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European Union – Council of Europe Joint Project on

**IMPROVING THE JUVENILE JUSTICE SYSTEM AND STRENGTHENING THE
EDUCATION AND TRAINING OF PENITENTIARY STAFF IN SLOVENIA
(Component I)**

Comparative Study of European standards and promising practices (Output 3)

Version no 4., 16 March 2023

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- For Germany: Mr. Michael Gebauer Ministerialrat, Head of Division, Division II A 5 - Juvenile Criminal Law - Victim Offender Mediation Federal Ministry of Justice; Ms. Theresia Höynck, Universität Kassel, and Jochen Goerdeler, Penitentiary Department, German Federal Ministry of Justice; Ms. Rita Richter Nunes, Lecturer at the Hochschule RheinMain in the main areas of children's rights, childhood studies, child protection and participatory research, who was involved in the preparation of the roundtable in December 2022 with the Slovenian stakeholders.
- For the Netherlands: Ms. Astrid Veen, Coordinating Policy Officer, Mr. Pedro Nobbe and Ms. Ellen Schermer Voest, Senior policy officers, at the Youth Crime team, Ministry of Security and Justice, Department of Youth, Family and Responses to Crime; Ms. Eva Huls, Dutch substitute children's judge of the first instance courts in Amsterdam and Rotterdam and in-house attorney for Defence for Children International - Netherlands, who was involved and shared her expertise with the Slovenian stakeholders on the occasion of the roundtable in December 2022.
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They provided all the needed information to draft this Study and to draw actionable recommendations.

Acronyms

CPC	Criminal Procedure Code
CoE	Council of Europe
CRC	Convention on the Rights of the Child
EU	European Union
IA	Individual Assessment
LIJ	National Instrument for Youth Criminal Justice
LVU	Care of Young People Act
MACR	Minimum Age of Criminal Responsibility
MoJ	Ministry of Justice
NIFP	Institute for Forensic Psychiatry and Psychology
RJ	Restorative Justice
SID	Slachtoffer in Beeld
UN	United Nations

Executive summary

This Comparative Study of European standards and promising practices (Output 3) prepared in the framework of the European Union/Council of Europe Joint Project “Improving the juvenile justice system and strengthening the education and training of penitentiary staff” in Slovenia (Component I), analyses how other European countries’ experiences can inspire the ongoing Slovenian juvenile justice reform. In particular, this Study looks at legal provisions and their practical implementation primarily from Germany, the Netherlands and Sweden – but also from other European countries – that can assist to bridge the gaps in the national juvenile justice system, being relevant for the Slovenian context and applicable according to its existing legal and policy framework.

It is important to emphasise, however, that the practices described and analysed in this study are not necessarily considered better than the ones already existing in Slovenia. They serve to show a variety of existing models for Slovenian stakeholders to reflect upon and assess in light of their own legal system. Some examples may also show that the Slovenian juvenile justice system reform is on the right path. This Study aims in fact to put forward a discussion on a variety of practices that can be informative to the Slovenian stakeholders, but only recommends practices that are in line with international standards.

In the first part, the Study focuses on the specialisation of the juvenile justice system, and through promising practices from Germany, the Netherlands, Austria, Kazakhstan, Croatia and Montenegro shows that the more a juvenile justice system is specialised, with highly trained professionals, the more the system will be child-friendly and child-centred. Establishing a specialisation at prosecution and court has proven a promising practice that promotes child-friendly administration of justice in Germany, the Netherlands, Austria and Montenegro. The social services in Sweden, where there is no specialised juvenile justice system, have emerged as predominately responsible in dealing with children alleged as, accused of or recognised as having infringed the criminal law, and, accordingly, are highly specialised. The experience from Germany, the Netherlands and Italy, that all have specialised social services, also shows positive results, as well as the specialisation of restorative justice and diversion implementing institutions/professionals in the Netherlands, Germany, Montenegro and Sweden.

In the second part of the study, the research focuses on individual assessment protocols and tools, and on measures and sanctions for children – in particular children with mental health, development, emotional and behavioural issues – including diversion and restorative justice practices. Promising, robust and multidisciplinary individual assessment tools and protocols are presented from the Netherlands, where they are adapted to the different circumstances of the case and the characteristics of children, including the most complex cases. In terms of responses that the juvenile justice system can provide to children with mental health, emotional and behavioural issues who have committed serious and violent crimes, the “special living groups/units” within juvenile facilities in the Netherlands, and the “special/secure homes” providing compulsory care measures in Sweden offer two examples of potential solutions to be tested and adapted in Slovenia. These two examples are relevant as they offer, in both cases, a highly specialised response to very complex cases, at the same time addressing the issue of security through closed

institutions/units separated from the mainstream population of juveniles. The key elements to take into account in a potential application of such measures in Slovenia are, among others, the presence of highly specialised and multidisciplinary staff in these units/institutions; the offer of tailored and multidimensional rehabilitation programmes; a clearly defined duration and the continuous monitoring, to make deprivation of liberty the last resort and for the shortest period of time as per international standards. Furthermore, the Health Systems should be provided with additional resources and be supported to respond to the demand increasingly coming from the overall population and particularly the justice system (as across Europe). Overall, multi-agency cooperation is fundamental in ensuring that the most “complex” cases do not end up in the juvenile justice system, and when they do, in ensuring that the juvenile justice system responds with programmes and treatments that are tailored to the needs of each child, and that include a variety of components to be able to address that complexity.

Introduction

About the project

The European Union/Council of Europe Joint Project “Improving the juvenile justice system and strengthening the education and training of penitentiary staff in Slovenia” aims to support the Slovenian authorities in the reform of the juvenile justice (JJ) system. The key outcome of the reform process is expected to be improvement in the juvenile criminal justice system through new legislation and policies that are in line with European standards and good practices.

The project’s objective is achieved through four streams of activities, strongly interconnected:

- Research and gap analysis report (Output 1): a thorough analysis of the current state of play of the juvenile justice system, to identify the main gaps of the proposed juvenile justice legislation (ZOMSKD) to respond to current challenges, which primarily concern the issue of sanctions and the situation of children with mental health, development, emotional and behavioural issues.
- Analysis report of the juvenile justice case-law (Output 2): a separate in-depth analysis of 300 juvenile criminal justice cases has been conducted, with a focus on juvenile offenders, to provide further information about the obstacles in criminal procedures against children, the adequacy of imposed criminal sanctions, the efficiency of the execution of criminal sanctions and juvenile recidivism.
- **Comparative Study of European standards and promising practices (Output 3):** after the above-mentioned analysis of gaps and possible solutions at national level and based on the findings of the Research and Gap Analysis, a comparative analysis of provisions and practices across European countries is presented here, to analyse how legal provisions and their practical implementation on the matter of juvenile justice in other contexts may be of relevance to Slovenia. The Comparative Study looks at experiences from other legal systems and concentrates on the main areas of interest identified during the gap analysis that will be presented later in the report. The methodology of the Comparative Study draws extensively from the results obtained from output 1 - emphasising interconnections and taking the notion of juvenile justice from an international perspective further.
- Recommendations and a roadmap for their implementation (Output 4): the findings and recommendations arising from the above-mentioned Outputs will converge into targeted recommendations for solutions at normative, policy and operational levels. These recommendations will be practice-oriented, specific to the Slovenian national context, and will provide concrete propositions on how to tackle the main current gaps.

About the Comparative Study

The **overall objective** of the Comparative Study of European Standards and Promising Practices (Output 3) is to provide actionable recommendations for the improvement of the Slovenian juvenile justice system by drawing from the gaps of legislation and practice identified in outputs 1 and 2 and providing information on how other actors at European level have addressed these and similar issues through promising

practices, in line with international standards. The recommendations resulting from this Study, along with those deriving from the other project's outputs, will converge into recommendations for provisions to support the improvement of the first proposal for the "Liability of Minors for Criminal Offences Act" and the "Act Amending the Criminal Procedure Act" to provide solutions at the normative level but also concerning necessary reforms at the policy and operational levels.

The promising practices included in this Study – in terms both of legal provisions and of their practical implementation – shall inspire the national policy makers in the process of reform. Through practices coming from other contexts, it will be possible to propose practice-based and practice-oriented recommendations to the Slovenian legislator and policy makers on how to tackle issues concerning the priority areas identified by the national research.

The **specific objectives** of the Comparative Study can thus be identified as follows:

- To present promising practices – in terms of legal provisions and their implementation – from European countries which may be relevant to the Slovenian national context, for each of the three areas identified by the National Research and Gap Analysis;
- To provide Slovenian policy makers and practitioners with practical examples of solutions to some of the challenges on the path towards a more child-centred justice system, and to build the capacity of professionals on key issues;
- To draw up practice-based and practice-oriented recommendations as a response to the gaps identified in the national research, the case study analysis and which emerged from the comparative analysis of promising practices.

The Comparative Study, building on the priority areas identified, and underpinned by the desk research and expertise of the international experts drafting the present report, is going to be functional to the core of the project: it will in fact serve not only to make comprehensive and concrete recommendations for the legislator and policy makers, but also to provide an overview of what should be considered at the focus of capacity building activities for practitioners and professionals working in the field in Slovenia.

The information provided in the Comparative Study will also help identify:

- The topic/s for a half a day seminar that will be conducted by international experts with Slovenian professionals;
- The main practice or country of interest – based on comparability elements and on the promising aspects reported – for potential further investigation by the Slovenian stakeholders.

Methodology

Scope of the study

The thematic scope of the Comparative Study has been defined based on the findings of the gap analysis, and on consultations with Slovenian stakeholders and the Council of Europe.

The two **thematic priority areas** are the following:

- 1) Specialisation of the criminal justice system on children's rights matters
- 2) Measures and sanctions for juvenile offenders, with strong focus on measures for children with mental health, mental development, emotional and/or behavioural problems: this area includes individual assessment practices (as the necessary gateway to identify the appropriate sanctions/measures), diversion practices, restorative justice practices and specific sanctions and responses for children with mental health, mental development, emotional and/or behavioural problems.

Each of the thematic areas will include specific focus on the group of children mental health, development, emotional and behavioural issues.

Each of the priority areas thereby identified unfolds in **research questions** that **the study will aim to answer to through**:

- a) Definitions based on European and International legal standards
- b) Promising practices from a selection of countries

Each of the thematic areas will be introduced, in the report, by the respective provisions in the main European and International legal standards, with emphasis on the European Rules for juvenile offenders subject to sanctions or measures (2008). A comprehensive overview of the legal framework at European and International level is included and is listed in the references at the end of the report.

While the above thematic areas will be covered in the Comparative Study with dedicated sections, another theme has been identified as **transversal**, given its relevance under each of the thematic areas identified above, which means that under each of these areas prominent attention and space will be given to European provisions and practices that include:

- **Multi-sectorial cooperation**: a multi-agency and multi-disciplinary approach is of key importance in order to ensure a child-centred justice at all stages. As the Council of Europe Strategy for the Rights of the Child (2022-2027) reads: *"The complex challenges met by children and by those protecting their rights require a systemic and structural response"*.

Methods and tools

The methodology for the Comparative Study of European standards and promising practices includes mixed qualitative methods of data collection and analysis: desk research and review of the existing literature and of the European and international legal standards, a questionnaire, and interviews in the target countries chosen for the in-depth analysis.

Definitions of key concepts

The first step in this Study is to provide solid definitions of the key terms and concepts that are going to be at the core of the study itself, grounded on European and International legal standards. Although preliminary definitions and common understanding of these core concepts are already available and in use, it is important that they are corroborated and agreed upon, in order to ensure consensus among professionals and avoid the spread of potential misconceptions. With this in mind, at the beginning of the presentation of each priority area, the core concepts will be presented and defined with the support of the relevant legal framework.

Here below is a list of the key concepts that will be used throughout the study:

TERM	DEFINITION
Child	Human beings under the age of 18 years, in accordance with article 1 of the Convention on the Rights of the Child.
Child-sensitive	That takes into consideration the child's right to protection and individual needs and views in accordance with the age and maturity of the child.
Children accused of an offence	Children who have been charged with a criminal offence but have not yet been tried before a court.
Children alleged as having committed an offence	Children who are under investigation on suspicion of having committed a criminal offence.
Children in conflict with the law	Children who are recognised as having infringed the penal law.
Children with mental health, mental development, emotional and/or behavioural problems	In the framework of the present project, this term has been found to correspond best to the way Slovenia addresses what would be referred to by the WHO as "mental disorders or mental health conditions". ¹ While definitions from WHO and the International Classification of Diseases 11th revision (ICD-11) were taken into consideration and serve as the basis for this definition, the term used in this Study is deliberately expanded to be inclusive also of those children who do not fully fit ICD-11 diagnostic criteria or have

¹ Definition of mental health conditions or mental disorders from the World Health Organisation (WHO), see at <https://www.who.int/news-room/fact-sheets/detail/mental-disorders>.

	never received/would never receive a formal diagnosis, but still require an individualised approach due to their emotional or behavioural state at a given point in time.
Diversion	Refers to the variety of practices and programmes that are used as alternatives to judicial proceedings, to allow children who commit offences to be directed away from the juvenile justice system. It can be applied from the initial point of contact with the police up until disposition in the juvenile courts.
Deprivation of liberty	Means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority (United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 11 (b)).
Child / Juvenile Justice System	A specialised system of laws, policies, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognised as, having infringed penal law. ²
Juvenile	A child who may be dealt with for an offence in a manner which is different from an adult. ³
Minimum Age of Criminal Responsibility (MACR)	The minimum age below which the law determines that children do not have the capacity to infringe the criminal law. ⁴
Non-custodial measures	The term refers to sanctions and measures provided in response to juvenile offending, and which not include detention. Examples of non-custodial measures – also called “alternative measures” – include care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes. ⁵
Pre-trial detention	Detention from the moment of the arrest to the stage of the sentence, including detention throughout the trial.
Promising practice	A promising/good practice is any intervention, service, protocol, programme that includes qualitative or quantitative assessments of successful or potentially successful outcome. An outcome to be considered “successful” must be fully compliant with international standards on children’s rights.
Rehabilitation	Refers to medical and psychological care and required legal and social services to be provided to children in order to recover from physical and psychological harm. According to the Convention on the Rights of the Child (article 39), such recovery services should be

² This approach is recognised in article 40 of the CRC, the core justice for children provision.

