centre, the activities most positively perceived by juveniles are those that teach them decision-making skills and goal-setting within the problem covered by the probation programme, as well as watching thematic videos followed by discussions. Children are most negative about congested introductory sessions, as well as legislative specifics related to the subject matter of the probation programme. Among the shortcomings of their work, the probation agencies noted the insufficient level of organisation of programme activities and monitoring, by probation supervisors, of the results of the work done with juveniles.

I think we are quite effective... Plus we conduct individual and group sessions. Children start thinking differently, so I consider it to be the merit of probation.

From an interview with a juvenile probation officer

I have very many practical examples, and colleagues shared such examples with me when children on probation realised that their behaviour was a little bit wrong, there were certain shortcomings, they were doing something wrong in life and they corrected themselves, there were cases when you could witness almost two different persons: a child who had just come to probation and the same child who is being taken off the register.

From an interview with a member of staff at the Probation Centre

Besides probation programmes ordered by courts, probation agencies offer children to participate in social and educational activities, both individually and in groups.

These can be group sessions where we try to share, say, some knowledge and experience that we have, or the people we invite have, say, representatives of other NGOs or even just people with interesting knowledge and skills. For example, not so long ago, we had a woman who is an actress and director, and she gave acting classes.

From an interview with a probation officer

Probation agencies seek out and organise various activities for children, involving municipal and private institutions, NGOs and volunteers. For this purpose, each region has established so-called “resource pools” with a list of partner organisations willing to provide some kind of services to children. These include social services, legal aid centres, charitable foundations and business partners.

It means that is, for our part, we write a letter, we write about what this is for, who we are, how they can help, for example, in the re-socialisation of minors who are in conflict with the law. In other words, we describe the reason and tell them how they can help. As a result, we go to the administration with this official letter, talk to them and either get permission or are told that we can't be helped, and there are also cases like this.

From an interview with a probation officer

Each unit within its territorial jurisdiction selects or searches for such organisations, applies to them, signs memorandums, and then they directly deal with probationers in such spheres, where our colleagues cannot do it. For example, it can be so that there is no psychologist in the unit, or there is no such position, or there is a position, but it is vacant. Our colleagues conclude memorandums together with centres of social services for family, children and youth, with government or non-government organisations, to have this assistance offered.

From an interview with a member of staff at the Probation Centre

The majority of lawyers, judges and prosecutors positively assessed the performance of the probation agencies, noting that they only sometimes encounter a formal performance of their duties. Also, they considered understaffing and, in particular, the lack of psychologists to be a problem. Although according to the Probation Centre, the overall understaffing (of all probation agencies) does not exceed 6-9%.

How do they work?.. well I know our examples, sometimes it's formal, yes, that is, sometimes there are identical pre-trial reports that come, well they are formal. Sometimes they don't see them there. Well, there are positive examples there from those children who are registered with us and the service, if it works, works with these difficult families as much as they can. So I can hardly say how it needs to be, but in terms of how effective they are there, well, it could go either way.

From an interview with a judge

In the sense that they are trying to organise themselves somehow. It's hard for me to talk about their effectiveness. There's also a lot of different people... the workers I talk to are sometimes very enthusiastic, who somehow manage to pull it together. And sometimes things are neglected. Sometimes there is a lack of resources and staff, that's the key point. Psychologists are lacking.

From an interview with a judge

Yes, we regularly conduct inspections in this body. I mean, we don't have that many such bodies in the region. The public prosecutors regularly visit them, watch how they handle cases, and control all that. We included our comments in the prosecutorial response documents this year as well, for example, that their level of prevention is insufficient. I invited the head, and I said, “let's move away from a formal approach, especially where minors are concerned, because what is this work for?” It is to prevent our children from re-offending in the future. We don't need that formalistic approach, we need to talk to each child, to check his or her conditions and so on.

From an interview with a prosecutor

Children also gave positive feedback about the overall work of the juvenile probation sectors. However, they felt that probation units in regions where the juvenile aspect of the work is less pronounced are less effective.

Well, I can compare the attitude that was in my small town and the one that was here, it is more interesting here, and more is given. There are classes here that are held with us, about children's rights and different topics. What you can't do, why you did it, and so on. There in my town I just came, registered myself and left. There were classes maybe once a month there. It's nice to be greeted with a smile, even here, even though you, of course, have made a mistake in your life, but all people understand that you have made a wrong thing, made a mistake in your life, and you will change.

Probation in my district was for adults, there was nothing like that there, no psychologist, nothing. You just came, wrote something, registered, that's all. So it was boring, not interesting at all. But then, when I entered the college last year, I was transferred here as my place of residence changed. At first, it was all strange because there were teenage classes, individual classes; it was something new, unusual for me. But over time I got used to it, I feel good here, and I like coming here, they pay much more attention to children than at the previous place, because there are psychologists, other staff members who work with us and help us understand ourselves, our lives.

From interviews with children registered with juvenile probation sectors

An important part of probation work consists in co-operation with child welfare agencies and services, specialised institutions and agencies responsible for the social protection and prevention of offending. Although the process of communication between them has started to improve over the last few years, there are still some challenges to overcome. Firstly, it is the provision and exchange of information, both at the stage of writing pre-trial reports, assessing the risks of reoffending and in the process of re-socialisation of juveniles. In order to ensure that children receive the necessary social services, the personnel of the juvenile probation sectors sent 126 reports to social services concerning the registered juveniles' stay in difficult circumstances in 2021. As a result of their review, 36 confirmations were received that the juveniles on probation were registered as children in difficult circumstances.

Most of all, thanks to personal contacts, you have already started to communicate with organisations, you already know whom to contact, we call each other on the phone. It is probably the bureaucracy – the requests, the paperwork, the responses – that complicates things the most. Well, there are different organisations that can give formal answers.

From an interview with a probation officer

According to some lawyers that represent children, one of the difficulties of interaction between different juvenile justice actors is that not always they know what functions each body performs. For example, a lawyer or prosecutor may present the work of the probation agencies to children as merely “showing up” in a similar way to the police. Therefore, children and their parents go there having low trust in them and lacking understanding of why it is necessary. In addition, not all judges may be aware of various probation programmes, which should only be ordered by judicial decisions.

They don't always understand from the start how the police are different from probation because children have to show up at both the police and probation. Then they see a different approach here, that we try to create such a more comfortable home environment that children would want to come to us.

From an interview with a probation officer

Regular training of all actors involved in juvenile justice is essential to overcoming interaction problems. In Ukraine, probation staff are trained under programmes developed with the participation of international experts. They involve training in motivational interviewing skills, pro-social modelling, which are essential for a social psychologist, and training in some cognitive and behavioural intervention skills. Currently, a pro-European system of probation staff training is in place in two Professional Development Centres (Bila Tserkva and Dnipro). New educational programmes were completed there by 550 professionals in 2017, 918 in 2018, 599 in 2019, 43 in 2020 and 106 in the nine months of 2021. These professionals learned new probation methods and tools being used in Europe and Canada⁵⁷. At the same time, it is the training of juvenile probation officers who can provide effective re-socialisation of juveniles that needs to be extended.

Conclusions:

- Probation work on juveniles is most effectively organised in the juvenile probation sectors in Ukraine. Probation service units often lack the staff, expertise and other resources required to provide adequate social and educational support to convicted children.
- Various tools to work with juveniles have been developed and implemented, in particular, 4 probation programmes are now in place, including those aimed at building life skills, legal awareness, changing pro-criminal thinking, preventing substance use and dealing with aggression. A significant share of children shows high results in completing these programmes. Moreover, the recidivism rate among children on probation does not exceed 2-3%.
- At the same time, the existing list of non-custodial sanctions should be expanded to ensure that children are actively involved in their correction and include community service and corrective work, reintegration programmes, compulsory return to school, etc. The key correction outcome should be children's awareness of the deeds they committed, rather than just being released from the punishment on probation.
- It is important to respect the right to confidentiality and privacy in preparing pre-trial reports on children. Unfortunately, practice so far shows occasional disclosure of the status of accused juveniles in schools and at places of work and residence.
- There is also a lack of mechanisms for monitoring the drafting of pre-trial reports on minors, which results in their regular drafting in a formal manner and, consequently, in a lack of adequate information for the court to make well-informed, comprehensive decisions on children.
- Recruiting staff with appropriate knowledge of dealing with accused juveniles is a challenge that exists and is the most acute in probation service units in the regions, resulting in their ineffective implementation of social and educational measures.
- Interaction between probation agencies and other juvenile justice actors, such as social services, police and kindergartens, needs to be arranged.