³ Juvenile Justice System Act 2018.

⁴ General Comment 24 (2019) on children’s rights in the child justice system.

⁵ Article 40(4) United Nations Convention on the Rights of the Child (UNCRC).

	provided to child victims of neglect, exploitation and abuse. According to the Committee on the Rights of the Child, General Comment 24 (2019), rehabilitation and reintegration should be the primary aims of the child justice system. Examples of rehabilitation include educational and vocational programs, treatment centre placement, and counselling.
Reintegration	Refers to the safe process through which a child transitions back into the community, achieves physical and psychological recovery and acquires attitudes and behaviours conducive to him or her assuming a constructive role in society. Such reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.
Restorative justice	Any process in which the victim, the offender and/or any other individual or community member affected by a crime actively participates together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative process include mediation, conferencing, conciliation and sentencing circles. ⁶
Sanctions and measures	This term is to be preferred to both the terms ' <i>penalty</i> ' and ' <i>punishment</i> ' because of its more neutral nature, which can be seen as embracing the main aim of juvenile justice which is to rehabilitate the child through measures and sanctions, rather than to punish them. Depending on the context, other terms may be used, but the two above-mentioned terms should be avoided.
Specialisation	It refers to a part of the justice system that is equipped to address children's needs and adopt adequate measures to rehabilitate and reintegrate them into society. A specialised system can consist of children's courts that are separate from the general organisation of the judiciary as a whole or specialist courts or chambers that are part of the general judicial system. In most European countries, the jurisdiction of specialist courts or chambers will often differ from that of general courts; The most widespread means of achieving specialisation is by the creation of specialist chambers or departments. This can be achieved often by means of internal court rules." ⁷

⁶ UN Basic principles on the use of restorative justice programmes in criminal matters, 2002, para. 2: <https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-use-of-restorative-justice-programmes-in-criminal-matters/>.

⁷ Opinion (2012) no. 15 of the Consultative Council of European judges on the specialisation of Judges, adopted at the 13th plenary meeting of the CCJE (Paris, 5-6 November 2012).

Review of legal framework and desk research

The Comparative Study is carried out mostly through the review of the main European and International legal standards on the matter of juvenile justice, with specific focus on the thematic areas mentioned earlier, and desk research of provisions and practices existing at European level that cover the scope.

Questionnaire in all Council of Europe member states

A brief questionnaire was sent to all 46 member States of the Council of Europe, with the objective to collect an overview of promising practices from across Europe in the thematic areas of interest for the Comparative Study.

Selection of promising practices across Europe

The selection of promising practices presented in the Comparative Study followed a twofold strategy:

- All Council of Europe countries were included in the collection of promising practices, through the abovementioned questionnaire and desk review.
- Based on the above, a selection of three countries – Germany, the Netherlands and Sweden – to be analysed more in-depth was made, following the criteria below:
 - a. The comparability with Slovenia in terms of legal systems and legal tradition;
 - b. The existence of very well-established and consolidated good practices at systemic level – in terms of overall specialisation and organisation of the juvenile justice systems – and at operational level – in terms of practices and methods in place;
 - c. The existence of promising practices particularly in terms of specialised responses to treat juveniles with mental health conditions

Beyond the in-depth focus on the three selected countries, the scope of the Comparative Study remains broader and includes snapshots from across the Council of Europe member States. These present practical examples of promising practices in the thematic areas from other contexts that may be of interest and inspiration for the Slovenian policy makers and practitioners.

Interviews of experts in the target countries

Three interviews were carried out with experts in the target countries to gather more in-depth information on specific promising practices identified through the questionnaire and the desk research. Specifically, one online interview has been conducted per each country:

- For Germany, the online interview was conducted with Dr. Michael Gebauer Ministerialrat, Head of Division, Division II A 5 - Juvenile Criminal Law - Victim Offender Mediation

Federal Ministry of Justice; Prof. Dr. Theresia Höynck, Universität Kassel, and Jochen Goerdeler, Penitentiary Department, German Federal Ministry of Justice. In addition, Rita Richter Nunes – Lecturer at the Hochschule RheinMain in the main areas of children's rights, childhood studies, child protection, participatory research – was involved and participated in the preparation of the roundtable in December 2022 with the Slovenian stakeholders.

- For the Netherlands, the online interview was conducted with Astrid Veen, Coordinating Policy Officer, Pedro Nobbe and Ellen Schermer Voest, Senior policy officers, at the Youth Crime team, Ministry of Security and Justice, Department of Youth, Family and Responses to Crime. In addition, Eva Huls, Dutch substitute children's judge of the first instance courts in Amsterdam and Rotterdam and in-house attorney for Defence for Children International - Netherlands, was involved and shared her expertise with the Slovenian stakeholders on the occasion of the roundtable in December 2022.
- For Sweden, the online interview was conducted with Axelina Hedenskog, Desk officer at the Division for social services at the Ministry of Health and Social Affairs, and Catrine Kaunitz, Senior Expert for the Swedish National board of Institutional Care.

Limitations

The main limitation of this study is the variety of contexts, provisions and practices that makes every country and system very different from another one and make comparisons often inappropriate. This Study does not, as a matter of fact, propose a substantive comparison between countries, but aims mostly to describe how specific, selected systems work and how the promising practices observed in such systems can find an application in Slovenia and provide Slovenian stakeholders with lessons learnt.

The language, English, is also an obstacle as long as to profoundly understand the implementation of practices on the ground it would be necessary to access operational documents that are instead not accessible to the researchers because of language barriers. This barrier is overcome thanks to the interviews, conducted in English, with national experts, and to the questionnaire disseminated by the Council of Europe. Despite the limited resources available and the timeframe, the Study offers a rich collection of examples of provisions, practices, approaches and protocols that are in place or have been experimented across Europe with positive outcomes. It hopefully provides the Slovenian stakeholders with relevant discussion points and recommendations, as well as a glimpse on some particularly interesting and applicable solutions coming from other countries that could then be further explored and researched.

The Comparative Study: provisions and practices from across Europe

Section 1: Specialisation of the criminal justice system on children's rights matters

1.1 Key International Standards

For children to be treated in a child-friendly and child-sensitive manner, all professionals should be adequately trained to understand children's needs. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime require that all professionals working with child victims receive comprehensive training that addresses all aspects of working with child victims, from initial identification and crisis intervention skills to techniques for questioning child victims.⁸ The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, which address an even wider target group, also require specialisation of all professionals working with children, including in civil and administrative proceedings.⁹ The Committee on the Rights of the Child regularly examines the matter of specialisation of professionals in its periodical review of States parties' reports. In its General Comment No. 24 (2019) on children's rights in the child justice system, the Committee on the Rights of the Child emphasises that continuous and systematic training of professionals is crucial to uphold those guarantees and that a comprehensive system requires the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office, as well as specialised defenders or other representatives who provide legal or other appropriate assistance to the child.¹⁰

The European Rules for juvenile offenders subject to sanctions or measures states that all staff working with juveniles perform an important public service (Rule 18). 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.¹¹

⁸ Resolution adopted by the United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, 22 July 2005, paras. 41–42.

⁹ CoE, The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

¹⁰ UN CRC General comment No. 24 (2019) on children's rights in the child justice system

¹¹ 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 (Adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies)

1.2 Synthesis of gaps in the Slovenian system

Slovenia does not currently have a specific juvenile justice act . Juvenile justice matters are regulated by the Criminal Code and the Criminal Procedure Act. However, the adoption of a special criminal act regarding juvenile offenders has been underway since 2008.

There are currently no specialised criminal courts for children alleged as, accused of or recognised as having infringed the law in Slovenia. A specialised juvenile department at court in Ljubljana existed until approximately 10 years ago but it was then abolished. A certain level of specialisation of the legal system in juvenile justice matters is however provided through courts' internal distribution of work, which sees juvenile justice case files assigned to specific judges who have received some training on the subject and have experience in young people's education.¹² Importantly, it is observed that such judges are assigned juvenile justice cases in addition to their regular workload, mainly constituted by cases involving adults.¹³ However, there is no formal or organisational specialisation of judges and courts provided by law.

The National Research and Gap Analysis prepared in the framework of this project, showed that the absence of an official and regulated specialised court system in juvenile justice matters has caused difficulties in practice. For example, judges are not necessarily aware of children's needs and special rights, and they do not have enough time to devote to juvenile justice cases due to their competence in adults' cases too. As a consequence, judges' capacity to fully understand the situation of the child, identify the most appropriate measures and monitor the implementation and adequacy of such measures over time is limited.

At the prosecutorial level, the Slovenian system does not foresee the existence of specialised juvenile departments, but, de facto, there are some prosecutors that are specialised in juvenile justice. In District State Prosecutor's Offices, the existence of specialised departments varies from office to office, but as a general rule they are more common in bigger offices.

Specialisation of social workers in children's rights is neither established by law, nor are there internal rules on specialisation. There are four-days special trainings, performed by the Judicial Training Centre, which are always attended at least by two social workers, although they are not specifically designed for social workers. The National Research and Gap Analysis supported by the CoE showed the need to prescribe a legal obligation for social workers to specialise or to gain additional knowledge in juvenile justice, especially in light of their significant role in identifying the most suitable sanction, or diversion measure for each child given his/her particular personal circumstances (report, opinions, supervision...etc).

The National Research and Gap Analysis also states that the general perception of legal practitioners is that a specialised training of lawyers cannot be made mandatory by law as a necessary requirement for

¹² Ibid.

¹³ Filipčič, Plesničar 2017: 402.

those representing children, because such an obligation would interfere with one's freedom to choose their own attorney.

Mediation in juvenile justice cases has been in use since 2000. However, the number of cases that prosecutors refer to mediation progressively declined until 2014, when the numbers hit the lowest record. Since then, this kind of referrals have started to slowly increase again but it is still not often used, despite evidence of its successful employment in the past years. The substantive shortage of mediators specialised in juvenile justice was also identified by the Gap Analysis on the Juvenile Justice System in Slovenia supported by the CoE as the main reason for the scarce use of mediation.

1.3. Description of the specialisation of the Juvenile Justice system in the Netherlands

1.3.1. Legal framework and definitions of key terms and concepts

A separate juvenile justice system (known as *Kinderwetten* or 'child laws')¹⁴ is in place with sanctions and criminal proceedings intended to have a primarily educative or rehabilitative effect and a distinctive, child-friendly character.¹⁵ The Netherlands has a flexible model, which allows for sanctions from the adult Criminal Code to be applied to juvenile defendants aged 16 or 17, on the basis of either the seriousness of the offence, the personality of the defendant, or the circumstances under which the offence has been committed.¹⁶ Special provisions relating to the treatment of juveniles under criminal law have been inserted into the Dutch Criminal Code and the Code of Criminal Procedure.¹⁷ These provisions replace in part the regulations for adults.¹⁸

In 1995, the Netherlands passed new amendments of the Juvenile Criminal Law, which reinforced the legal basis for alternative sanctions that had operated until then and also increased the maximum period of imprisonment for juveniles recognised as having infringed criminal law from one to two years.

At this moment, substantive law governing juvenile crime must be applied in cases where a juvenile is between 12-18 years old at the time when the crime was committed.¹⁹ The Minimum Age of Criminal Responsibility (MACR) is 12.²⁰

Juvenile Criminal Law may also be applied to adolescents aged between 18 and 21 — if the personality of the offender, or the circumstances surrounding the case make this necessary — even though Dutch law

¹⁴ Children and the Law in the Netherlands: A Comparative Introduction, 2017, p. 65.

¹⁵ Ibid.

¹⁶ Criminal Code, 2012, Art. 77.b.i

¹⁷ Criminal Procedure Code, Wetboek van Strafvordering, Sv, The relevant articles of law are 77a-77g Sr and 486-509e Sr.

¹⁸ International Institute of Restorative practices found on: <https://www.iirp.edu/news/restorative-aspects-in-the-dutch-juvenile-justice-system> (visited on 19.12.2022).

¹⁹ Also see The new Dutch law and policy on young adult offenders Jolande uit Beijerse Associate Professor, Department of Criminal Law, Erasmus School of Law, the Netherlands, see also Article 77a Sr.

²⁰ Article 486 Sv.

does not formally recognise this notion.²¹ This can happen if the person displays signs of mental development issues or has committed petty crimes typical of adolescents.

1.3.2. Specialisation of the institutions

Specialisation of Social Services

The Child Protection Board. The Child Protection Board (a division of the Ministry of Security and Justice) takes care of children at risk and children alleged as, accused or recognised as having infringed the criminal law (the Board assesses the situation of these children and gives advice about appropriate sanctions/or measures).²² The Board's function is specified in the Civil Code of the Netherlands and is composed of social workers (child welfare investigators).²³ With respect to children alleged as, accused or recognised as having infringed the criminal law, the Board's tasks are:

- *Protection*

The Board works to prevent children coming into contact with the law, by working with families of children identified as being at risk, as well as it addresses situations of children who are alleged as, accused or recognised as having infringed the criminal law, in terms of their further protection.

- *Sanctions*

When a child has infringed the criminal law and an official police report has been drawn up, or when a child has been taken into police custody, the police inform the Board. The Board subsequently conducts an investigation in order to inform the public prosecutor and the court about the child and their family's situation. The Board also gives the public prosecutor and the court pedagogic advice about a possible sanction and or measure and assistance in line with the offence and a representative of the Board is also present at the time of the court proceedings. Furthermore, the Board monitors the child throughout the implementation of the sanction and ensures that all activities of the Board, the child's rehabilitation service and the public prosecutor are harmonised. The Board cooperates directly with the police, courts, municipal authorities, certified institutions and the Domestic Violence and Child Abuse Counselling and Reporting Centre.