⁵⁷https://www.probation.gov.ua/?page_id=28

Section 6. Specialisation of Juvenile Justice Actors⁵⁸

International standards contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules⁵⁹”), European Rules for juvenile offenders subject to sanctions or measures⁶⁰ call for the establishment and support of juvenile justice services.

“Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.”

COURTS (JUDGES)

In accordance with the Constitution and the Law of Ukraine “On the Judiciary and the Status of Judges⁶¹,” justice in Ukraine is administered exclusively by courts. The Law also provides for the specialisation of courts focusing on civil, criminal, commercial, and administrative cases, as well as on cases of administrative offences. In local general and appellate courts, there are specialised judges to conduct criminal proceedings against juveniles. The judges competent to conduct juvenile criminal proceedings are elected from among the judges of the relevant court at a meeting of the judges of that court, based on the proposal of the president of the court or the proposal of any judge of that court if the proposal of the president of the court is not supported, for a term not exceeding three years, and may be re-elected.

The number of judges authorised to conduct criminal proceedings against juveniles shall be determined separately for each court by a meeting of judges of that court.

A judge with at least ten years’ length of service as a judge, experience in judicial criminal proceedings and high moral and professional qualities may be elected as a judge authorised to conduct criminal proceedings against juveniles. If there are no judges with the necessary length of judicial service, a judge authorised to conduct criminal proceedings against juveniles shall be elected from among the judges who have the greatest length of service as judges.

We have a juvenile specialisation provided for in the Law of Ukraine “On the Judiciary and the Status of Judges,” where there is a particular provision on a judge or judges dealing with cases involving juveniles; it is stipulated by law. In fact, we can say this arrangement exists in courts but not in such a manner that there is a judge who purely decides only on these cases, no. Let’s say judges hear all criminal cases, but when a case concerns a juvenile, the judge with the lengthiest service is the one to whom those cases are referred; cases are simply distributed in such a manner. At least that is how it is arranged in our court. The only thing is that last year, those judges retired, and the younger ones are already dealing with these cases.

From an interview with a district court judge

We have no juvenile specialisation. And the procedural documents of the prosecutors themselves, such as indictments of children, clearly testify to that. Also, this is evidenced by the decisions of judges available in the register of court judgments about children. There, a court judgment regarding an adult is taken as a template, and they apply the same format to a juvenile

⁵⁸In this case, we have taken a narrow approach, considering only courts and the prosecutor’s offices among the justice bodies. The role of other bodies is discussed in the relevant sections of the Report.

⁵⁹https://zakon.rada.gov.ua/laws/show/995_211#Text

⁶⁰[https://sites.unicef.org/tdad/councilofeuropejjrec08\(1\).pdf](https://sites.unicef.org/tdad/councilofeuropejjrec08(1).pdf)

⁶¹<https://zakon.rada.gov.ua/laws/show/1402-19#Text>

offender. They fail to take due regard to the child-friendly aspects of the proceedings. Namely, judges do not delve into the issue that a suspended offender on the bench is treated as an adult and apply all the tools to him/her as though to an adult. Yes, to some extent, they mention that the offender is a juvenile, but we know that judges make an assessment based on their inner conviction. Well, that inner conviction is not focused on children today. It is focused simply on considering the case as quickly as possible, closing the proceedings, passing a verdict, or making some other decision in the case, and that's it, and the case file is then archived. None of the judges, those involved in the trial, are concerned about the further fate of the child.

From an interview with a lawyer

Judges authorised to conduct juvenile criminal proceedings are not relieved of their responsibilities as judges of the appropriate instance. Still, their exercise of such powers is taken into account in the allocation of court cases and is considered a priority.

The UN Committee on the Rights of the Child recommends that governments establish juvenile courts either as separate units or as part of existing regional/district courts. If this is not immediately possible for practical reasons, governments should ensure that specialised judges are appointed to hear juvenile cases.⁶² In Ukraine (as of 11 October), there are 5,001 judges with authority⁶³ to administer justice. According to the statistics for 2020, these judges received 3,675,932⁶⁴ cases, that is, 735 (!) cases per judge per year. This statistic does not yet take into account the investigating judges, who do not deal with the merits of cases in which they are involved as investigating judges, so the actual caseload per judge is even higher. There are no statistics concerning judges authorised to consider juvenile cases.

Prosecutor's Office

The prosecution authorities should perform their functions in the field of child-friendly justice in accordance with international conventions, the Constitution of Ukraine, the Law of Ukraine "On Prosecution"⁶⁵ and the Order of the Prosecutor General's Office No. 509 of 04.01.2020 "On Special Aspects of Performing by the Prosecutor's Offices of their Functions regarding Protecting Children and Counteracting Violence." A Department for Protecting Children's Rights and Counteracting Violence has been set up within the Prosecutor General's Office, regional prosecutor's offices have established units for child protection and counteracting violence, and juvenile prosecutors responsible for the protection of children's rights have been appointed at the new district prosecutor's offices.

To that end, the relevant units of the public prosecution service shall make comprehensive use of the functions of the public prosecution service in organising and procedurally guiding pre-trial investigations, addressing other issues as required by law during criminal proceedings, supervising covert and other investigative and search activities by the police, supporting public prosecution in court, representing the State in court in the manner prescribed by law, supervising compliance with the law in the enforcement of court judgments in criminal cases and in applying other measures of constraint related to the restriction/deprivation of personal liberty of children.

The performance of the public prosecution service in criminal proceedings involving children should be based on the following principles:

- children shall be informed of their rights, have easy access to justice and be able to report violations of their rights;

⁶²74 UN Committee on the Rights of the Child, General Comment No. 10, para. 31

⁶³<https://www.ukrinform.ua/rubric-society/3173420-v-ukraini-vakantni-1900-posad-suddiv-zastupnik-golovi-vrp.html>

⁶⁴<https://hcj.gov.ua/news/kadrovyy-deficyt-negatyvno-vplyvaye-na-dostup-do-pravosuddya-svitlana-shelest>

⁶⁵<https://zakon.rada.gov.ua/laws/show/1697-18#Text>

- ensuring the best interests of the child;
- respect for children's dignity and their protection against discrimination;
- protecting children against all forms of violence, abuse, including sexual abuse, especially by parents, guardians (custodians) or other persons who care about such children, and their exploitation.

The participation of the juvenile prosecutor in court proceedings is mandatory:

- in criminal proceedings against a minor, including where criminal proceedings are conducted against several persons, at least one of whom is a minor, as well as against a person under the age of criminal liability as of the moment when his or her identity was established;
- in criminal proceedings concerning childhood protection and where a minor is involved as a victim or is a person whose rights and interests have been or may be violated as a result of a criminal offence – without delay after the information has been entered in the Unified Register of Pre-Trial Investigations, after the decision to merge or segregate the pre-trial investigation materials or changes in the notification of suspicion.

In order to reduce the negative impact of the criminal offence event on the parties to proceedings, as well as to prevent further victimisation of children, prosecutors are obliged to:

- take measures to apply audio and/or video recording of investigative actions during the interrogation of a minor;
- make active use of the possibility of conducting remote pretrial investigations (Article 232 of the Code of Criminal Procedure);
- in order to protect the rights of child victims or witnesses, apply to court that they be interviewed outside the courtroom, in another room, by videoconference (Articles 352–354 of the Code of Criminal Procedure).
- before submitting to court applications that suspects or accused juveniles be transferred under the supervision of their parents or persons in loco parentis (Article 493 of the Code of Criminal Procedure), task investigators with obtaining information about the identity of the parents, guardians or custodians and their relations with the juveniles.
- take measures to clarify to juvenile suspects and victims and their legal representatives their right to conclude reconciliation agreements. Initiate plea bargaining if there are grounds to do so.
- where there are legitimate grounds, promote the early diversion from criminal proceedings of juveniles who have committed criminal misdemeanours or non-grave offences by applying to the court for releasing them from criminal liability and applying to them compulsory disciplinary measures.
- ensure that a minor whose rights and interests are or may be violated as a result of a criminal offence is given the opportunity to directly submit a statement or notification of the commission of the criminal offence to the agency authorised to initiate a pre-trial investigation, and exercise, in certain cases specified by law, the procedural rights of a victim and applicant respectively.
- take measures to prosecute, in accordance with the law, persons who have engaged minors in illegal activities, drunkenness, prostitution, use of narcotic drugs, etc.
- ensure that measures are taken to identify the possible negative impacts on children as a result of domestic or sexual violence, malicious failure to take care of children, or abuse of guardianship rights, leading to the commission of a criminal offence by such children.