Specialisation of the Police

The police have a special department in charge of juvenile cases with specialised police officers who investigate the relevant cases in cooperation with representatives of the Juvenile prosecutor's office and with representatives from the Child Protection Board and the Youth Probation Service.²⁴

The specialised police officers have the following powers relating to juveniles:

- Preventing illegal behaviour

²¹ Article 77c Sr.

²² Ibid.

²³ About the Child Care and Protection Board, Every child has the right to protection, Ministry of Security and Justice, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=34380>

²⁴ Diversion in the Netherlands: Bureau Halt (From the Future of the Juvenile Justice System, P 323-331, 1991, Josine Junger-Tas and Leonieke Boendermaker, et al., eds. -- See NCJ-133019)

- Taking repressive measures
- Helping child victims of crime, searching for missing children and caring for abandoned children.

Focus box 1. Snapshot of Specialisation of the police in Ukraine

Through an order of the Ministry of Internal Affairs "On Approval of the Instruction on the Organization of Work at Juvenile Prevention Units of the National Police of Ukraine", the tasks of the specialised police departments are regulated as such:²⁵

- *preventive work aimed at preventing children from committing criminal and administrative offences, identifying the causes and conditions that contribute to this, and taking measures within their sphere of competence to eliminate them;*
- *keeping prevention records of children prone to committing offences and conducting individual prevention measures with them;*
- *participation in establishing the whereabouts of a child in the event of his/her disappearance or obtaining data for this purpose within the framework of the criminal proceedings launched into the fact of his/her disappearance;*
- *taking measures to prevent and counteract domestic violence committed by and against children, as well as child abuse;*
- *taking measures to prevent child neglect, including by providing police care for minors;*
- *carrying out activities related to the protection of the child's right to comprehensive secondary education;*
- *interaction with other National Police units, government and local self-government bodies regarding protecting the rights and legitimate interests of children;*
- *carrying out pre-trial investigations of criminal misdemeanours, within their competence, in the form of inquiry.*

Specialisation of institutions offering diversion and restorative justice

Halt Bureaus. Halt Bureaus originated in 1981 and it is the institution in charge of diversion. For example, in case of minor theft, the police may direct the juvenile to the Halt Bureau.²⁶ The criteria for the Halt programmes are the following: the child is between 12 and 18 years of age; the offence committed is on the list of offences of Halt offices; the child admits to the crime committed; the child is a first time offender; and the child and parents agree to the referral to the Halt.²⁷ These bureaus are established in each municipality and each employee is responsible for working with a certain number of schools. When a Halt Bureau receives a case, it arranges a meeting with the parents and the child. The bureau informs the child of the offence and their rights and responsibilities, involving both parents in the discussion. If there is a victim involved in the case, the Bureau arranges a second meeting with the victims, as well as with the juvenile and the parents. The purpose of this meeting is to discuss the question of compensation and reparation. The Halt Bureau issues disciplinary measures that cannot be longer than 20 hours in total and finds a place for the juvenile to implement them.²⁸ The measures can be: apologising to the victim; paying

²⁵ Appendix 9. Order of the Ministry of Internal Affairs "On Approval of the Instruction on the Organisation of Work at Juvenile Prevention Units of the National Police of Ukraine" of December 19, 2017, No. 1044.

²⁶ Ibid.

²⁷ Article 77 CC of the Netherlands.

²⁸ The JJ System in the Netherlands, Boyko Boev, BG Helsinki, 2011.

for damage caused; learning skills; community service; and involvement of parents. Halt programmes are financed by the Ministry of Justice and Security, based on output. The educational programmes that are offered by the Halt are financed by the municipalities and or the provinces.²⁹

Specialisation of judicial actors

Judges that hear cases of juveniles are specialised in juvenile justice.³⁰ The Netherlands is divided into 11 judicial districts, each with its own court. Each court has a number of sub-district venues. The district court is made up of at least four sectors. These always include the administrative sector, civil sector, criminal sector and sub-district sector. Family and juvenile cases are often put into a separate sector.³¹

The **Prosecutor** plays a central role in cases involving juveniles in the Netherlands. Every prosecution office in the Netherlands has a designated juvenile prosecutor and a public prosecutor's clerk that deals only with juvenile cases.³² Both judges and prosecutors receive specialised training in juvenile justice implemented through training units located within the Ministry of Justice.³³

Focus box 2. Snapshot of the Specialisation of the Judiciary in Austria

*Special departments have been set up for juvenile criminal cases at both district and regional courts. The judges and prosecutors in charge of juvenile criminal matters are theoretically required by law to be pedagogically skilled and to have a certain expertise in psychology and social work. In-service training is available through the private association of juvenile judges. Since 1988, single (professional) judges have the same jurisdiction *ratione materiae* as in regular courts. As to lay participation, at least half of the lay persons sitting in a jury or on a mixed bench ("Geschworene", "Schöffen") have to work, or have worked, as teachers or in the field of youth welfare or other youth work; two of the eight jurors, and one of the two assessors, have to be of the same sex as the defendant.³⁴*

A Custodial Institutions Agency is tasked with implementation of detention and treatment of convicted juveniles as well with their rehabilitation. There are 5 forensic juvenile detention facilities (*Justitiële jeugdinrichtingen*) which are high security facilities for juvenile detainees (minimum age is 12, maximum age can be 27)³⁵ who need a higher level of care, treatment and/or security.

There are also 5 small-scale facilities for juveniles (*Kleinschalige Voorzieningen Justitiële Jeugd*), which are low-security facilities where juveniles can be placed in pre-trial detention, to serve a short detention sentence, or if they are in the final phase of forensic care. These facilities are closer to the social network of the juveniles, ensuring existing care and school or work can continue or start as much as possible during the stay.

²⁹ Halt in the Netherlands, Aiming to prevent and combat juvenile crime, Jaap de Ward, Ministry of Justice and Security, 2019.

³⁰ Ibid.

³¹ https://e-justice.europa.eu/16/EN/national_justice_systems?NETHERLANDS&member=1

³² Rap & Weijers, 2014, p. 116).

³³ Review of Judicial Training and Education in Other Jurisdictions Dr. Cheryl Thomas May 2006, also see <https://www.younginprison.org/en/yip-in-the-netherlands>

³⁴ Juvenile Court Act (Jugendgerichtsgesetz 1988 – JGG).

³⁵ Even though the range is very wide and it could not be considered as a good practice per se, it is included into the study for description purposes only.

Specialisation of defence attorneys

When a case is prepared for trial, a defence counsel is appointed to the child. The appointed lawyer must be specialised in juvenile justice cases by virtue of specific trainings on the topic. Nevertheless, the parents can hire their own defence counsel if they wish.³⁶ According to the Criminal Procedure Code, arrested minors can choose to:

1. Consult the lawyer of the standby duty arrangement (*piket centrale*) – which is added automatically by the Legal Aid Board; or
2. Call a lawyer of their own choice.³⁷

Focus box 3. Snapshot of Specialisation of the Defence Attorneys in Italy

According to Article 11 of Presidential Decree 448/1988, the lawyers appointed by the court to represent children in criminal proceedings shall be included in a specific list prepared by the bar association at each court. The requirements to be included in such list are the following:

- Having carried out the legal profession before the juvenile courts; or
- having attended advanced trainings for lawyers in relation to juvenile law and issues related to youth.³⁸

Specialisation of Service for probation and after care

Juvenile probation services are part of the ‘Youth Care’ (*Jeugdzorg*) organisations. In cases of parole, the Youth Probation Service is responsible for supervision of the juvenile and the conditions of the parole. The service gets to know the juvenile and his/her family and prepares reports about the observance of the set conditions and the social situation of the child. Young offenders’ institutions, the Child Protection Board (*Raad voor de Kinderbescherming*), the Youth Probation Service (*Jeugdreclassering*) and municipalities work together in network and process-related consultative bodies. They arrange shelter, income, education and/or work for young offenders upon release.³⁹

1.4. Description of the specialisation of the Juvenile Justice system in Germany

1.4.1. Legal framework and definitions of key terms and concepts

³⁶ LA CHILD 2017, https://www.lachild.eu/wp-content/uploads/2016/05/CountryOverview_Netherlands.pdf

³⁷ The role of the youth lawyer, in the juvenile justice system in the Netherlands, National report September 2016 - February 2017 Defense for Children International The Netherlands.

³⁸ National Reports LA Child, 2020, EU funded project.

³⁹ KEEPING YOUTH AWAY FROM CRIME: SEARCHING FOR BEST EUROPEAN PRACTICES, the Netherlands. National Report. Authors: Mathijs Euwema and Esther Miedema.

Relevant laws are the German Criminal Code dating back to 1851, the German Criminal Procedure Code dating back to 1879 and the German Juvenile Court Act from 1923. Major law reforms in 1953, 1990, and 2008 emphasised diversion, educational and restorative justice measures.⁴⁰

The MACR is 14. In situations of children aged 14 to 17 years of age who are alleged as, accused of or recognised as having infringed criminal law, the juvenile judge decides whether the Juvenile Court Act or the Criminal Code is applicable (sections 105 et seq. Juvenile Court Act).⁴¹ The criminal offence is to be determined according to the German Criminal Code and supplementary criminal statutes (section 1 German Juvenile Court Act) and only the legal consequences for juvenile offenders are different and governed by the German Juvenile Court Act.⁴²

By law, the primary purpose of any juvenile justice response in Germany is to prevent the young person from reoffending.⁴³ German juvenile justice is also grounded in a principle of “minimum intervention,” meaning that sanctions should only be imposed if absolutely necessary.⁴⁴ For petty offences, this means that diversion without any sanction (“non-intervention”) is typical. More serious offences, including some felonies, may be addressed through victim - offender reconciliation (mediation), educational measures provided by outside agencies, and/or minor sanctions by the court, such as a warning, community service (usually between 10 and 40 hours), reparation/restitution, an apology to the victim, or a fine.⁴⁵ Thus, sentencing has a focus on rehabilitation, prevention and education.⁴⁶

1.4.2. Specialisation of the institutions

Specialisation of Social Services

Germany has a system of private and state welfare, as well as of justice institutions in the field of juvenile crime prevention and of juvenile justice. The community youth welfare offices (*Jugendämter*) and the youth assistance in youth court proceedings (*Jugendgerichtshilfe*) have a double task:

- They fulfil purely welfare-oriented tasks (family aid, protection of children in need of care according)

⁴⁰ Youth Justice in Germany, Frieder Dünkel Subject: Criminology and Criminal Justice, Juvenile Justice and Juvenile Delinquency, International and Comparative Criminology, Online Publication Date: Jan 2016 DOI: 10.1093/oxfordhb/9780199935383.013.68

⁴¹ German Juvenile Court Act.

⁴² Ibid.

⁴³ Dünkel, F. (2016), Youth Justice in Germany, Oxford Handbook, 3, https://rsf.uni-greifswald.de/storages/uni-greifswald/fakultaet/rsf/lehrtstuehle/is-duenkel/Veroeffentlichungen/Duenkel_-_Youth_Justice_in_Germany_-_Oxford_Handbooks_Online.pdf.

⁴⁴ Ibid.

⁴⁵ AIR AND JUST PROSECUTION Promoting justice through leadership and innovation Lessons Learned from Germany: Promoting Developmentally Appropriate and Rehabilitative Youth and Young Adult Justice, <https://fairandjustprosecution.org/wp-content/uploads/2022/06/FJP-Germany-Youth-Justice-Brief.pdf>.

⁴⁶ Youth Justice in Germany, Frieder Dünkel Subject: Criminology and Criminal Justice, Juvenile Justice and Juvenile Delinquency, International and Comparative Criminology, Online Publication Date: Jan 2016 DOI: 10.1093/oxfordhb/9780199935383.013.68

- They support the juvenile prosecutor and court by delivering personal and family background information for the trial and they are partly responsible for the execution of educational measures (mediation, social training etc.)

Assistance for the juvenile courts is provided by the specialised juvenile welfare offices working in collaboration with the juvenile assistance associations (under the Book 8 of the Social Code, the government provides the basis for structural support of youth associations work and other areas of child and youth services. These associations are independent organisations, organised and implemented jointly by young people and social workers that implement projects in the area of child protection).⁴⁷ The representatives of the juvenile welfare office provide assistance with respect to social and other aspects that are significant with regard to the goals and tasks of juvenile welfare in proceedings before the juvenile courts. For this purpose, they shall support the competent authorities by investigating the personality, the development and the family, social and economic background of the juvenile, and shall make a statement with regard to any potential particular vulnerability, as well as to the measures that are to be taken.⁴⁸ According to the Social Code Book (SGB) VIII, when a child or young person comes to the attention of the police with an offence, the responsible youth welfare office (*Jugendamt*) is also informed as standard practice.⁴⁹ The first step is to check whether there is a need for educational input: this may be done by offering the parents counselling or advice. The youth services always take a pedagogical approach, not focusing solely on the offence but on the child or young person as a whole: their circumstances become the starting point for pedagogical action. The aim is to work with children, young people and parents and to deal with the root causes of the juveniles' criminal behaviour. This work is on a voluntary basis.⁵⁰

Specialisation of institutions offering diversion and restorative justice measures

Offender-Victim Mediation (*Täter-Opfer-Ausgleich*) is usually implemented upon the prosecution services' initiative through the juvenile court service, the juvenile protection services, or through a specialist independent organisation.⁵¹ One third of the independent organisations that implement mediation deal exclusively with juveniles and young adults.⁵²

Focus box 5. Snapshot of Specialisation of the Mediators in Macedonia

According to Article 78 from the Law on Justice for Children, only mediators who have at least five years of experience in working with children can lead victim-offender mediation. In practice, mediators that are usually appointed by

⁴⁷ Section 36a of the Social Code Book (SGB) VIII, Section 38, Youth Court Act.

⁴⁸ Bernd Holthusen/Sabrina Hoops ZJJ 1/2012 Crime prevention in childhood and youth – on the role, contribution and importance of child and youth services.