- pay particular attention to the full enjoyment by juvenile victims of their rights in criminal proceedings and the use of additional safeguards provided for in criminal procedure legislation. Exercise procedural powers to prevent harm to their interests, in particular by restricting the participation of certain persons in the performance of certain investigative (search) activities or removing them from the criminal proceedings, initiating the replacement of the legal representative if the actions or interests of the latter conflict with the interests of the person they represent.

As of the time of research (August-September 2021) the appointment of juvenile prosecutors was still pending in the district prosecutor's offices and, accordingly, not all district prosecutor's offices had juvenile prosecutors in their staff. Given the remoteness of certain units of district prosecutor's offices, the overall workload of prosecutors and the overall decrease in the number of prosecutors after the completion of the public prosecution service reform, it is early yet to speak of a full-fledged juvenile justice specialisation of the public prosecution service in the area of child-friendly justice. Overall, 7,700 prosecutors remained in their offices in the country after the termination of the reform of public prosecution service, leading, in its turn, to the increased workload of single juvenile prosecutors⁶⁶.

Yes, there is the specialisation for both prosecutors and judges, but there are specifics of the legislation; for example, the Code of Criminal Procedure does not include the notion of a juvenile prosecutor, it is specified at the level of an in-house order only, and we are implementing and enforcing it. And, in addition, no provision is made in the Code of Criminal Procedure about the juvenile investigating judge. That means that investigating judges have no specialisation, they consider the whole megillah, which, of course, is detrimental.

From an interview with the prosecutor of the regional prosecutor's office

The infrastructure required to fully implement child-friendly justice is, in fact, lacking. A child-friendly interview (interrogation) requires a friendly environment ("green room"), which few law enforcement agencies and courts are equipped with. This also applies to the availability of video and audio recording equipment that would allow stationary recording of procedural steps involving children.

"We are working with everyone to get it., especially when dealing with sexual offences. Unfortunately, we do not have a green room in Zaporizhzhia, it is a problem, but I believe it will be fully functional shortly. We take specific action for this: we work with charitable foundations and other public organisations, representatives of the U.S. embassy visited us. We are launching an online crisis line for children in September. If the green room and the line start functioning, it will be very good. In general, we try to take all the children to Melitopol, where the green room is equipped and operates. We have close communication with psychologists, we constantly keep our hand on the pulse, we have all conditions for interviewing such children."

From the interview with a unit head within a regional prosecutor's office

But there are also positive examples of the developed support for children in contact with the law. For the first time in Ukraine, a pilot project called **Barnahus**⁶⁷ was launched in Vinnytsia region. It is designed to provide professional support to children who are victims or witnesses of crime in criminal proceedings. A centre for protection and social and psychological support in the justice process for children who are victims or witnesses of violence (the Barnahus model) has been established. The Centre has been arranged to include:

- a waiting room;

⁶⁶ <https://www.slovoidilo.ua/2021/10/02/novyna/polityka/pislya-pershoho-etapu-reformuvannya-prokuratury-zalyshylosya-7700-prokuroriv-venediktova>

⁶⁷ <https://minjust.gov.ua/news/ministry/proekt-barnahus-zapratsyuvav-na-vinnichchini?fbclid=IwAR3nAUYCuyMzpk0ePyzeNJ4ahQa3g5HNeSjfuJ33R8HsXxv1A676uYkh678>

- an interview room;
- a room for a multidisciplinary team;
- an office for experts;
- a first-aid post;
- a kitchen;
- two personal hygiene rooms: showers and toilets.

The Barnahus Centres are also planned to be opened in Mykolaiv and Ternopil regions, and in Kyiv.

The main conclusion of the legal analysis contained in the study "Legal Analysis of the Baranhus Model in Ukraine" is that although Ukrainian legislation does not create insurmountable obstacles for the establishment and operation of Baranhus, it is recommended that Ukraine adopt a legislative framework for its regulation and procedures. In Ukraine, this process has already begun with the participation of interested parties from various fields, who have united in the Interagency Coordination Council on Juvenile Justice and the Working Group on the Implementation of the Barnahus Model.⁶⁸

⁶⁸ Legal analysis of the Barnahus model in Ukrain. – Council of Europe, 2021.

Inter-Agency Coordination Council on Juvenile Justice

The Inter-Agency Coordination Council on Juvenile Justice functions on the basis of the Regulation on the Inter-Agency Coordination Council on Juvenile Justice approved by the Resolution of the Cabinet of Ministers of Ukraine of 24 May 2017, No. 357, as amended on 5 February 2020, No. 45, and on 18 November 2020, No. 1132⁶⁹. It is governed by the Constitution and laws of Ukraine, the Decrees of the President of Ukraine and Resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, acts of the Cabinet of Ministers of Ukraine and this Regulation.

The Council is headed by a Deputy Minister of Justice, and includes representatives of ministries and agencies, the Prosecutor General's Office and judiciary, representatives of civil society and international organisations. The Council generates ideas as to the juvenile justice and has working groups that draft amendments to laws and law enforcement practice and develop standards for training professionals on child-friendly justice.

The Council develops specific areas of work and early plans and adopts them.

In 2021, the Council produced the following deliverables:

The Law "On Child-Friendly Justice" was finalized.

2. The Unified Standards for Training of Justice Professionals on Juvenile Justice were developed (for lawyers, judges, employees of prosecutor's offices, the National Police, prisons, probation, etc.), and the capacity development of juvenile justice professionals was supported.

The Data Bank of Polices, Projects and Programmes Designed to Prevent Offences among Minors was updated and supported, and access to it was ensured for offence prevention actors.

4. The introduction of unified standards of keeping statistics by government entities with regard to children involved in the sphere of justice was underway.

5. Implementing the Barnahus model pilot project was supported in some Ukrainian regions.

6. Work was performed to enhance laws to strengthen the observance of children's rights in the digital sphere.

7. Work was performed to enhance laws on settling disputes between parents on the place of residence for children and the involvement in their upbringing with due regard for their needs and best interests, and the regulation of legal consequences for the abduction of a child by one of the parents.

8. Recommendations were developed for investigators, judges and prosecutors on performance under the Green Room methodology.

9. Work was performed to implement the pilot project involving psychologists in criminal proceedings where children or minors participate.

10. The development of juvenile restorative justice was supported.

The Council has prepared the Draft of the Law of Ukraine "On Child-Friendly Justice", developed and is currently introducing child-friendly interview (interrogation) standards. It provides training sessions, conducts analytical research and performs various advocacy work. International standards for child-friendly justice are being introduced due to the fact that international organisations are involved in the Council activities.

⁶⁹ <https://zakon.rada.gov.ua/laws/show/357-2017-%D0%BF#Text>

Conclusions:

1. The specialisation of juvenile justice actors in Ukraine is vague in most cases. The provisions for the specialisation of judges of the sector-specific law are insufficient when the justice system is under permanent reform and judges are lacking. The absence of specialised juvenile investigating judges also testifies to the fact that this topic is of low priority for the justice system of Ukraine.
2. The specialisation of prosecutors is formalized by a departmental order only and can easily be changed/cancelled by each successive Prosecutor General of Ukraine.
3. As public prosecution is under reform and the staffing levels of prosecutors are being reduced, the prosecutors' workload increases, affecting, in its turn, their ability to perform their child justice functions in a good manner.
4. Apart from specialised justice professionals (judges and prosecutors), there is almost no specialised infrastructure to administer justice for children (no "green rooms" or special custody institutions for children). Only occasional pilot initiatives and efforts made by individual professionals to create special conditions for children add optimism and give rise to expectations that the system can be changed.

Chapter 7. Data collection and independent monitoring

The basic document that outlines an approach to collecting, processing and analysing data on children in contact with the law is the **Manual for the Measurement of Juvenile Justice Indicators** developed jointly by UNICEF and the UN Office on Drugs and Crime⁷⁰, containing fifteen juvenile justice indicators. In 2019, the Inter-Agency Coordination Council on Juvenile Justice analyzed the juvenile data collection system in force in Ukraine⁷¹.