⁴⁹ Police Regulation (PDV) 382.

⁵⁰ Section 36a of the Social Code Book (SGB) VIII.

⁵¹ F Dunkel, *Täter-Opfer-Ausgleich: German Experiences with Mediation in a European Perspective*, European Journal on Criminal Policy and Research Volume: 4 Issue: 4 Dated: (1996) Pages: 44-66

⁵² Criminal Justice in Germany, Facts and Figures by Jörg-Martin Jehle Published by the Federal Ministry of Justice Fourth Edition 2005.

the juvenile prosecutor or the juvenile judge are professionals who also work within the child protection services and have passed the official exam for mediators.⁵³

Specialisation of judicial actors

The German juvenile justice system provides for specialised youth courts. These courts are positioned as chambers of the Local Courts or District Courts. The juvenile court has an assistance system composed of:

- youth welfare office and
- youth assistance as a special body in a supportive role/support service.⁵⁴

Juvenile court hearings take place *in camera* (section 48 German Juvenile Court Act) and cases against juveniles and young adult offenders are normally heard in the first instance by the juvenile court.⁵⁵

Focus box 6. Snapshot of Specialisation of the Judiciary in Croatia

Juvenile Courts Act⁵⁶

2. Organisation of Juvenile Courts

Article 36

(1) In municipal courts located where county courts have their seats, as well as in county courts themselves, juvenile divisions shall be established. Juvenile divisions shall be composed of juvenile panels (Article 57, Paragraphs 1 and 2) and juvenile judges (Article 57, Paragraph 6).

Article 37

Juvenile judges in municipal and county courts, as well as public prosecutors appearing before these courts (public prosecutors for juveniles) shall have strong inclinations towards upbringing, needs and benefits of the youth, and shall have basic knowledge of criminology, social pedagogy and social welfare for young persons.

Article 38

Juvenile judges in municipal and county courts shall be appointed for a term of office of five years from the ranks of the judges sitting in these courts by the President of the Supreme Court. Public prosecutors for juveniles shall be appointed for a term of office of five years from the ranks of public prosecutors and deputy public prosecutors in respective public prosecution services by the Public Prosecutor of the Republic of Croatia. After the expiry of five years a judge or a public prosecutor or a deputy public prosecutor may be re-appointed as a juvenile judge or a public prosecutor for juveniles, respectively.

The German juvenile justice system also provides for prosecutors specialised in juvenile justice.⁵⁷ Juvenile public prosecutors are assigned to proceedings falling within the jurisdiction of the juvenile courts. The law prescribes who can be appointed as a prosecutor in juvenile justice cases. For example, it states that judges on probation and civil servants on probation are not to be appointed as juvenile public prosecutors within the first year after their appointment. The law also establishes that juvenile justice case files may only be assigned to public prosecutors at local courts (*Amtsanwälte*). The performance of tasks incumbent

⁵³ Law on Justice for Children Article 78. Official Gazette of R. N. Macedonia 152/19 and 275/12).

⁵⁴ Section 38 German Juvenile Court Act

⁵⁵ Criminal Justice in Germany, Facts and Figures by Jörg-Martin Jehle Published by the Federal Ministry of Justice Fourth Edition 2005.

⁵⁶ JUVENILE COURTS ACT (Official Gazette no. 111/1997), amendments: Official Gazette no. 27/1998 Official Gazette no 12/2002.

⁵⁷ Section 36 and 37 Juvenile Court Act.

on juvenile public prosecutors may be assigned to trainee jurists under the supervision of a juvenile public prosecutor in individual cases. Trainee jurists may only perform representation in hearings in proceedings before the juvenile courts under the supervision and in the presence of a juvenile public prosecutor. The law further stipulates that Judges sitting in the juvenile courts, and juvenile public prosecutors handling matters involving juveniles, are to have appropriate education skills and training, as well as experience in the education and upbringing of juveniles. They are to have knowledge of criminology, education and social education, as well as youth psychology.⁵⁸

Focus box 7. Snapshot of Professional Support Services at Courts and Prosecutions in Montenegro

The institution of the Professional Support Services has been instituted by the Act on Treatment of Juveniles in Criminal proceedings (Official Gazette of Montenegro, No. No. 1/18 2018). Professional Support Services provide for a multidisciplinary system of providing support to judicial authorities in juvenile justice proceedings. The Professional Support Service consists of experts: social workers, psychologists and pedagogues. The services are organisationally divided and associated either with the Juvenile Public Prosecutor's Office or the Juvenile Courts, and accordingly, their competencies differ and appear at different stages of the criminal procedure.

The Professional Support Service's responsibilities and tasks regarding juveniles and children involved in criminal legal proceedings are:

- Tasks completed during preparatory procedure;
- Tasks connected to the implementation of criminal sanctions and,
- Tasks performed in connection to legal protection of children/juveniles.

Specialisation of defence attorneys

In Germany, lawyers who can represent children in criminal proceedings are specialised in juvenile justice but they do not have a special status by law. Hence, they are only partly recognised in an official manner.⁵⁹ While Germany does not have an official register for lawyers who are specialised to represent children in criminal proceedings, the local bar association recognises their status.⁶⁰ However, these lawyers are not recognised with their speciality⁶¹ in the national official lawyer index. A child can choose his/her own lawyer.⁶² This lawyer can be mentioned in the request for assignment (section 141 para. 1 StPO, see also under 3.1.) and shall be assigned in the mandatory defence regime.⁶³

Specialisation of Services for probation and after care

German probation services consist of social workers/social pedagogues who are working in penal institutions. Probation officers can deal with adults as well as with young offenders (aged from 14 up to

⁵⁸ Section 36 and 37 Juvenile Court Act.

⁵⁹ LA CHILD, LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW, National Report on Germany May - July 2020.

⁶⁰ Local bar association Frankfurt, website at <http://www.rechtsanwaltskammer-ffm.de/index.php?id=128>.

⁶¹ Federal law society, national official lawyer index, website at <http://www.rechtsanwaltsregister.org/>.

⁶² My Lawyer my Rights national Report 2017 p. 32, 36.

⁶³ MüKo/Thomas/Kämpfer, comment on the StPO, section 137 recital 39.

and including 20 years).⁶⁴ There are also special After-Care-Centres (*Nachsorgezentren*) which provide intensive social guidance for young offenders in their local community during the first months after their release to reduce the risks of recidivism.⁶⁵

1.5. Description of the specialisation of the Juvenile Justice system in Sweden

1.5.1. Legal framework and definitions of key terms and concepts

In Sweden, the judicial procedure in juvenile justice cases is governed by a Code of Judicial Procedure.⁶⁶ Where young persons are concerned, rules are also contained in the Young Offenders (Special Provisions) Act.⁶⁷ Under the Young Offenders (Special Provisions) Act, moreover, if a person under 18 is suspected on probable cause of a criminal offence, their legal guardian must be notified immediately, unless there are special reasons to the contrary. Under the same Act, if it is possible that a person under 18 may incur a sanction other than a fine, public defending counsel must be appointed for them.

Children under 15 years of age in conflict with the law may not be sentenced under the Criminal Code. When children under 15 years of age are alleged as, accused or recognised as having infringed the criminal law, the municipal social welfare committee is notified. Under the Swedish criminal justice, children who commit an offence for the first time are dealt within the social services. Imprisonment for a crime committed before the age of 18 is only possible in special cases, such as having committed previous offences, or the nature of the crime.⁶⁸ If a child is under the age of 18 and is found in conditions implying an imminent and serious danger to his/her health or development, he/she may be taken in charge by a police officer for prompt return to his/her parents/legal guardian or the municipal social welfare committee. There is no minimum age for care orders under the Social Services Act, the Compulsory Care of Young Persons (Special Measures) Act or the Compulsory Psychiatric Care Act.⁶⁹

There is a long-standing principle in the Swedish model whereby the courts are generally expected to refer offenders between 15 and 17 years of age to the social services system. This is one of the fundamental pillars of the Swedish youth justice model and it has remained intact despite recent legislative reforms.⁷⁰

⁶⁴ Criminal Justice in Germany, Facts and Figures by Jörg-Martin Jehle Published by the Federal Ministry of Justice Fourth Edition 2005.

⁶⁵ Examples of Increasing Professionalization of the Probation and Prison Services in Germany Alexandra Wälzholz-Junius Bewährungshelferin im Landgerichtsbezirk Saarbrücken.

⁶⁶ The Swedish Code of Judicial Procedure (1942:740). Published 15 June 2015. SFS 1942:740.

⁶⁷ Act on Special Provisions for Young Offenders (Lag med särskilda bestämmelser om unga lagöverträdare (SFS 1964:167)). On January 2, 2022, new sentencing rules in the Swedish Criminal Code (Brottsbalken [BrB] (SFS 1962:700)) entered into force, eliminating certain exceptions for criminal offenders aged 18 to 20.

⁶⁸ Criminal Code of Sweden, Section 30- Brottsbalk (1962:700).

⁶⁹ This practice should be viewed with caution, as putting legislation broadly as such creates a possibility for abuse of that legislation to the detriment of children.

⁷⁰ Proposition 1962:10; Proposition 1979/80:1; Proposition 1997/98:96.

The goal in both the Social Services Act from 1998⁷¹ and in the Compulsory Care Act of young persons from 2003⁷² is to provide protection, help and support for abused or neglected children as well as children with criminal behaviour and other social problems.⁷³

Young persons who infringe the criminal law can also be dealt with under the Criminal Code (CC), which includes more coercive measures for youth crime, such as custodial youth care, introduced in 1989. However, the local social services boards will still have the main responsibility for young persons that have infringed the law.⁷⁴

1.5.2. *Specialisation of the institutions*

Specialisation of Social Services

The legislation regulating the operation of social services imposes on the municipal social welfare committees a special responsibility for children and young persons and there are special rules for the protection of minors. The social services are specialised in working in the field of juvenile justice.⁷⁵ Children who have infringed the criminal law can be referred to these services for the issuance of treatment measures. Every municipality in Sweden (290 in total) has local social services that are responsible for ensuring that everyone gets the support and protection they need including children who are alleged as, accused or recognised as having infringed the criminal law.⁷⁶ The municipal social services' task is to provide various types of help and support to everyone in Sweden – for example, to children and families

The municipal social welfare committee is the body in charge, at local level, and it consists of social workers and local representatives of the political parties. They will decide, upon referral by the social services, whether it is necessary to get involved and which protection activities are needed to address the children's criminality and circumstances.⁷⁷

Prior to the reforms of 1999 and 2007, the courts generally had no control over what the social services did once a young person had been referred to them. Today, the social services have to present a concrete treatment plan to the court if they want to apply compulsory measures.⁷⁸ Social services also attend

⁷¹ Socialtjänstlag (2001:453).

⁷² Juvenile Crime and the Justice System in Sweden 26 Feb, 2017 GENERAL LAW 04, Anna Hollander and Michael Tärnfalk.

⁷³ Proposition 2000/01:80; Proposition 2002/03:53.

⁷⁴ Juvenile Crime and the Justice System in Sweden 26 Feb, 2017 GENERAL LAW 04, Anna Hollander and Michael Tärnfalk.

⁷⁵ Chapter 5 section 1 Social Services Act (2001:453).

⁷⁶ <https://www.informationsverige.se/en/om-sverige/att-forsorja-sig-och-utvecklas-i-sverige/social-service-i-din-vardag.html>.

⁷⁷ Information found on: <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/dokument-webb/ovrigt/information-compulsory-care-of-children-in-accordance-with-swedish-act-lvu-for-guardians.pdf>

⁷⁸ (Proposition 1997/98:96; SOU 2004:122) Frieder Dunkel, Joanna Grzywa, Philip Horsfield, Ineke Pruin (Eds.) in collaboration with Andrea Gensing, Michele Burman and David O'Mahony, Juvenile Justice Systems in Europe, Current Situation and Reform Developments Vol. 4 2nd revised edition 2011.

interviews and submit a report with their opinion to the prosecutor before a decision on prosecution is made. If the child is under the age of 15, it is the social services that decide whether such an investigation, resulting in the statement of an opinion, should be carried out.⁷⁹

Specialisation of institutions offering diversion and restorative justice measures

Social services play an important role in diversion measures.⁸⁰ All local social services can offer mediation if the offence was committed by someone under the age of 21.⁸¹ However, mediators are not required to have any specialised knowledge or training in work with juveniles.⁸²

Specialisation of judicial actors

There are no juvenile justice specialised courts nor judges who deal with juvenile justice cases in Sweden. However, there are specialised prosecutors in the public prosecutions service.⁸³ The prosecutors have no specific education in juvenile justice, but are requested to attend regular training courses in the field and should be interested in and appropriate for the task.⁸⁴

Specialisation of defence attorneys

According to section 26 in the Legal Aid Act,⁸⁵ there is no type of registration requirement for lawyers who want to represent children in criminal proceedings nor requirement for special training. A child benefitting from legal aid can choose his or her lawyer.⁸⁶

1.6. Analysis and applicability of the promising practices to the Slovenian context

“The juvenile legal system can be extremely complex, and young people deserve specialized professionals who recognize their potential for growth and change.”⁸⁷

A very practical issue that most countries face is how to manage children’s criminality, through drafting, revising or rethinking the juvenile justice system, including the court system and legislation. Hence,

⁷⁹ (chapter 14 section 1 Social Services Act

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Victim Offender Mediation in Sweden: An Activity Falling Apart?, Maritha Jacobsson, Lottie Wahlin & Eva Fromholz Chapter Open Access First Online: 04 April 2018.

⁸³ Law with specific rules concerning juveniles (1964:167).

⁸⁴ <https://rm.coe.int/answers-to-the-questionnaire-on-principles-of-public-prosecution-as-re/168071cb39>

⁸⁵ Act of legal aid (1996:1619).

⁸⁶ LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW National Report on Sweden May - July 2020.

⁸⁷ Fair and Just Prosecution, The Importance of Specialization in Juvenile Court, 2021, found on: <https://medium.com/fair-and-just-prosecution/the-importance-of-specialization-in-juvenile-court-5645edcad4ce>.

examining the experiences of different jurisdictions allows for the identification of common problems and themes and contributes to the identification of good practices . However, it is clear that there is no rule of thumb and not all good practices can be implemented in all countries, regardless of how similar their juvenile justice systems might be. Experience shows that concepts do not always translate well across national borders, but they do give rise to ideas, and offer concrete inspiring examples which could be tailored to the existing national legal frameworks.

Currently, Slovenia is going through a reform of its juvenile justice system, and one of the identified issues is the lack of specialisation in the juvenile justice system, both at the level of institutions and at the level of individual professionals - in the form of mandatory trainings.

1.6.a The legal acts regulating juvenile justice

Slovenia is currently revising a draft separate Juvenile Justice Act that will unify and harmonise the provisions applicable to juveniles that are now scattered among different legal texts, including the Criminal Code. This law is intended to be broad enough to cover substantial as well as procedural issues with respect to juvenile justice. A similar approach has been taken by Germany, where criminal law can by no means be applied to children alleged as, accused of or recognised as having infringed the criminal law, and juveniles can under no circumstances appear before the adult court. These children are always dealt with within the juvenile justice system and according to juvenile justice provisions. The law, in detail, prescribes measures and sanctions to be applied to these children, prescribes for specialised institutions that will administer juvenile justice and also deals with the specialisation of professionals that will work with children that are alleged as, accused of or recognised as having infringed the criminal law. The Dutch juvenile justice system is embodied into children's laws (provisions that target children alleged as, accused of or recognised as having infringed the criminal law embodied into the criminal legislation). These provisions replace in part the regulations for adults in the criminal procedure law. On the contrary, Sweden does not have a separate juvenile justice legislation nor system that refers to children alleged as, accused of or recognised as having infringed the criminal law but takes a very different approach towards treating such children, predominately through the social services system.

With respect to the legal tradition of Slovenia and the already existing functioning of the system, the German example would appear particularly relevant. In light of what has been presented in the previous sections, (parts of) the German juvenile justice model could be adapted to the Slovenian context through a simple law reform, without having to tear up the entire system as it looks now. The prerequisites for a model similar to the German one are already partially there, and the model also fits well with the professional climate in Slovenia (with professionals who wish to specialise in juvenile justice, with social work centres which could take on a role of supporting diversion measures and implementing sanctions, etc.).

Developing a model similar to the Swedish one in the Slovenian context appears more farfetched in terms of investment and time needed to reorganise the whole system, and thus less realistic. In line with recent developments in Slovenia (*i.e.* the Barnahus law and the draft ZOMSKD) coupled with the legal tradition

and professional climate in the country, a reform which focuses on developing a clearer role and specialisation of specific professional groups, namely judges, prosecutors and (a special branch of the) social services, and which sets forth clear legal provisions for how these professionals should operate, communicate and collaborate in an multidisciplinary and interagency manner, appears to be the best way forward.

It is recommended that in drafting of the new version of the act on Juvenile Justice (ZOMSKD), the promising practice of the German Youth Courts Act to be reviewed in more detail, hence to consider:

- Providing details both in terms of substantial and procedural law;
- Defining specialised institutions, and;
- Providing for roles and responsibilities of those institutions/professionals, including the cooperation between them, as a prerequisite to efficient and effective child-friendly justice.

1.6.b Specialisation of the Judiciary

Slovenian judges, in the absence of specialised juvenile departments, within existing courts, are overburdened with all types of criminal cases in addition to juvenile cases (although in some courts, certain judges hear juvenile cases and only certain type of adult offenders' cases, this is not a widespread practice) preventing them to devote the time and energy needed to such cases, especially with respect to the regular and substantive monitoring of progress of served sanctions. Prosecutors, similarly, are of the opinion that specialisation, in the form of department, mandatory trained, or career juvenile prosecutors are important to improve the protection of children alleged as, accused or recognised as having infringed the criminal law, upon entering the system. Both judges and prosecutors consider that such specialisation would address the concerns about justice professionals who are not sensitised enough to working with children: according to the project's Research and Gap Analysis, the Slovenian judges felt that because of the lacking knowledge of children's rights and of child psychology/development prevented them from balancing the different elements (including those that the social workers provide) and making a global assessment in line with the best interest of the child. Thus, they felt that the specialisation of judges in the field of juvenile justice is therefore vital.

In general, it is clear that a system primarily designed for adults cannot successfully accommodate children and provide for child-sensitive justice processes. As shown in the previous section, there are many promising practices from countries in Europe and wider, that have opted for specialisation of the juvenile justice system, as a whole, with the view of achieving better results in protection of children, as well as in reducing recidivism (the juvenile re-offending rate in Germany is about 30%, compared for example with US re-offending rates that reach about 75% and where specialised juvenile systems are not widespread practice).⁸⁸ Both Germany and the Netherlands offer a view to a highly specialised juvenile justice system

⁸⁸ Kids in Prison: Racial Disparities, Longer Sentences and a Better Way. <https://www.wnyc.org/story/being-kid-adult-prison-here-vs-other-countries/>

with a long tradition, ranging from specialised “children’s laws” to specialised juvenile institutions, and trained (specialised) professionals. This approach requires well-defined institutions with mandates and responsibilities clearly set forth in legislation as well as the regulation of specialisation of their professionals. It is an approach aiming for excellent and regulated multi-sectoral coordination and cooperation.

The German juvenile court act provides for special juvenile departments within the local and district courts, as well as juvenile prosecutors who are also trained for working with children. The Netherlands has special sections within the courts that hear only family and juvenile cases, as well as special departments, within the prosecutions for working with juvenile justice cases. Both countries, have also provided for specialised support services, in the courts in Germany and in the prosecutions in the Netherlands - whose role it is to assist the legal professional, serve as a liaison between child, his family and the legal institutions, to cooperate with the social services and other specialised services such as the Halt bureaus for example, etc.

In sum, without a specialised juvenile justice institutions and career professionals in juvenile justice sitting in those institutions it will be difficult for Slovenia to achieve child-friendly justice processes.

It is recommended to:

- Establish juvenile departments within district courts-these department will hear cases of juveniles committing criminal deeds (all criminal deeds as proscribed by legislation) and will have jurisdiction to hear cases where children are victims of criminal deeds (this could apply to certain chapters of the Criminal Code for example Chapter IXX, XXI, XXXV etc, or it could be organised by certain articles of certain Chapters)
- Alternatively, traveling judges that would have a court day on regular basis in each district, can potentially provide for more regular contact with children and better monitoring of implementation of measures than what is possible at the moment.

Focus box 7: Positive results after specialisation of judiciary in Kazakhstan⁸⁹

After introducing 19 specialised district courts for children in 2009 and juvenile judges being appointed, the children sentencing rates have been reduced in Kazakhstan.⁹⁰ This and the establishment of the specialised probation for juvenile offenders has contributed to the decrease of the number of children in conflict with the law by 53 per cent between 2009 and 2018 (6,651 to 3,145 children), as well as the number of children in pre-trial detention has also decreased, from 475 in 2009 to 166 in 2017. In addition, the number of children in detention also decreased, from 427 at the end of 2009 to 49 in 2017.

⁸⁹ Ibid.

⁹⁰ United Nations Children’s Fund (UNICEF) representative in Kazakhstan Yuri Oksamitniym, also see UNICEF official web site: <https://www.unicef.org/kazakhstan/en/juvenile-justice>, also see UNICEF, DEVELOPMENT OF SPECIALIZED INTER-DISTRICT COURTS ON ISSUES OF MINORS IN KAZAKHSTAN, 2015.

Focus box 8: Positive results achieved in countries that underwent justice systems reform and included specialisation of justice institutions⁹¹

In 2012, UNICEF and the EU commissioned an independent multi-country evaluation to assess the extent to which juvenile justice system reforms in 11 countries and territories in Europe and Central Asia during the period of 2006 to 2012 have better protected the rights of children. The reforms included specialisation of the justice system especially courts and prosecutions. The evaluation together with other independent evaluations illustrated reform achievements, challenges and lessons learned. The major conclusions from these evaluations are:

- The number of children in detention (pre- and post-trial) has fallen by almost 60 percent between 2006 – when most of the juvenile justice reforms started in the region – and 2012.
- The number of children diverted from judicial proceedings has almost doubled during the same period, meaning that these children received support outside of the justice system.
- There have been reductions in the average length of pre-sentence detention. In four countries for which data is available, there was a decline in the length of pre-sentence detention of children from 2006 to 2012 (Moldova, Armenia, Kyrgyzstan and Montenegro).

As seen from the German, Croatian and Montenegrin experiences shown above it is useful to consider establishing, within the prosecution/court system, professional support services composed of social workers and/or psychologists/social pedagogues, who will aid the juvenile prosecutors /judges in their work and will serve as a liaison with the children's social services, mediation services and will be in charge of implementation of diversion measures. Moreover, it is also possible to consider that such services could in fact take some of the workload of the already over-burdened social services in Slovenia, by preparing the social report (in consultation with the social services), implementing and monitoring diversion measures, monitoring implementation of sanctions, providing child friendly information to juveniles, implementing mediation (like special services at courts in Germany) etc.

Focus box 9: Positive results in Montenegro since establishment of the professional support service at prosecution⁹²

The professional support service at prosecutions offices was established in 2012. The service is, *inter alia*, responsible, *inter alia*, for drafting a social report in cooperation with social services, and for the implementation of diversionary measures. Since the establishment of the service there has been a continuous increase of diversionary measures given to juveniles by prosecutors (24 in 2012 - 141 in 2020, which amounts to a 170% increase).

⁹¹ Multi-country independent evaluations, impact of juvenile justice reform on children in conflict with the law, www.unicef.org/evaldatabase/index_90389.html, 2015.

⁹² Information received from the professional Support Service in Montenegro.

1.6.c. The specialisation of the Social services

Currently in Slovenia, social services generally lack resources, are working with all kinds of social cases without having a special department/dedicated specialised social workers for working with children at risk and children that have infringed the law, nor they have any mandatory training, which has resulted in not having enough resources and time to devote to preparation of reports on the situation of the children (according to judges social reports from Centres for Social Work vary greatly in quality), including monitoring of implementation of sanctions etc. Even though Sweden does not have a specialised juvenile justice system, it has also adopted a child-friendly approach which translates into social services being predominately responsible for dealing with children alleged as, accused of or recognised as having infringed the criminal law, whereas only a very small number of children do get sentenced by courts. This approach requires a very strong and well-developed social services system, that is highly specialised, which in turn, in the Slovenian reality, would ask for significant investments and changing the current social care system and perhaps the juvenile justice system itself. However, the children's social services, in the likes of Germany, the Netherlands and Italy, which have a certain degree of specialisation but are not the predominant carrier of the juvenile justice system could be worth of exploring in more detail.

Bearing this in mind, it is recommended that:

- Specialised juvenile departments within the Centres for Social Work be initiated, or
- Have trained professionals assigned to each Centre for Social Work to work with families and children at risk (the aim would be to work with children, young people and parents and to deal with the root causes of the juveniles' criminal behaviour in addition to the work conducted when the child has already committed an offence)

Having specialised departments or even only specialised professionals within the Centres for Social Work can be an effective way to also solve, the problem with mediation (as described in the section below), as well as providing an effective way to further develop aftercare of children alleged as, accused of or recognised as having infringed the criminal law- through programmes initiated by these specialised departments.

Alternatively, if the establishment of stronger and more specialised social services in Slovenia is problematic because of a lack of available social work professionals, as pointed out by Slovenian stakeholders during the consultations⁹³ it is recommended:

- To consider establishment of professional support services at prosecutions/courts, as described above.

1.6.d. Specialisation of Restorative Justice providers

⁹³ Roundtable 9 December 2022.

With respect to mediation, the Slovenian prosecutors consulted⁹⁴ have explained that there is a substantive lack of mediators specialised to address criminal offences committed by juveniles. The reasons for this were allocated in the (lacking) motivation of mediators to specialise in juvenile justice cases which are not enough to be financially justifiable. The majority of countries have encountered the same issue. For example, in North Macedonia social workers, by law, are additionally specialised to perform mediation in cases of children alleged as, accused of or recognised as having infringed the criminal law. The Dutch experience with the specialised Halt Bureaus that are tasked with all diversionary and restorative justice measures (including mediation) and the professional support services at courts in Germany that offer *inter alia* mediation services to juveniles are of particular value to be looked at in more detail, because a similar concept could be developed in Slovenia.

It is recommended that:

- Mediation for juvenile justice cases be organised by Centres for Social Work (by the specialised departments for work with children contact with the law that we proposed in the section above) and
- The specialised social workers in juvenile justice be trained (certified) to be mediators.

1.6.e. Specialisation of lawyers

In Slovenia the Bar Association maintains an official list of attorneys professionally qualified to represent juveniles, including attorneys who have completed the basic training in children's rights.⁹⁵ However, under Criminal Procedure Act , the person may choose their attorney freely⁹⁶, which is why it is currently not considered possible to prescribe obligatory specialisation of attorneys. A juvenile or their parents, guardian or relatives may choose the attorney who is specialised or non-specialised, but when the attorney is chosen for the juvenile by the court, the court chooses an attorney from the list of specialised attorneys.⁹⁷ Italy's example, as well as other examples from the region and wider all follow this rationale. Namely, for lawyers that are appointed through the national legal aid scheme the requirements of specialisation in terms of trainings apply; however, if a parent/guardian or the child wishes to appoint a lawyer by themselves, they are not obliged to choose from the list of trained lawyers. This has been widely debated during the processes of legislation reform in other countries like Montenegro and North Macedonia, but the Bar Associations have been the strongest opponents to any such advancement in the protection of children involved in criminal proceedings. As a way around this problem, one option would be to include training on children's rights in the mandatory training curricula for lawyers, to ensure that

⁹⁴ Ibidem.