Table 1. Fifteen juvenile justice indicators

No.	Indicator	Definition
1	Children in conflict with the law	Number of children arrested during a 12 month period per 100,000 child population
2	Children in detention (CORE)	Number of children in detention per 100,000 child population
3	Children in pre-sentence detention (CORE)	Number of children in pre-sentence detention per 100,000 child population
4	Duration of pre-sentence detention	Time spent in detention by children before sentencing
5	Duration of sentenced detention	Time spent in detention by children after sentencing
6	Child deaths in detention	Number of child deaths in detention during a 12 month period, per 1,000 children detained
7	Separation from adults	Percentage of children in detention not wholly separated from adults
8	Contact with parents and family	Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
9	Custodial sentencing (CORE)	Percentage of children sentenced receiving a custodial sentence
10	Pre-sentence diversion (CORE)	Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11	Aftercare	Percentage of children released from detention receiving aftercare
12	Regular independent inspections	<ul style="list-style-type: none"> Existence of a system guaranteeing regular independent inspection of places of detention

⁷⁰https://www.unodc.org/documents/justice-and-prison-reform/JJ_indicators_Russian.pdf

⁷¹https://www.ppl.org.ua/wp-content/uploads/2020/02/%D0%97%D0%B2%D1%96%D1%82_%D1%81%D1%82%D0%B0%D1%82%D0%B8%D1%81%D1%82%D0%B8%D0%BA%D0%B0_%D1%84%D1%96%D0%BD%D0%B0%D0%BB%D1%8C%D0%BD%D0%B0-%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F.pdf

		<ul style="list-style-type: none"> • Percentage of places of detention that have received an independent inspection visit in the last 12 months
13	Complaints mechanism	<ul style="list-style-type: none"> ▪ Existence of a complaints system for children in detention ▪ Percentage of places of detention operating a complaints system
14	Specialised juvenile justice system (CORE)	Existence of a specialised juvenile justice system
15	Prevention	Existence of a national plan for the prevention of child involvement in crime

In Ukraine, the following agencies currently collect, process and analyse data on minors in contact with the law:

- Ministry of Social Policy of Ukraine;
- Prosecutor General's Office;
- The National Police of Ukraine;
- The State Judicial Administration of Ukraine;
- The State Department for Enforcement of Criminal Sentences of the Ministry of Justice;
- The State Institution "Probation Centre";
- The State Statistics Service.

All these agencies collect and process data at different intervals. The frequency of statistical data collection may be:

- monthly – juvenile delinquency, application of administrative legislation, detention of juvenile inmates in remand centres and penitentiary institutions, performance results of juvenile probation sectors (respectively the Prosecutor General's Office, the National Police, the Administration of the State Penitentiary Service of Ukraine, the State Institution "Probation Centre");
- quarterly – performance results of the pre-trial investigation body of the National Police and the special educational institutions of the State Department for Enforcement of Criminal Sentences of Ukraine;
- semi-annual – information on juvenile probationers registered with probation agencies;
- annual – judicial statistics.

Prosecutor General's Office of Ukraine

In accordance with the requirements of the Code of Criminal Procedure of Ukraine, the Prosecutor General's Office maintains a Unified State Register of Pre-trial Investigations (URPTI) On the basis of information entered into the URPTI, the Prosecutor General's Office provides computerised administrative reporting for all bodies of pre-trial investigation (Article 38 of the Code of Criminal Procedure of Ukraine), that is, National Police bodies, security agencies, bodies supervising tax investigations, detective units, NABU internal control units, bodies of the State Department for Enforcement of Criminal Sentences of Ukraine, bodies of the State Bureau of Investigation. All data is aggregated in the following report forms:

- The unified report on criminal offences (Form 1);
- The unified report on perpetrators of criminal offences (Form 2);
- The report on the results of combatting organised groups and criminal organisations (Form 1-O3).

Data on juvenile offenders and victims of criminal offences are an integral part of the overall crime rate in the State, with the disaggregation of basic data by age, type of crime, severity, etc.

The National Police of Ukraine

Under Article 23 of the Law of Ukraine “On the National Police”⁷² and other laws and regulations, the National Police ensures:

- conducting pre-trial investigations of criminal offences within a specified jurisdiction, including offences committed by minors;
- taking measures to prevent and halt any unlawful acts against children;
- prosecuting children aged between 16 and 18 who have committed administrative offences;
- participation in preventive measures to prevent juvenile delinquency; detention of unattended children for up to eight hours in designated areas until their parents or legal representatives receive them or until they are placed in specialised institutions;
- participation in court proceedings involving accused juveniles under Articles 496 and 500 of the Code of Criminal Procedure, including the enforcement of compulsory disciplinary measures.

The police provide information and analysis to exercise its legal powers to create, populate and maintain automatic databases that are part of the uniform information system of the Ministry of Internal Affairs and, in particular

- under the orders of the Ministry of Internal Affairs of Ukraine “On approval of the Instruction⁷³ on computerised recording of administrative offences” No. 595 of 04.07.2016 and of the Prosecutor General’s Office “On approval of the Regulation⁷⁴ on the Unified Register of Pre-Trial Investigations, its creation and maintenance procedure” No. **298 of 30.06.2020**), registers detected administrative and criminal offences committed by minors or with their participation;
- preventatively registers and deregisters children subject to a preventative and registration case being opened;
- under the orders of the Ministry of Internal Affairs of Ukraine “On approval of the Instruction on the organisation of search for suspects, accused (defendants), persons evading criminal penalty, missing persons and the identification of unidentified corpses” No. 3 of 05.01.2005 and of the Ministry of Internal Affairs of Ukraine “On approval of the Instruction on the organisation of criminal intelligence activities and covert operations by criminal intelligence units of the National Police of Ukraine” No. 07 of 05.05.2016, searches for juvenile suspects, accused (defendants), those evading penalty or court sentence, missing persons and unidentified corpses.

⁷²<https://zakon.rada.gov.ua/laws/show/580-19#Text>

⁷³<https://zakon.rada.gov.ua/laws/show/z1059-16#Text>

⁷⁴<https://zakon.rada.gov.ua/laws/show/v0298905-20#n7>

Based on the data from computerized records and data generated in non-automated mode, the NPU, in addition to the above, also summarises statistical reports by periods, regions and services. These include:

- Report on the work of pre-trial investigation bodies (form 1-CJI);
- Report on selected performance indicators of juvenile prevention units (form 1-ABH);
- Performance report for juvenile prevention units and reception centres for children (form 1-IOII)
- Report on the performance of the National Police in preventing and counteracting domestic violence (form 1-ДН)
- Report on the results of the search for absconding and missing persons, the identification of unidentified corpses and persons unable, for health, age or other reasons, to give information about themselves (form 3);
- Information on offences committed by and against children (form 1-НЛ);
- Report on the application of administrative law by the National Police (form 1-АП).

The State Judicial Administration of Ukraine

Pursuant to the requirements of Article 152 of the Law of Ukraine “On the Judiciary and the Status of Judges”⁷⁵ and the Regulation⁷⁶ on the State Judicial Administration of Ukraine approved by the decision of the High Council of Justice No. 141/0/15-19 of 17.01.2019, the State Judicial Administration of Ukraine ensures:

- activity management for keeping court statistics;
- functioning of the Unified Judicial Information System (computerised);
- keeping the Unified State Register of Court Judgements.

The State Judicial Administration of Ukraine collects in a computerised manner, processes and analyses statistical data on judicial proceedings to provide the following:

- Juvenile conviction report (form 8);
- The report of the courts of the first instance on criminal cases consideration (form 1-K);
- The report of appellate courts on considering appeals in criminal proceedings (form 2-K);
- The report on the personal composition of convicted offenders (form 7).

The agencies of the State Judicial Administration of Ukraine summarise the results of administrative practice in the report of the courts of the first instance on the consideration of cases involving administrative offences (form 1-II). **Information on the prosecution of minors for administrative offences is not separated.**

The State Department for Enforcement of Criminal Sentences of the Penitentiary Service of Ukraine.