⁹⁵ Article 452.b/III ZKP.

⁹⁶ See, for example, Article 4/I and Article 148/IV ZKP.

⁹⁷ Article 454/V ZKP.

all lawyers have at least a minimum level of understanding of the key principles and /or to try and address the problem through the inclusion of the topic as part of the Bar exam.

It is recommended:

- to consider that a mandatory training in children's rights is prescribed into the legislation (Law regulating the profession of Lawyers) for all lawyers;
- One of the subjects in the Bar exam to be connected to children's rights.

Section 2: Measures and sanctions for juveniles

Under this second section, a variety of measures and sanctions for juveniles are presented. The examples are drawn from the experience of the three countries selected for the in-depth analysis and a selection of other practices from across Europe. The practices presented include:

- Individual assessments, measures and sanctions for children with mental health, development, emotional and behavioural issues
- Diversion practices
- Restorative justice practices

Given the variety of practices under analysis, each category will be introduced with some key concepts and definitions, and with the specific legal framework at European and International level.

At a general level, when referring to sanctions and measures for children alleged as, accused or recognised as having infringed the criminal law, it is relevant to refer to the main legal European standards on the matter, specifically the **European Rules for Juvenile Offenders subject to sanctions or measures**⁹⁸:

Rule 5 – 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.

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

Rule 12: Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.

Rule 15: 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).

Rule 40: Within the framework of a given community sanction or measure various approaches, such as case- work, group therapy, mentoring and day attendance, and the specialised treatment of various categories of offenders shall be adopted to meet the needs of the juveniles.

Rule 73: Particular attention shall be paid to the needs of (*among others*):

drug addicts and alcoholics;

juveniles with physical and mental health problems;

other particularly vulnerable offender groups.

Rule 117 (Special Part F.3 on Mental Health Institutions). Juvenile offenders in mental health institutions shall receive the same general treatment as other juveniles in such institutions and the same regime activities as other juveniles deprived of their liberty.

⁹⁸Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, available at <https://www.refworld.org/pdfid/4a7058c02.pdf>.

Rule 118. Treatment for mental health problems in such institutions shall be determined on medical grounds only, shall follow the recognised and accredited national standards prescribed for mental health institutions and shall be governed by the principles contained in the relevant international instruments.

Rule 119. In mental health institutions safety and security standards for juvenile offenders shall be determined primarily on medical grounds.

2.1 Synthesis of gaps in the Slovenian system

Slovenian law provides for a broad range of sanctions and measures that can be applied to children alleged as, accused or recognised as having infringed the criminal law – mostly in the form of educational measures – and it is generally appropriate, reflecting the principle of individualisation of the sentence and its rehabilitative scope. Nevertheless, some gaps have been identified in the national research conducted in the framework of the present project, as explained above, especially for what concerns the actual implementation of the law.

Such research found that the court does not have the information it needs for a comprehensive assessment of the juvenile's situation, including mental health, developmental, emotional and/or behavioural problems because of the lack of specialised social workers and psychologists, and because of the lack of appropriate, multidisciplinary and timely individual assessment protocols.

The assessment is often conducted only after the child has already been placed in an institution. A lack of specialised personnel – especially of clinical psychologists and psychiatrists – as well as the need for specific diagnostic centres strongly emerged. The introduction of structured, multidisciplinary individual assessment processes and protocols is also seen as necessary and should be applied as soon as possible when a child first comes into contact with the justice system.

Of special interest and concern are children with mental health, developmental, emotional and/or behavioural problems⁹⁹ that have committed an offence. The question that emerges – in line with international standards - is whether the system provides for enough appropriate options to respond to the needs of these children, at the same time protecting both them and the community from the risks of re-offending. Thus, the important focus is on the reconsideration of the position of the juvenile justice system and individualisation of sanctions, as well as the specialisation of relevant professionals, as explained in the previous section, as a *sine qua non* for the achievement of a child-friendly justice system.

The research and gap analysis also shows how restorative justice practices are offered in the Slovenian system only in the form of mediation. Mediation is used as a form of diversion, and referrals have been steadily declining in the past decade. According to the research, this is the result of the lack of enough specialised training for mediators, the lack of consolidated guidelines for state prosecutors – who refer

⁹⁹ Definition of mental health conditions or mental disorders from the World Health Organisation (WHO), see at <https://www.who.int/news-room/fact-sheets/detail/mental-disorders>.

the cases – and for the other professionals involved, and the lack of homogeneous resources and practices offered across the country.

The other diversion practice available for prosecutors in Slovenia is the “deferred prosecution” – introduced into the Slovenian legislation in 1995 – under the condition that the suspected juvenile performs certain actions to remove the harmful consequences of the criminal offence. These tasks include repairing or compensating for any caused damage, paying a contribution to a public fund, a charity institution or the compensation fund for victims of criminal offences, or performing community service. If the suspected juvenile fulfils such obligation within a period of six months, the criminal complaint is dismissed. The percentage of cases referred to prosecution has decreased after 2006, but not drastically. The success rate of the deferred procedure is a bit lower than in the case of mediation – on average 65,5%. There are no precise guidelines on how and in which cases to apply diversion, and to ensure that all the procedural safeguards are respected also in the application of diversion.

2.2 Individual assessments and responses for children with mental health, development, emotional and behavioural issues

Key international standards

Individual assessment with children involved in criminal proceedings refers to robust, multidisciplinary, participatory processes and instruments. These assessments give the professionals who work with children involved in criminal proceedings all the information they need to provide the most appropriate response to the child. They also support decision-makers to serve the best interests of the child in a given case.

EU laws establish obligations for undertaking individual assessments. They set out key elements for this obligation, but do not specify who or how these assessments should be carried out. It is for Member States, to identify the manner in which these assessments will be undertaken when implementing such obligations at national level:

- Article 22 of Directive 2012/29/EU, which establishes minimum standards on the rights, support and protection of victims of crime (Victims’ Rights Directive);
- Article 19 of Directive 2011/93/EU on combating the sexual abuse and exploitation of children and child pornography;
- Article 7 of Directive (EU) 2016/800, which establishes procedural safeguards for children who are suspects or accused persons in criminal proceedings (Procedural Safeguards Directive).

The Council of Europe Guidelines on child-friendly justice (2010), concerning multidisciplinary assessment (n.16) establish that: “With full respect of the child’s right to private and family life, close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation.” It is also stressed that: “A common assessment framework should be established for

professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case" (n.17).

Furthermore, the Guidelines (n. 36(B)) emphasise that: "The child's best interests should be a primary consideration in all cases involving children. The assessment of the situation needs to be done accurately. These guidelines promote the development of multidisciplinary methods for assessing the best interests of the child acknowledging that this is a complex exercise. This assessment becomes even more difficult when these interests need to be balanced with the interests of other involved parties, such as other children, parents, victims, etc. This should be done professionally, on a case-by-case basis".

Individual assessments are of particular relevance in this Study and for the reform of the juvenile justice system in Slovenia, in reference to the group of juveniles that raises mostly concerns as emerged in the Research and Gap Analysis conducted by the Institute of Criminology at the Faculty of Law Ljubljana: the group of children with mental health, development, emotional and behavioural issues that have committed an offence.¹⁰⁰ In the framework of this Study, this expression includes a variety of conditions, from anxiety disorders, depression, bipolar disorder, post-traumatic stress disorder, eating disorders, disruptive behaviours and dissocial disorders, neurodevelopmental disorders, and as well those children who do not fully fit specific diagnostic criteria or have never received a formal diagnosis, but still require an individualised approach.

From the perspective of the international standards, the European Rules for juvenile offenders subject to sanctions or measures provides for the importance of individual assessment, particularly for children with mental health, developmental, emotional and/or behavioural problems, under Rules 5, 73 and 118. Furthermore, the General Comment 24 (2019) on children's rights in the child justice system provides this, about "children lacking criminal responsibility for reasons related to developmental delays or neurodevelopmental disorders or disabilities": "Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed".

The practices presented below provide the description of various individual assessment tools and processes and of measures that respond to the very complex and multifaceted needs of children with mental health, development, emotional and behavioural issues that have committed an offence, through therapeutic and multisystemic approaches.

¹⁰⁰ Please check the definition in the introduction section.

2.2.1 The Netherlands¹⁰¹

The Child Protection Board in the Netherlands has the role of investigating the situation and circumstances of juveniles and advising the Public Prosecution Service and the Juvenile Court. Various screening and diagnostic tools are used, among other things, for risk assessment and advice by the Board to the juvenile court, but also for possible responses. In addition, there is a special instrument to check for the presence of possible intellectual disabilities. If any of such disabilities are identified, the treatment will be adjusted accordingly.

The individual assessment of child suspects was already provided in the Dutch Criminal Procedure Code, but after the coming into force of EU Directive 2016/800 some new sections have been added. Furthermore, specific and separate laws and regulations for youth cases, such as the Guidelines and framework for the penal procedure of youth and adolescents, including Halt bureaus and the Quality Framework of the Child Protection Board, have been introduced.

In 1954, the Child Protection Board was mentioned for the first time in Dutch criminal law. Since then, the prosecution is *compelled* to obtain information about the personality and circumstances of the young suspect,¹⁰² which is still mentioned in section 494 sub 1 CPC. When a report is missing in court, the children's judge or, if applicable, the single-judge division of the Sub-District Court Sector, can make a request for more information at the Child Protection Board (section 498 CPC). The Child Protection Board may also voluntarily report information concerning a child to the public prosecutor. When the prosecutor decides to immediately and unconditionally dismiss the case, it is not needed to obtain additional information about the child.

The Child Protection Board shall be promptly notified in case of a police custody order. If an "early help" report is issued, the public prosecutor shall take it into account before applying for pre-trial custody. The early help report can be seen as an individual assessment, focusing mainly on police statistics and risk factors, about school, personal circumstances such as housing and information about parents. This first assessment looks into basic police records: age, prior victimisation, family circumstances, age of first offending, etc. In total about 21 indicators are put together. If more than 7 indicators are positive, the chance of recidivism is considered greater. The assessment gives a score of "high/medium/low", and low risk will be referred to the Halt bureau.¹⁰³ Medium and high will be further assessed by the Child Protection Board using another, more comprehensive risk assessment tool "RITAX" (see more details below, under the description of the National Instrument for Youth Criminal Justice, the LIJ instrument).

¹⁰¹ The information provided under this section has been collected during a European project, "FOCUS on my needs", in which the Netherlands was one of the implementing countries and Dutch experts – namely Eva Huls, Maartje Berger (Defence for Children)

Annemieke Wolthuis (Restorative Justice Nederland) – produced a national report and in-depth analysis of the existing individual assessment tools for child suspects and accused of an offence.

¹⁰² J. uit Beijerse, *Jeugdstrafrecht. Beginselen, wetgeving en praktijk*, Apeldoorn/Antwerpen, Maklu (2017), p. 196.

¹⁰³ This is a diversion measure including a restorative approach offering a second chance without creating a criminal record (section 77e Criminal Code). More information about the Halt services are provided under the section about "Diversion practices".

The case will then be sent for a further assessment that is carried out during a multi-disciplinary meeting of stakeholders discussing the case. The approach used is called “ZSM” which is an acronym for “as soon, smart, selective and simple as possible” in Dutch. Participants at the ZSM meeting are from police, prosecution, the Child Protection Board, the probation office and Victim’s Support. After police interrogations and the ZSM meeting, the prosecutor can decide to not prosecute and release or refer a child to Halt. The ZSM is an assessment working with static factors: for example, questions like “How often did the young suspect commit an offence?” and “At what age?”. More attention is given to personal characteristics and other “dynamic risk factors” – referred to the family and social circumstances of the child and beyond their own personality – in the next part of the process, through the LIJ instrument carried out by the Child Protection Board. This instrument involves screening, signalling and risk assessing. It is used for reporting and advising on sentencing (strafadvies), as it should indicate which intervention would be the most effective in diminishing the risk factors.¹⁰⁴ The child suspect, parents/guardians or a confidential advisor are involved when generating the advice (section 494a sub 4 CPC). Schools can also be approached for information. According to the Explanatory memorandum of the implementation law of EU 2016/800 (TK 2018-2019, 35116 nr. 3) the more serious the offence, the wider the scope of the assessment.

In cases in which the child shows signs of being affected by mental health issues, the Institute for Forensic Psychiatry and Psychology (NIFP) will assess the child. When deprivation of liberty is at stake, a Pro Justitia report is carried out according to a multi-disciplinary approach by the Dutch Institute for Forensic Psychiatry and Psychology (NIFP). The prosecutor or judge will ask for a Pro Justitia report if more expertise needs to be included and more information on the mental state and of the suspect is necessary for the decision in that case.

Besides the fairly limited comparative information available on how individual assessments with children involved in criminal proceedings are conducted across Europe, it is observed that tools used for children alleged as, accused of or recognised as having infringed criminal law are less researched than the ones designed and applied for child victims. The lack of common, uniform guidelines across countries, but also within countries, prompts every jurisdiction to develop its own range of individual assessment tools.

The Netherlands represents a promising example of a system with harmonised individual assessment process and set of tools, diversified according to the specific individual and the specific circumstances. The protocols and tools are in fact adapted and provide several variants depending on the specific issues identified and explored, including the child suspect’s mental conditions:¹⁰⁵

- ⇒ The Institute for Forensic Psychiatry and Psychology (NIFP) carries out research for a Pro Justitia report when a judge or prosecutor asks to have the suspect's mental condition examined. For ambulatory investigations, the NIFP engages a forensic behavioural expert, also known as a pro Justitia reporter. This can be a psychiatrist or a psychologist, who is registered and has followed the

¹⁰⁴ J. uit Beijerse, Jeugdstrafrecht. Beginselen, wetgeving en praktijk, Apeldoorn/Antwerpen, Maklu (2017), p. 196/197.

¹⁰⁵ The information provided here has been collected during a European project, “FOCUS on my needs”, and it is included in the Dutch report drafted by Eva Huls, Maartje Berger (Defence for Children) and Annemieke Wolthuis (Restorative Justice Nederland).

training to become a pro Justitia rapporteur. In youth cases, the NIFP will use the information from the LIJ instrument and the report of the Child Protection Board and vice versa.

Assessments are available to all children alleged as, accused of or recognised as having infringed criminal law, but for some groups of children assessments can be carried out focusing on their specific needs and/or behaviour. The following variants of the basic individual assessment tool can be of interest for the Slovenian context in the development of specific instruments to early detection of mental health, development, emotional and behavioural issues and early, appropriate intervention:

- ⇒ SCIL: A tool to assess mental disability, such as a low/high IQ. SCIL is not part of the LIJ-instrument, but the LIJ-questionnaires involve a question about whether the SCIL has been assessed.¹⁰⁶
- ⇒ J-SOAP: The Juvenile Sex Offender Assessment Protocol Dutch version III (J-SOAP D) is a separate assessment for child suspects of sexual offences. The protocol systematically estimates the risk of recidivism of convicted and non-convicted young people between 12 and 18 years of age who have committed at least one hands-on sex offence. J-SOAP D is offered through the Forensic Academy in collaboration with the Forensic Care Specialists.
- ⇒ Top 600: List of young people in Amsterdam who have been convicted several times and have many police contacts, although this method is also used in other districts. They are known for committing high-impact offences, including robberies, street robberies, burglaries, serious abuse, violence and murder / manslaughter. The offender goes through the assessment, as well as their family. Extra attention is given to little brothers and sisters for prevention of similar behaviours.¹⁰⁷
- ⇒ SDQ and SPSY: Care and psychiatry tools used by psychiatry. They are part of the LIJ-instrument, but they are not developed by the ministry of justice and safety.

The assessment that results from the implementation of these tools is used as a guidance in the identification of responses, sanctions and measures: pedagogical solutions are adapted to different cases, including for children with intellectual and learning disabilities. The approach used is network-oriented, where families and also the social network of young people play an important role.

One of the options available is youth probation counselling, whereby the Youth Probation Service, together with the child, draws up a plan of approach that is in line with what the child needs, and which suits their mental health. For children with an intellectual disability there is a separate certified institution (the William Schrikker group) that provides guidance.

Beside the focus on children with intellectual disabilities, the Youth Probation Service focuses not only on reducing the risks of recidivism, but also on the juvenile's reintegration into society (following 4 pillars: self-recovery, recovery to one's own loved ones, recovery to society, recovery to the victim), well-being and rehabilitation. The Youth Probation Service also refers juveniles to specific services for support, such as mental health care, when needed, and focuses also on restorative measures adapted to the specific target group.

¹⁰⁶ See <https://www.deforensischezorgspecialisten.nl/onderzoek/risicotaxatie-instrumenten/jeugd/j-soap-d/>.

¹⁰⁷ See: <https://www.amsterdam.nl/wonen-leefomgeving/veiligheid/top600/>

When it comes to children with complex behavioural issues who are convicted to juvenile justice institutions, the Dutch juvenile justice system provides the possibility of allocation in the so-called “special living groups”, which raised the interest also of Slovenian stakeholders, while being aware of the compliance with international standards: detention should be applied only as a last resort and for the shortest period of time.

The Dutch Youth Act, art. 4, provides that “juveniles can be placed in a place designated as such by the Minister of Security and Justice:

- a. intensive care unit, or
- b. intensive treatment unit, or
- c. individual trajectory unit, or
- d. observation unit.”

These are units within the juvenile facilities. A juvenile can be placed in an intensive care unit if (art. 22 a): a) the juvenile is in a crisis situation, b) the crisis situation is probably the result of a psychiatric disorder or a personality disorder, and c) the juvenile cannot temporarily stay in another institution. The placement will only take place if this is necessary for the purpose of stabilising and, if necessary, making a diagnosis with regards to the juvenile. The director determines within a maximum of six weeks and after advice from a psychiatrist whether the need to continue the stay in the intensive care unit still exists. A young person who has been placed in an intensive care unit will stay in a group of at least two people.

A juvenile can be placed in an intensive treatment unit (art. 22 b) if: a) the young person needs extra guidance, b) the need for extra guidance is the result of a psychiatric disorder or a personality disorder, and c) the juvenile cannot temporarily stay in another institution. The placement will only take place if this is necessary for the stabilisation and treatment of the juvenile. The director determines within a maximum of three months and after advice from a psychiatrist whether the need to continue the stay in the intensive treatment unit still exists. A young person who has been placed in an intensive treatment unit will stay in a group of at least two people.

A juvenile can be placed in an individual trajectory unit (art. 22 c) if: a) the young person needs extra individual guidance, b) the need for extra individual guidance is the result of a personality disorder, and c) the juvenile cannot stay in another institution. The young person's stay is aimed at promoting the return to a ‘regular’ regime or the return of the young person to society. A young person who has been placed in an individual trajectory department will stay in a group of at least two people. The director of the institution where the juvenile has been placed in the individual trajectory department, determines within a maximum of six months and after having obtained the advice of the advisory committee whether the need to continue the stay in the department for the individual trajectory department still exists. The Minister shall lay down further rules regarding the task, composition and working method of this advisory committee.

In addition, according to art. 22d, the Justice Minister may determine that a juvenile who is subject to a placement order in an institution for juveniles is placed for observation in a designated unit for a maximum period of seven weeks. This period can be extended to a maximum of four weeks. After the observation period has expired, the juvenile returns to the institution where s/he was previously placed, unless the

observation report shows that transfer to another institution is appropriate. The placement for observation can take place at the request of the director of the institution where the juvenile is staying in the following cases: a) if there is reason to do so from the point of view of the treatment of the juvenile; b) if this is deemed necessary with a view to drawing up an opinion for the purpose of extending the measure.

2.2.2 Germany

As mentioned in Section I of this Study, the primary objective of German juvenile criminal law and the juvenile criminal proceedings is to prevent juveniles from re-offending. This means that in each individual case a detailed assessment of the personal and social circumstances, as well as the personal development is foreseen and regulated, under section 2(1) of the Youth Courts Act. The Youth Courts Act offers the juvenile court prosecutor's offices and young offenders' courts a broad and nuanced range of measures and sanctions with which to tailor the response (sections 5-30, 45, 47 et al. of the Youth Courts Act). In the decision-making process that leads to a specific sanction, an extensive enforcement-related diagnostic test is carried out to identify education and support needs. Based on this diagnostic procedure, an individual enforcement and support plan is set up, which determines, for instance, specific opportunities for support. The plan is updated and amended regularly. Furthermore, in the admission procedure, a medical examination is carried out, which also includes an assessment of psychiatric, neurodevelopmental and addiction issues.

In juvenile criminal proceedings, the assessments of personal circumstances, their format and the level of detail, depend on each individual case, as well as whether it might require examinations from a specialist. Experts can also be commissioned and temporarily involved to conduct additional examinations if needed. This means that the level of details of such assessments varies, while the principle of proportionality is always taken into account.¹⁰⁸

Pursuant to section 52 (1) of Social Code Book VIII in conjunction with sections 38 and 50 (3) sentence 2 of the Youth Courts Act, the youth welfare office must be involved early on in proceedings according to the Youth Courts Act.¹⁰⁹ The youth welfare office has to determine at an early point whether the adolescent or young adult might benefit from youth services or services provided by other social security institutions. The prosecutor's office or the judge examines whether such services could permit the refraining from prosecution or discontinuation of proceedings (section 52 (2) of the Social Code Book VIII).

According to German juvenile criminal law, the Youth Court can instruct the individual to undergo rehabilitative treatment (section 10 (2) of the Youth Courts Act), both as a sole penalty and as a probation instruction when suspending a youth penalty sentence (section 23 (1) of the Youth Courts Act). Pursuant to section 7 of the JGG in conjunction with sections 63 and 64 of the Criminal Code, if the specific legal

¹⁰⁸ Information from the questionnaire responses.

¹⁰⁹ As explained in the previous section about Germany, under the "specialisation of social services", assistance for the youth courts is provided by the specialised service (*Jugendgerichtshilfe*) of the youth welfare offices (*Jugendamt*) working in collaboration with partner agencies for youth courts.

prerequisites apply, a conviction may also result in placement within a psychiatric hospital or institution for withdrawal treatment.

While this study could not identify any specific promising practices in terms of response or treatment of children with mental health, development, emotional and behavioural issues, who are also alleged as, accused of or recognised as having infringed criminal law, what is of particular interest in the German system is the strong multi-agency cooperation between the Child and Youth Welfare System and the Juvenile Justice System.

The Child and Youth Welfare System is a service-oriented and family-oriented system, where the family plays a very central role and parents are considered to generally be the ones who have the child's best interest most at heart. This means that the youth welfare office (*Jugendamt*) offers support services to expectant and new parents, provides support services if some parents/carers fail to take care of a child for health reasons or other compelling reasons; provides counselling centres for children, adolescents and parents in case of separation and divorce of the parents, as well as parents/carers can have educational assistance while upbringing their children.

The existing support services offered by the youth welfare office are varied and range from preventive services to interventions but are mainly "tailored to the individual needs of the family". Other support services include: social pedagogical family help (Section 31 SGB VIII), individual support and group work for children and juveniles (Section 29 SGB VIII), educational assistance, care assistants (Section 30 SGB VIII), residential care (Section 34 SGB VIII) and foster care (Section 33 SGB VIII).

This is of particular interest for the Slovenian context when referring to children with mental health, development, emotional and behavioural issues, as it could offer another angle through which to approach these issues – in parallel to responses for the most complex and violent cases: early prevention, support to families from early childhood and during adolescence, and early screening and detection of mental health issues and care issues within families.

The youth welfare office works in strong collaboration with the family court, the providers of free youth welfare, and health facilities, including psychiatric facilities. The deprivation of liberty in a child psychiatric facility is subject to the approval of a family court (Section 1631b of the Civil Code) and the appointment of a procedural assistant to protect the interests of a child is considered. The placement is permissible as long as it is necessary for the welfare of the child, in particular to prevent a significant danger to the child or others, and if this danger cannot be tackled with other means or forms of assistance (Section 1631b (1) of the Civil Code). This means that the placement must be intended to last for a defined period of time and not on an undetermined basis.

2.2.3 Sweden

Measures implemented by or based on decisions made from social services constitute the most dominant form of response to offenses committed by young people in Sweden, as described in Section I of this study.

The criminal justice system is expected to cooperate with the social services in relation to cases involving young people and able to refer young offenders to the social services. The Swedish juvenile justice system is a unique system in Europe from this point of view as per the predominant role of the social services. The fundamental principle at the basis of this system is that all measures should be implemented based on the specific individual needs and with the consent of the person subject to the measures, including when social services measures are applied in response to offending.

Although it is possible to implement coercive measures within the framework of social services, the vast majority of measures employed in relation to young offenders are based on the voluntary participation of the children/youth concerned as well as their legal guardians.¹¹⁰

In practice, this translates into an individual assessment carried out in each and every case, by the municipality social services. As described earlier, each municipality in Sweden (for a total of 290) has its own social services municipal council, that deals also with the responses for children alleged as, accused of or recognised as having infringed criminal law. The social services will thus conduct the individual assessment and produce a report to advice any decisions taken for that specific child. Although there are no standard procedures or protocols in place, the assessment is conducted following some overall guidelines developed by the National Board of Health and Welfare, which is the central authority the social services refer to.¹¹¹

Despite the prevalence of cases where a measure is taken with the consent of the juvenile, including in cases of offending, there are circumstances where juvenile offenders can be placed into compulsory care, both when they are under the MACR and when they are between 15 and 20, according to the Care of Young People (Special Provisions) Act (LVU).¹¹² The municipal social services can apply to the administrative court for a compulsory care order if the care required by the youth in question cannot be provided (or where there is an assumption that this care cannot be provided) with the consent of the youth (if aged 15 or over) or the youth's guardians (if the youth is below the age of 15). The LVU Act emphasises the primary objective to protect the child through these compulsory care measures: the use of its provisions in response to offending behaviour is thus intended with the primary objective to prevent further future offending, rather than as a response to the crime.

The compulsory care measure is provided by the LVU Act also for children above 15 who have committed serious criminal offences and have been sentenced to secure youth care under the Secure Youth Care Act.¹¹³ It is possible for the local social welfare board (initially often the chairperson of the board) to issue

¹¹⁰ Sarnecki, J., Sweden, in Decker, S.H., and Marteach, N., (eds), International Handbook of Juvenile Justice, 2016.

¹¹¹ <https://www.socialstyrelsen.se/en/about-us/>.

¹¹² <https://www.stat-inst.se/om-sis/om-webbplatsen/other-languages/the-swedish-national-board-of-institutional-care/lvu--assessment-and-treatment-in-special-residential-homes-for-young-people/>.

¹¹³ Sweden has two parallel systems for responding to youth crime: one within the municipal system of social services provision and the other within the criminal justice system. These systems work in strong connection with each other, whereas the administrative court mostly deals with care-related decisions (including compulsory care and including for young offenders), while the criminal court deals with cases of children alleged as, accused of or recognised as, having infringed penal law, and under the Youth Custody Act (LSU).

a compulsory care order immediately in an acute situation and to then subsequently to apply to have the care order confirmed by a decision of the administrative court.

The compulsory care under the LVU Act does not have a predetermined duration in time, as it will be concluded only when there is no longer reason to provide this kind of care. Monitoring and assessments are thus conducted regularly, every 6 months.

For children between 15 and 17 who are sentenced to secure youth care and subject to compulsory care, this measure is provided in so-called “special/secure homes” administered by the National Board of Institutional Care: an independent Swedish government agency that delivers individually tailored compulsory care for young people with psychosocial problems.¹¹⁴ These homes are small institutions, usually located in rural areas and with a very high ratio of staff to residents, that host small groups of young people (up to 21) who are serving a compulsory care order following a sentence for a very serious crime (committed when they were below 18), and usually in combination with either substance abuse or other socially destructive behaviour. There are 22 special/secure homes throughout the country, 2 of high security and 20 medium security, some of which also include open institutions/spaces.