In accordance with the Law of Ukraine “On the State Penitentiary Service of Ukraine”, the State Department for Enforcement of Criminal Sentences is responsible for:

⁷⁵<https://zakon.rada.gov.ua/laws/show/1402-19#Text>

⁷⁶<https://zakon.rada.gov.ua/rada/show/vr141910-19#Text>

- implementation of state policy in the field of enforcement of criminal penalties;
- supervision over the observance of human and citizen's rights and of the legal requirements governing the enforcement and serving of criminal sentences, the exercise of the legal rights and interests of convicted and detained persons.

The agencies of the State Department for Enforcement of Criminal Sentences of Ukraine collect and process administrative data on juvenile detainees, namely:

- data on the number of juvenile detainees held in remand centres and penal institutions;
- data on the performance of special educational institutions.

The State Institution “Probation Centre”

Under Article 6 of the Law of Ukraine “On Probation”⁷⁷ and the Regulation⁷⁸ on the State Institution “Probation Centre” approved by the order of the Ministry of Justice of Ukraine No. 4322/5 of 28.12.2017, the State Institution “Probation Centre” ensures the implementation of tasks imposed on the State Penitentiary Service of Ukraine regarding probation and direct guidance and co-ordination of probation agencies, in particular through:

- preparing pre-trial reports on accused juveniles, which is mandatory in the case of juveniles;
- supervising convicted persons sentenced to penalties involving deprivation of the right to hold certain positions or engage in certain activities, community service, corrective works, and persons whose sentence of restriction or deprivation of liberty for a certain period has been replaced by community service or corrective works;
- enforcing certain non-custodial sanctions;
- committing convicted persons sentenced to restriction of liberty to serve their sentences in correctional centres;
- implementing probation programmes regarding persons released from serving their sentences on probation (Article 75 of the Criminal Code of Ukraine).

Under their powers defined in the Law, the probation agencies summarise the following administrative data on juvenile probationers

- data on juvenile probationers registered with probation agencies;
- data on the performance of juvenile probation agencies (sectors).

Ministry of Social Policy of Ukraine

The Regulation⁷⁹ on the Ministry of Social Policy approved by the Resolution of the Cabinet of Ministers No. 423 of 17.06.2015 provides for the following Ministry's competencies:

coordinating social protection of homeless and neglected children and their social and psychological rehabilitation;

⁷⁷<https://zakon.rada.gov.ua/laws/show/160-19#Text>

⁷⁸https://www.probaton.gov.ua/wp-content/uploads/2019/08/%D0%9D%D0%B0%D0%BA%D0%B0%D0%B7-%D0%9C%D0%AE%D0%A3-%D0%B2%D1%96%D0%B4-22.02.2019-%E2%84%96561_5-%D0%9F%D0%BE%D0%BB%D0%BE%D0%B6%D0%B5%D0%BD%D0%BD%D1%8F-%D0%BF%D1%80%D0%BE-%D0%94%D0%A3.pdf

⁷⁹<https://zakon.rada.gov.ua/laws/show/423-2015-%D0%BF#Text>

social and legal protection of children, the prevention of homelessness and delinquency among them, social and psychological rehabilitation of the most vulnerable categories of children;

monitoring and coordinating the activities of the offices of children's affairs;

co-ordination and analysis with regard to social and psychological rehabilitation centres for children, shelters for children, and social and psychological rehabilitation centres for children.

The Ministry of Social Policy summarises the performance of shelters for children and social and psychological rehabilitation centres for children in the following statistical reports:

Report on the movement of children in shelters for children;

Report on the performance of the social and psychological rehabilitation centres for children.

In addition to gathering statistical data, compliance with children's rights in contact with the law is subject to independent monitoring by the Parliament Commissioner for Human Rights while acting as a National Preventive Mechanism. The results of such monitoring activities are systematised annually in a "Special Report of the Verkhovna Rada Commissioner for Human Rights. Progress in the Implementation of the National Preventive Mechanism,"⁸⁰ which contains a detailed description of problems and challenges faced by children in contact with the law. These reports are, of course, unable to cover all the problematic issues of juveniles who have come into contact with the criminal justice system. Still, they have a good balancing effect on the central executive authorities, which exercise functions in juvenile justice within the limits of their statutory competence.

A number of NGOs in Ukraine are involved in the independent monitoring of the observance of the rights of children in contact with the law. For example, there is a group of NGOs called Coalition "The Rights of the Child in Ukraine", which includes:

- All-Ukrainian Public Organisation "Women's Consortium of Ukraine"
- All-Ukrainian Foundation for Children's Rights
- Youth Public Organization M'ART ("Youth AlteRnaTive")
- Kharkiv Institute for Social Research
- Kharkiv Regional Foundation Public Alternative
- Human Rights Centre Postup
- Children's Environmental Public Organisation "Flora" (Kirovohrad)
- Association of Young Professionals "Klas" (Kharkiv)
- Partnership for Every Child international charity
- Charitable Foundation "Rokada"
- Gender Advice and Information Agency, a youth organisation from Sumy Region
- Representative office of the international organization HIAS.

For example, the Coalition "The Rights of the Child in Ukraine" has independently monitored⁸¹ compliance with the rights of children held in reception centres of the Ministry

⁸⁰<https://ombudsman.gov.ua/ua/page/npm/provisions/reports/>

⁸¹https://wcu-network.org.ua/ua/Zaxist_prav_dtei/publications/Zagaln_visnovki_rekomendaci_montoringu_dotrimannja_prav_diti_v_prii

of Internal Affairs and offered relevant recommendations for changes in the system for detaining children prior to judgement. The coalition of organizations under the leadership of the Anti-Discrimination Centre monitored child rights observance in the closed institutions in Belarus, Moldova and Ukraine⁸². It was intended to improve the situation with children deprived of liberty under total state control.

CONCLUSIONS

1. Ukraine systematically collects vast amounts of information on children in contact and in conflict with the law.
2. Despite a large amount of information collected, it does not fully meet the requirements of the **Manual for the Measurement of Juvenile Justice Indicators**. For example, there is a lack of separate data on the number of juveniles aged 16–18 prosecuted for administrative offences; many bodies collect statistics on children, but there is no coordination, and no particular body or agency is responsible for public policy on children in the criminal justice system.
3. Lots of statistical data are outdated and should be reviewed, as well as approaches to processing them. Access to such information is complicated, and it requires considerable effort for its further aggregation or separation.
4. There are still few initiatives for independent monitoring of respect for the rights of children in contact with the law in Ukraine.
5. If no child-friendly justice system is established and no responsible government body is defined and supported by relevant laws and regulations, data on children in contact and in conflict with the law and relevant policies will remain beyond the scope of government priorities.

⁸² <https://adcmemorial.org/novosti/adcz-memorial-i-ego-partnery-iz-stran-vostochnogo-partnerstva-zavershili-proekt-prodvizhenie-sovremennyh-mezhdunarodnyh-standartov-prav-rebenka-deinstituczionalizacziya-i-gumanizacz/>

Summarizing all the standards we referred to in the document, in conformity with international standards and practices referred to in this research, the research team has developed some recommendations

We recommend to the Cabinet of Ministers of Ukraine

1. Develop and submit to the Verkhovna Rada of Ukraine the draft law amending the Criminal Code of Ukraine to ensure that deprivation of liberty for a criminal offence is applied to children only *in exceptional cases* by listing specific (serious and particularly serious) offences for which the penalty of deprivation of liberty is provided for juveniles.
2. Develop and submit to the Verkhovna Rada of Ukraine the draft law to increase the scope of applying, within the child-friendly justice, corrective actions that **do not envisage penal sanctions of coercive nature**. For example, instead of the mass application of Article 75 “Release from serving a sentence on probation” of the Criminal Code of Ukraine, disciplinary measures involving proactive actions of children in conflict with the law should be applied. These could be community service for children aged 16 years and over, compulsory programmes for anger management and reducing aggression, compulsory return to education, reading books, etc.
3. Develop and submit to the Verkhovna Rada of Ukraine the draft law introducing a **mandatory restorative justice procedure** for minor and moderate offences. So far, such procedures are only possible with the parties’ consent at the trial stage. The potential of this procedure was demonstrated in a pilot project implemented by the Ministry of Justice of Ukraine and the Prosecutor General’s Office.

We recommend to the Ministry of Internal Affairs of Ukraine

4. Develop and submit to the Verkhovna Rada of Ukraine the draft law to formalise the preventive functions of police units in the law “On National Police”.
5. Modify police functions in terms of juvenile prevention **to focus them on preventing juvenile crimes** and not only on collecting data and registering children that have already committed offences. The police need to become active gatekeepers to keep children out of the criminal justice system through proactive prevention and early intervention measures.
6. Modify the reporting of juvenile police officers by removing juvenile re-offending from the list of their negative performance indicators. Currently, the commission of a repeat criminal offence by a child on the register results in disciplinary action being taken against the relevant police officer.
7. Create a **child-friendly infrastructure in the police**. All bodies that administer justice vis-a-vis children should be equipped with specially-designed rooms for dealing with children (Green Rooms).
8. Provide for mandatory periodic (at least once a year) training for child-friendly justice professionals within the basic training, vocational training and refresher courses. If possible, conduct such training in cross-sectoral groups: prosecutors together with judges and probation agencies, or police officers with the staff of offices of children’s affairs, social workers, etc.

9. Develop and submit to the Verkhovna Rada of Ukraine the law draft providing that, in proceedings where minors are suspects and defendants, prosecutors and investigators have an opportunity to **close cases at the pre-trial stage and apply restorative practices and mediation** provided that such agreements are further approved by courts.

The Ministry of Justice of Ukraine should

10. Consider **establishing inter-regional correctional centres** where minors could serve their custodial sentences. This will enable children to maintain important social links while serving their sentence and to receive reintegration services in or close to their community.
11. Change the priority of the child-friendly justice system from “the sentence as an end goal” to changing/correcting the behaviour of child offenders with the provision of the full range of psychological, social, medical, educational, etc., services. Currently, these services have a second-rate status and are applied only after the end of criminal proceedings against children. **The new approach should provide for the continuity of delivery of such services to children because juvenile justice should be a crisis social intervention by the state in the life of children who committed offences.**
12. Extend **the powers of the probation service to define the content** of non-custodial sanctions. For example, mandatory community service could be provided if offences inflicted damage to property. For example, if a child commits an act of vandalism or deliberate damage to the property, the sanction should be the restoration of the property (painting, cleaning, etc.).

We recommend to the Ministry of Social Policy of Ukraine

13. Audit the performance of the services of children’s affairs in terms of coordinating interdisciplinary teams to be established under the Resolution of the Cabinet of Ministers No. 585 dated 1 April 2020 “On Safeguarding Social Protection of Children under Difficult Circumstances” to provide aid to every child living in difficult circumstances, including children in conflict with the law.

We recommend to the State Judicial Administration of Ukraine

14. Introduce specialisation of judges at the level of the law, **assigning specific judges to consider on merits criminal proceedings involving juveniles as accused persons, witnesses or victims** and exempting them from dealing with other types of cases.
15. Establish **the position of a juvenile investigating judge** in each court to deal with all matters relating to the support of cases where juveniles are defendants, witnesses or victims.
16. Establish child-friendly environment in each court that should have a specially equipped courtroom to hear cases where children are involved or participate.

We recommend to the Prosecutor General’s Office of Ukraine

17. Develop and submit to the Verkhovna Rada of Ukraine the draft law to formalise the preventive functions of public prosecution service in the law “On Prosecutor’s Office”.

We recommend to civil society organisations

18. Support and develop schemes for independent monitoring of the respect for the rights of the child in conflict/contact with the law. Pay special attention to children under state government care and control (correctional facilities, boarding schools, detention centres). Particular attention needs to be paid to such places when additional restrictions imposed due to the spread of COVID-19 coronavirus disease are in effect.

We recommend to the Ukrainian National Bar Association

19. Provide a greater specialisation under the programme “children’s lawyer” to upgrade the qualification of lawyers defending children’s rights in criminal proceedings.

Appendices

Data collection tools

1. A QUESTIONNAIRE FOR AN INTERVIEW WITH A PROBATION OFFICER

How often do judges order probation for minor offenders?
How do you implement it?
Do you co-operate with institutions/organisations to implement probation?
In what manner is such cooperation arranged? Are there Memoranda of Cooperation? What are the challenges of such co-operation?
What kind of difficulties do children face during probation?
What specific measures do you include in probation to improve children's behaviour?
To what extent are parents/guardians involved in probation?
What probation tools do you use (pre-trial reports, re-offending risk assessment, replacing the unserved part of the sentence with a more severe one, etc.)?
How do you evaluate the effectiveness of probation?
Has probation contributed to reducing re-offending among juveniles?
To what extent do you monitor children after probation?
How does probation contribute to socialisation and reintegration?
What reintegration services are available to children in conflict with the law, and how are they organised?
How is the risk of child re-offending assessed, and what programmes are implemented to prevent it?
What can be done to improve the probation process?

2. A QUESTIONNAIRE FOR AN INTERVIEW WITH A LAWYER REPRESENTING A CHILD

What is the qualification level of juvenile judges and prosecutors dealing with children in conflict with the law?
Are there specialised and trained lawyers to defend the interests of children in conflict with the law?
How often do courts apply recharacterisation at the suggestion of prosecutors?
What recharacterisation measures are most and least frequently used?
To what extent do courts use mediation? How do the relevant actors assess the effectiveness of recharacterisation measures?
Does the use of recharacterisation prevent children from re-offending?
What are administrative sanctions applied to children?

What criteria do judges apply to impose administrative sanctions?

What is the criminal re-offending rate among children who have served administrative sentences?

What are criminal penalties imposed on juveniles who have breached the law?

What criteria do judges apply to impose criminal penalties on children?

To what extent do children exercise their right to be heard and participate in judicial proceedings?

Do children in conflict with the law have access to timely and direct information about their charges and children's rights?

Are children provided with legal and other assistance at all stages of judicial proceedings?

Do courts deliver judgements against children in conflict with the law without delay and with the involvement of their parents and legal representatives?

Are children free from coercive self-incrimination, and do they have access to friendly interviews?

Do all parties respect the right to privacy at all stages of proceedings involving children in conflict with the law? And what about the right to appeal?

What are the conditions and rights of children placed in pre-trial detention?

What are the rights of children placed in reception centres, and what are the conditions in such centres?

What is the length of pre-trial detention for children?

Are parents and legal guardians / legal representatives informed immediately upon detention?

What are the conditions and treatment of children given custodial sentences (separation from adults, gender segregation and use of isolators)? What educational, health, and recreational services are available to children in juvenile correctional facilities?

Is there a formal complaint mechanism for children deprived of their liberty?

What reintegration services are available to children in conflict with the law, and how are they organised?

How often do judges order probation for minor offenders? And how is it implemented?

How do relevant professionals evaluate the effectiveness of probation?

To what extent are parents/guardians involved in probation?

Has probation contributed to reducing re-offending among juveniles?

To what extent do probation professionals monitor children after the completion of probation?

How is the risk of child re-offending assessed, and what programmes are implemented to prevent it?

3. A QUESTIONNAIRE FOR AN INTERVIEW WITH A REPRESENTATIVE OF AN NGO DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

What are administrative sanctions applied to children?

What criteria do judges apply to impose administrative sanctions?

What is the criminal re-offending rate among children who have served administrative sentences?

What are criminal penalties imposed on juveniles who have breached the law?

What criteria do judges apply to impose criminal penalties on children?

How often do courts apply recharacterisation at the suggestion of prosecutors? What recharacterisation measures are most and least frequently used?

To what extent do courts use mediation?

How do the relevant actors assess the effectiveness of recharacterisation measures?

Does the use of recharacterisation prevent children from re-offending?

Do you think that the rights of children at risk that are in conflict with the law are respected by the system?

If no, why not? What is your experience? What are the main areas of concern?

To what extent do children exercise their right to be heard and participate in judicial proceedings?

Do children in conflict with the law have access to timely and direct information about their charges and children's rights?

Are children provided with legal and other assistance at all stages of judicial proceedings?

Do courts deliver judgements against children in conflict with the law without delay and with the involvement of their parents and legal representatives?

Are children free from coercive self-incrimination, and do they have access to friendly interviews?

Do children have an opportunity to exercise their right to appeal?

Do all parties respect the right to privacy at all stages of proceedings involving children in conflict with the law?

Are juvenile judges and juvenile prosecutors present in each trial?

What is the qualification level of juvenile judges and prosecutors dealing with children in conflict with the law?

Are there specialised and trained lawyers to defend the interests of children in conflict with the law?

What are the conditions and rights of children placed in pre-trial detention?

What are the rights of children placed in reception centres, and what are the conditions in such centres?

What is the length of pre-trial detention for children?

Are parents and legal guardians / legal representatives informed immediately upon detention?

What are the conditions and treatment of children given custodial sentences (separation from adults, gender segregation and use of isolators)?

What educational, health, and recreational services are available to children in juvenile correctional facilities?

Is there a formal complaint mechanism for children deprived of their liberty?

What prevention activities are developed and implemented among those targeting children at risk, parents, guardians and community and facilitating successful socialisation and integration?

Are children and their parents actively involved in developing and implementing such programmes?

Are children at risk placed in institutions as a prevention measure?

What is the effectiveness of prevention activities?

What is the level of coordination between professionals working in prevention?

What services do you offer to children and parents/guardians of children at risk of breaking the law?

What services do you offer to juvenile offenders?

Do you cooperate with government institutions responsible for dealing with children at risk / children in conflict with the law?

Do you think the juvenile justice system is designed and functioning well enough to meet the needs of children at risk of offending and child offenders?

Is there a data collection system developed at the central level regarding children in conflict with the law?

To what extent does the Ombudsperson independently monitor the rights of children who have been placed in facilities / deprived of liberty?

Do you offer reintegration programmes for children in conflict with the law?

What can be done to improve juvenile justice?

What reintegration services are available to children in conflict with the law, and how are they organised?

How is the risk of child re-offending assessed, and what programmes are implemented to prevent it?

4. A QUESTIONNAIRE FOR AN INTERVIEW WITH A CHILD WHO HAS SERVED A SENTENCE IN A PRISON

Do you know why you were sentenced to imprisonment in a juvenile correctional facility? Do you agree with the judge on this measure?

Did you have an opportunity to explain your actions that led to this situation to the judge?

Did the judge ask for your opinion and arguments before delivering a judgment?

Were you supported in the proceedings by a lawyer or parents?

Was the procedure against you comprehensible?

Were you informed of your rights?

How would you describe your stay in the facility?

How would you assess the conditions of detention? Was it clean there?

Were you well fed / were you hungry? Did you have an opportunity to go out into the yard?

Did you have an opportunity to see a doctor when you needed medical assistance?

Were you alone or with others in the room for detainees? What was their age? Did you feel safe when you were there? Were you frightened? Why?

Were you treated with dignity (well) by the people working there? If no, what did or did not they do (physical punishment, coercion, abusive verbal threats)? What do you think they should do better to help other young people like you?

Did you attend school there? Were you satisfied with the teachers?

Was there an opportunity to make a complaint if you thought you had been treated inappropriately by the staff? Was there an anonymous complaints box or another way of making anonymous complaints?

Was there anything you did not like while in the facility?

Please, share it with us so that we can make sure that this does not happen to other children/young people.

5. A QUESTIONNAIRE FOR AN INTERVIEW WITH A CHILD REGISTERED WITH A JUVENILE PREVENTION AGENCY

Please tell us a little about yourself, what do you like to do? (reading/playing games on the internet/playing with friends)?

What will you be when you grow up? What are your dreams?

What do you think is the role of the police, and why do people from the police want to help you?

Are they friendly with you? Have they helped you to solve any problems?

If so, in what way?

Do you know why they want to help you? Do you trust them?

Do you feel safe talking to them?

Do you understand their questions?

Do they talk to you when you are alone, or is there a parent/relative/social worker/teacher with you when they talk?

What do you think they should do to help other children like you? What would you suggest?

6. A QUESTIONNAIRE FOR AN INTERVIEW WITH A CHILD ON PROBATION

Please tell us a little about yourself, what do you like to do? (reading/playing games on the internet/playing with friends)?

What will you be when you grow up?

Do you know why you are on probation?

Do you think that the judge was right to put you on probation? If no, why not?

Have you had a chance to tell the judge how you feel or think about what you have done? Was the judge/police honest, and did they treat you well? Did they frighten you?

What would you advise them to do better to help children like you?

Is probation useful to you? Have you felt better after being involved in this programme? If so/not so, why? What has helped you in this programme? What have you enjoyed, what was memorable?

What would you recommend to include in the programme to help more children like you?
Would you like to continue participating in this programme?
Do you think the people working with you understand you?
Do they treat you well? Do you feel safe?
What do you like most about this programme / what do you dislike most?

7. A QUESTIONNAIRE FOR AN INTERVIEW WITH A REPRESENTATIVE OF THE PROSECUTOR'S TRAINING CENTER

What is the qualification level of juvenile prosecutors dealing with children in conflict with the law?
Do you have a special training programme for juvenile prosecutors?
Is there continuous training for juvenile prosecutors?
Is there a legal requirement for juvenile prosecutors' training and/or continuous training?
What do you think should be improved to ensure that all prosecutors dealing with juveniles are trained?

8. A QUESTIONNAIRE FOR AN INTERVIEW WITH AN OFFICER FROM A JUVENILE PROBATION SECTOR

How is probation for juvenile offenders organised in the country?
How often do judges order probation for minor offenders? And how is it implemented?
To what extent are parents/guardians involved in probation?
Has probation contributed to reducing re-offending among juveniles?
To what extent do probation professionals monitor children after the completion of probation?
What reintegration services are available to children in conflict with the law, and how are they organised?
How is the risk of child re-offending assessed, and what programmes are implemented to prevent it?
Do probation officers take training courses? How often? Is there regular training for probation staff?
What is the usual educational level/experience of probation staff? How are they recruited?
Do they report regularly to the Ministry?
Is there a data collection system to monitor the use of probation?
Is there a data collection system developed at the central level regarding children in conflict with the law?
To what extent does the Ombudsperson independently monitor the rights of children who have been placed in facilities / deprived of liberty?

9. A QUESTIONNAIRE FOR AN INTERVIEW WITH REPRESENTATIVES OF THE NATIONAL SCHOOL OF JUDGES

What is the qualification level of juvenile judges dealing with children in conflict with the law?

Do you have a special programme for juvenile judges, in particular on mediation (restorative justice)? If so, who implements it?

Is there continuous training for juvenile judges?

Is there a legal requirement for the training and/or continuous training of juvenile judges?

What do you think should be improved to make all judges dealing with juveniles undergo training?

10. A QUESTIONNAIRE FOR AN INTERVIEW WITH A JUVENILE PREVENTION OFFICER

What prevention activities are developed and implemented among those targeting children at risk, parents, guardians and community and facilitating successful socialisation and integration?

Are children and their parents actively involved in developing and implementing such programmes?

Are children at risk placed in institutions as a prevention measure?

What is the effectiveness of prevention activities?

What is the level of coordination between professionals working in prevention?

What are administrative sanctions applied to children?

What criteria do judges apply to impose administrative sanctions?

What is the criminal re-offending rate among children who have served administrative sentences?

What are criminal penalties imposed on juveniles who have breached the law?

What criteria do judges apply to impose criminal penalties on children?

How often do courts apply recharacterisation at the suggestion of prosecutors?

What recharacterisation measures are most and least frequently used?

To what extent do courts use mediation?

How do the relevant actors assess the effectiveness of recharacterisation measures?

Does the use of recharacterisation prevent children from re-offending?

Are there specialised and trained lawyers to defend the interests of children in conflict with the law?

What is your role in preventing juvenile delinquency?

What preventive measures do you take?

What institutions do you actively cooperate with in the prevention process?

Schools / social work centres / health care institutions?

Do you assess the main factors influencing juvenile delinquency, if so, how? How do you deal with them?

Do you involve children and their parents/guardians in the prevention process?

How do you monitor the children on your lists? Is this monitoring appropriate for the children?

Do you respect the child's privacy? How do you do this?

Do you think your current activities contribute to less offending by children?

What could be done to improve prevention?

Do you recommend the institutionalisation of children as a prevention measure? If so, which institutions do you recommend? Do you think that placing children in institutions is a good prevention method?

What are the biggest barriers to children's access to prevention programmes?

What reintegration services are available to children in conflict with the law, and how are they organised?

How is the risk of child re-offending assessed, and what programmes are implemented to prevent it?

11. A QUESTIONNAIRE FOR AN INTERVIEW WITH A JUVENILE PROSECUTOR

Are juvenile judges and juvenile prosecutors present in each trial?

What is the qualification level of juvenile judges and prosecutors dealing with children in conflict with the law?

Are there specialised and trained lawyers to defend the interests of children in conflict with the law?

To what extent do children exercise their right to be heard and participate in judicial proceedings?

Do children in conflict with the law have access to timely and direct information about their charges and children's rights?

Are children provided with legal and other assistance at all stages of judicial proceedings?

Do courts deliver judgements against children in conflict with the law without delay and with the involvement of their parents and legal representatives?

Are children free from coercive self-incrimination, and do they have access to friendly interviews?

Do children have an opportunity to exercise their right to appeal?

Do all parties respect the right to privacy at all stages of proceedings involving children in conflict with the law?

How often do you propose recharacterisation to courts? What recharacterisation measures are most and least frequently used?

To what extent do courts use mediation? As mediators? Do you consider mediation to be a successful method of preventing reoffending?

How do you rate the effectiveness of recharacterisation measures?

In your opinion, does the use of recharacterisation measures prevent children from re-offending?

What criteria do you apply when suggesting that a judge impose criminal penalties on children? Which ones do you use most often? How do you obtain this information: from social work centres/police?

Do you interview child offenders? If so, do you use language that children understand? Do you tend to be less formal when dealing with child offenders? Do you allow and encourage children to express opinions/arguments and ask questions during the procedure?

Are parents / a social worker / a legal guardian / a lawyer present during the conversation? Always?

How often do judges order probation for minor offenders? And how is it implemented?

How do relevant professionals evaluate the effectiveness of probation?

To what extent are parents/guardians involved in probation?

Has probation contributed to reducing re-offending among juveniles?

To what extent do probation professionals monitor children after the completion of probation?

What are the conditions and rights of children placed in pre-trial detention?

What are the rights of children placed in reception centres, and what are the conditions in such centres?

What is the length of pre-trial detention for children?

Are parents and legal guardians / legal representatives informed immediately upon detention?

What are the conditions and treatment of children given custodial sentences (separation from adults, gender segregation and use of isolators)?

What educational, health, and recreational services are available to children in juvenile correctional facilities?

Is there a formal complaint mechanism for children deprived of their liberty?

12. A QUESTIONNAIRE FOR AN INTERVIEW WITH A JUVENILE JUDGE

How often do you apply recharacterisation at the suggestion of the prosecutor?

What recharacterisation measures are most and least frequently used?

To what extent do courts use mediation?

Who are mediators? Are they specially trained lawyers?

Do you consider mediation to be a successful method of preventing reoffending?

What other forms of restorative justice, apart from mediation, are applied to juvenile offenders?

How do you rate the effectiveness of recharacterisation measures?

What is your opinion on whether recharacterisation measures prevent children from re-offending and promote the social reintegration of offenders? What criminal penalties do you impose on juveniles in conflict with the law?

Which ones do you consider most effective?

What criteria do you apply to impose criminal penalties on children?

Are all facts concerning personal circumstances, personality, maturity of a child, etc., recorded in criminal records? Which ones do you use most often?

Who prepares criminal reports? / How do you obtain this information: from social work centres / police?

How often do you put child offenders on probation? And how is it implemented?

Do you think probation is more effective than committing children to facilities?

How do you monitor the effectiveness of probation?

Has probation contributed to reducing re-offending among juveniles?

What criteria/factors do you use to decide to place children in pre-trial detention? Do you think that alternatives to detention of children are better than detention? For example, pre-trial detention at home under parental/guardian/police supervision or pre-trial probation? Is there a better choice?

What is the length of pre-trial detention for children?

Are parents and legal guardians / legal representatives informed immediately upon detention?

To what extent do children exercise their right to be heard and participate in judicial proceedings?

Do you allow children to express their opinions, ask questions, present arguments, question witnesses? Is this a common practice?

Do children in conflict with the law have access to timely and direct information about their charges and children's rights? Do you inform children about their rights during the trial?

Do you explain the legal process to them?

Are children provided with legal and other assistance at all stages of judicial proceedings?

Does each child have a legal representative/lawyer during the trial?

Do courts deliver judgements against children in conflict with the law without delay and with the involvement of their parents and legal representatives?

Are children free from coercive self-incrimination, and do they have access to friendly interviews? Do you use an inquisitive/incriminating approach when interviewing children? Do you use language that the children understand? Do they take children out of the courtroom when you read facts about their personal circumstances, health, maturity, etc.? Is the courtroom comfortable for children? Do you wear a formal uniform at court proceedings involving children? Do you tend to make the proceedings less formal?

Is an interpreter provided for children if they do not understand the language? Do you provide a special interpreter if a child has a disability?

Do children have an opportunity to exercise their right to appeal?

Do you explain this right to them?

Do you respect the right to privacy at all stages of the procedure involving children in conflict with the law?

Are court hearings scheduled at certain times of the day when there are fewer adult offenders in the court building? Do you take this into account?

Does this fact place restrictions on children before and during court proceedings?

13. A QUESTIONNAIRE FOR AN INTERVIEW WITH A REPRESENTATIVE OF THE OMBUDSMAN'S OFFICE

Do you regularly monitor conditions and practices in facilities for children who have committed criminal offences?

Do you talk to children placed in these facilities to get their opinions?

What are the main challenges of the juvenile justice system in terms of children's rights?

What are the conditions and rights of children placed in pre-trial detention?

What are the rights of children placed in reception centres, and what are the conditions in such centres?

What is the length of pre-trial detention for children?

Are parents and legal guardians/legal representatives informed immediately upon detention?

What are the conditions and treatment of children given custodial sentences (separation from adults, gender segregation and use of isolators)?

What educational, health, and recreational services are available to children in juvenile correctional facilities?

Is there a formal complaint mechanism for children deprived of their liberty?

To what extent do children exercise their right to be heard and participate in judicial proceedings?

Do children in conflict with the law have access to timely and direct information about their charges and children's rights?

Are children provided with legal and other assistance at all stages of judicial proceedings?

Do courts deliver judgements against children in conflict with the law without delay and with the involvement of their parents and legal representatives?

Are children free from coercive self-incrimination, and do they have access to friendly interviews?

Do children have an opportunity to exercise their right to appeal?

Do all parties respect the right to privacy at all stages of proceedings involving children in conflict with the law?

Is there a data collection system developed at the central level regarding children in conflict with the law? Do you prepare reports on your findings? Where do you submit your reports to?

CONSENT FORMS

Consent forms for adult respondents

Mr. / Ms. Full name:

Location:

Is invited to participate in the “Justice for Children” research conducted in partnership with the COUNCIL OF EUROPE. This research intends to assess the effectiveness of the juvenile justice system and its impact on the protection of children in conflict with the law. The research team includes:

The participant is invited to take part in an interview lasting up to 1 hour and 30 minutes There is no financial compensation for participation in the research.

The participant has confirmed that he/she freely agrees to participate in this research. He/she may decide to withdraw from the research at any time without any explanation. He/she has the right to refrain from answering certain questions without explanation. It will have no harmful consequences.

The participant authorises the research team to take written notes during the interview.

The research team ensures that the participant’s name or position will not appear in the report unless the respondent is a public official who wishes to give his/her title and position and if it is deemed meaningful for the research.

This data will not be used otherwise than is described herein.

This form shall be signed by the participant. A copy shall be provided at the request of the participant.

Date:

Signature of the participant:

Signatures of research team members:

Consent forms for children

Full name:

Location:

You are invited to participate in the research intended to assess the effectiveness of the juvenile justice system and its impact on the protection of children in conflict with the law. By taking part in the programme, you are helping to improve attitudes towards children in juvenile facilities.

The research team includes:

You are invited to take part in an interview, which will take no more than 30 minutes. There is no financial compensation for participation in the research.

You confirm your consent to participate freely in this research by signing this document. You may refuse to answer any question without giving a reason. You can also choose not to answer some questions if you do not want to. It will have no consequences.

The research team will take notes during the interview to ensure that they do not forget what you have said.

Our team will make sure that your name is not reflected in the report.

The notes we will make will not be used differently from what is described here.

Please, sign the form. You can get a copy if you wish.

Date:

Signature of the participant:

Signature of the guardian or responsible person of the facility:

Signatures of research team members:

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30. Law of Ukraine “On Free Legal Aid”.
31. Law of Ukraine “On Social Work with Families, Children and Youth”.
32. Law of Ukraine “On the Protection of Childhood”.
- 33.** Law of Ukraine “On Bodies and Offices of Children’s Affairs and Special Institutions for Children”;

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