When the child is admitted into a secure home, an immediate security assessment is conducted, at the level of the head office, to decide which residence s/he is going to be allocated. As following step, a risks-needs-responsivity assessment is conducted by a multidisciplinary team of experts, which includes psychological tests, cognitive tests, medical tests, etc.

The length of the stay depends on the sentence the juvenile has received, which can go from 14 days to 4 years, without parole. Regular monitoring is conducted, to assess if the level of security allows a transfer to another institution with less intrusive care. During their stay these young people attend school and are offered a variety of possible training and rehabilitation programmes, tailored to their specific needs and carried out by multidisciplinary teams of professionals: on anger-management, social skills, drug and alcohol abuse, among others. An extensive sexual-offenders treatment programme is in place as well. Being discharged from a special approved home rarely involves a complete cessation of care provision. In the majority of cases, care provision continues in a more open form. Only a small proportion of those discharged from special approved homes (approximately one-quarter) are discharged to the parental home or, in extremely rare cases, to their own homes.

An interesting approach was piloted in 2005 for a few years in Norway and in Sweden, called the Multifunctional Treatment in Residential and Community settings (MultifunC). The target group for the model was youth with serious behaviour problems and a high risk of continuously violent and antisocial behaviour. MultifunC is a complex treatment model characterised by a multisystemic focus that included structured aftercare as a part of the model. The model has “high standards of staff competence, structure, intensity, systematic treatment and functional cooperation between different groups of staff”.¹¹⁵ The

¹¹⁴ <https://www.stat-inst.se/om-sis/om-webbplatsen/other-languages/the-swedish-national-board-of-institutional-care/>.

¹¹⁵ Löfholm, C.A., Olsson, T.M., & Sundell, K., Effectiveness and Costs of a Therapeutic Residential Care Program for Adolescents with a Serious Behavior Problem (MultifunC). Short-Term Results of a Non-Randomized Controlled Trial, in Residential Treatment for children & youth 2020, vol. 37, no. 3, 226–243, p.227; Andreassen, T. MultifunC - multifunctional treatment in residential and

MultifunC unit is led by a manager and staffed by four teams: assessment team, school team, family/aftercare team, and milieu team. The assessment team consists of one psychologist and two therapists. The team assesses the needs of each youth and responsivity factors and formulate a treatment plan. Follow-up assessments are made during the placement to assess on-going risk and are central in deciding when the residential placement as well as total treatment should end. The school team consists of two or three teachers. This team is responsible for the pedagogical support to youth at school. This support includes receiving feedback on youth behaviour in the school setting. The family/aftercare team supports parents by training them in parenting skills and providing support to parents during aftercare. This team consists of three therapists. Finally, the milieu team consists of 10 treatment assistants, preferably with experience directed to treatment work. The milieu team is responsible for the daily therapeutic work, such as monitoring weekly treatment targets and involving the youth in decisions regarding how to reach identified targets, as well as applying interventions deemed to be relevant.¹¹⁶

Although the MultifunC is not functional anymore because deemed too resources-demanding, the multidisciplinary of the team working with these young people in compulsory care remains a crucial aspect of these secure homes, to provide a multidimensional treatment plan to the young person and prepare them to progressively leave that form of care.

2.2.4 Other practices from across Europe

As mentioned earlier, the availability of comprehensive, systematic analysis and collection of practices about individual assessment accounts is fairly limited, and mostly depends on the fact that each country – and often different jurisdictions within a country – has specific tools for the individual assessment of children in conflict with the law. This is even more particularly the case with regard to children with mental health, development, emotional and behavioural issues. However, it is worth referring to some other practices and to relevant guidelines and quality standards developed in the past few years. They provide guidance to countries and professionals to develop individual assessment tools that take into account the needs and strengths of children, not just being limited to the assessment of the risks of recidivism.

Individual assessment in Italy

The Juvenile Criminal Procedural Code (DPR 448/1988) provides for special investigative tools for conducting individual assessment in Italy: it gives the authorities the possibility to look for information from various people around the child, and to hear the opinion of various experts (Art. 9.2 DPR 448/1988). The information collected from people who had relations with the child is meant to support the judicial authorities in better understanding the child's background, living situation and social circumstances. The opinions of experts help in identifying the child's needs and vulnerabilities. The experts involved can be psychologists, social workers, educators, psychiatrists, criminologists, or other specialists. The DPR 448/1988 also provides for the cooperation of the judicial authority with the judicial social services (USSM) operating under the Ministry of Justice and the assistance

community settings. In J. K. Whittaker, J. F. Del Valle, & L. Holmes (Eds.), *Therapeutic residential care for children and youth* (pp. 100–112). London, UK: Jessica Kingsley Publishers, 2015.

¹¹⁶ Ibidem.

services of the local authorities. Art. 6 establishes that judicial authorities can refer to these services at any stage of the proceeding. However, more precise and homogeneous guidelines on how to practically conduct this assessment and on how to ensure cooperation between multidisciplinary actors is recommended and would make the process more efficient, by clarifying specific tasks and responsibilities.¹¹⁷

Some tools and guidelines on how to conduct and pilot individual assessment protocols and tools

- ⇒ Methodological orientations, from the [CREW project 2022 – Towards a child-friendly justice system: securing the rights and procedural safeguards of children who are suspects or accused persons in Italy](#)
- ⇒ Quality Standards on Individual Assessment: a gateway to a child centred approach – from the European Project FOCUS 2021 – and together with a pool of learning and piloting resources available at: <https://focus.justicewithchildren.org/en>
- ⇒ Checklist and key recommendations on how to carry out individual assessment with children in conflict with the law: [Manual for EU member states – How to ensure the rights of children in conflict with the law?](#) Focus on the role of the lawyer at the different stages of juvenile justice proceedings; Defence for Children International (Belgium), 2018

Multisystemic and other specific interventions for psychological and addiction issues

Some practices have been researched and identified as promising practices.¹¹⁸ They again come from the Netherlands as the country was one of the targets of a thematic research in 2015 on alternative measures to custody for juveniles, including care and treatment measures. They are pilot experiences and further research should be conducted to ascertain if they are still in place or not. However, the evaluation of these experiences shows positive outcomes, which is why they are proposed here and could offer some interesting elements in the development of specific treatment programmes in Slovenia for children with mental health, development, emotional and behavioural issues:

- ⇒ **Multisystemic therapy (MST) intervention** is used as a noncustodial measure for young offenders with complex behavioural problems. It involves both the young person and his/her family. The measure takes place at home and a therapist works together with the child and the family. The intention is to empower the entire household, while also working on strengthening close relationships in the wider community. This programme can be accompanied by the 'Tools4U' programme, developed for young offenders with cognitive issues. It teaches them how to use specific techniques in order to improve and strengthen their cognitive and social skills.¹¹⁹ This intervention is imposed by a judge, for children between 12 and 18, and it is used in response to problems such as aggression, lying, running away, substance abuse and negative peer influences. The intervention can last for between three and five months, and takes place in the home environment with the involvement of those who have significant influence on the young person's life. After the formal programme is completed, further supervision is required to support the practice of new strategies and behaviours for both young people and parents. In the Netherlands, evaluations of the effectiveness of MST have shown positive outcomes as compared to deprivation of liberty in a custodial institution or in closed youth care.
- ⇒ **TOOLS4YOU:** This tool is based on cognitive and behavioural therapy techniques. The tool is used for young people when it is considered that a lack of skills is linked to their offending behaviour, and who are considered

¹¹⁷ Defence for Children International Italia – Towards a child-friendly justice system: securing the rights and procedural safeguards of children who are suspects or accused persons in Italy, CREW 2022.

¹¹⁸ The practices below are drawn from research conducted in 2015 about measures alternative to custody, including specifically measures of care and treatment for children with complex behavioural issues: Louise Forde, Ursula Kilkelly & Deirdre Malone (2016).

¹¹⁹ Louise Forde, Ursula Kilkelly & Deirdre Malone (2016).

to present moderate risks of recidivism. Young people must be willing to participate in this programme. An MST trainer works with the young person and his or her parents for a number of meetings depending on the specific needs. Some meetings are held with the young person on their own, some with the parents present, and some with the parents on their own.

⇒ **Responsive Aggression Regulation Therapy:** This intervention is used for young people with very aggressive behaviour and who are considered to be at high risk of re-offending. It involves using cognitive behaviour treatment and drama therapeutic techniques. The measure can be imposed by a judge as a behavioural measure, as an after-programme, or as a condition during conditional youth detention. It aims to motivate and improve the self-belief of young people and their possibilities. The treatment lasts between 6 months and 2 years and is aimed at young people between the ages of 16 and 24. Work is done on individual motivation, the offence committed, prevalence, control skills, assertiveness, and changing dysfunctional cognition. Other classes are focused on reduction of stress, impulse control, mediation and breaking negative cycles of behaviour. This intervention has shown promise for young people with severe aggression problems.

2.3 Diversion practices

Key international standards

Diversion, a measure aimed at limiting formal state intervention for children alleged as, accused of or recognised as having infringed criminal law, first emerged in the USA in the 1960s. Over the decades that followed, various diversion practices and approaches spread across the globe, including in Europe, out of response to overloaded justice systems, and to a growing body of research that demonstrated the harmful effects of detention and criminal justice proceedings on juvenile offenders. In criminology, this is when the labelling theory gains relevance, which emphasises how, after the first breach of law, the interaction between the offender and the justice system can, in itself, represent an important concurrent cause of future deviant behaviour (secondary deviance). According to this theory, a person who is labelled as deviant/criminal tends to act in conformity with the expectations of the system. The construction of the attributes of the deviant identity is facilitated by the same criminal proceeding, the hearings, the whole trial and the final transcription of criminal records. The socio-economic consequences that develop in parallel with the proceedings, support the labelling process and the construction of the deviant identity, leading more easily to a deviant career.¹²⁰ In recent decades, evidence has also demonstrated how the labelling effect of the criminal proceeding is reinforced in detention, causing harmful effects such as on the child's development and risk of recidivism.¹²¹

¹²⁰ Tannenbaum, F., *Crime and the community*, New York, Ginn and Company, 1951; Lemert, E.M., *Social Pathology*, McGraw-Hill, New York/Toronto/London, 1951; Becker, H.S., *Outsiders – Studies in the sociology of deviance*, New York/London, The Free Press, 1963; Lemert, E.M., *Instead of Court, Diversion in Juvenile Justice*, National Institute of Mental Health, 1971.

¹²¹ MacAra, L., and McVie, S., *Youth Justice? The impact of system contact on patterns of desistance from offending*, *European Journal of Criminology*, Volume 4 (3): 315–345, 2007; Petrosino, A., Turpin-Petrosino, C., Hollis-Peel, M.E., and Lavenberg, J.G., *Formal processing of juveniles: effects on delinquency*, Campbell review 2010.

Diversion was thus introduced with the aim of creating a smoother and faster processes for a child in contact with the system, and to reduce the potential risks of stigmatisation. This has remained the main common goal of diversion measures promoted in recent decades across countries.¹²²

Since the 1980s, various international legal standards and instruments have called upon the prioritisation of alternatives to formal responses in juvenile justice, including the implementation of diversion measures. The term ‘diversion’ was first explicitly mentioned in the Beijing Rules in 1985.¹²³ In the commentary to the Beijing Rules, diversion is emphasised as a practice of crucial relevance to avoid, whenever possible, stigmatisation and other negative impacts that formal criminal proceedings may bear on a child. The Beijing Rules also highlight some core principles to be implemented in the application of diversion measures, such as gaining prior consent by the child before referral to appropriate community or other services [Rule 11.3].

Though it is not explicitly mentioned in the UN Convention on the Rights of the Child of 1989, the reference to recourse to diversion is evident in Art.40(3)(b)] and it was again explicitly mentioned in 1990 in the Riyadh Guidelines.¹²⁴ General comment No. 24 (2019) on children’s rights in the child justice system from the Committee on the rights of the child, the most recent general comment on children’s rights in juvenile justice, emphasises the importance of diversionary measures, urging States to apply diversion in full respect of procedural safeguards for child suspected or accused of a crime:

16. Diversion should be the preferred manner of dealing with children in the majority of cases. States parties should continually extend the range of offences for which diversion is possible, including serious offences where appropriate. Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process. Diversion should be an integral part of the child justice system, and, in accordance with art. 40 (3) (b) of the Convention, children’s human rights and legal safeguards are to be fully respected and protected in all diversion processes and programmes.

76. The Committee emphasizes that the reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions. Weight should be given to the child’s best interests as a primary consideration as well as to the need to promote the child’s reintegration into society.

More specifically in the European context, there are many instruments that refer to diversion and encourage its use by the states. In particular, Council of Europe Recommendation (87)18,

¹²² Dünkler, F., Diversion: A Meaningful and Successful alternative to Punishment in European Juvenile Justice Systems, in J. Junger-Tas and F. Dünkler (eds) *Reforming Juvenile Justice*, 2009; Unicef, *Diversion not Detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific*, 2017.

¹²³ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985.

¹²⁴ United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990.

Recommendation (87)20, Recommendation (2003)20, and Recommendation (2008)11,¹²⁵ where diversion is not only encouraged, but where the respect for the principles of legality and the presumption of innocence are also emphasised. The need to identify clear criteria for diversion, have also been emphasised, such as the guarantee of non-discrimination and informed consent (especially in relation to programmes that require an active involvement of the suspected child), which cannot be considered as an admission of guilt.

2.3.1 The Netherlands

Diversion in the Netherlands is defined as "Participation in a project to prevent a formal report being sent to the public prosecutor" (Art. 77e Criminal Code). Below, a brief description of the different options of diversion offered in the Dutch system:

- 1) The Halt settlement offers the possibility, in the case of juveniles' minor offences, to apply an intervention and to do justice to the consequences for victims, without the possible negative consequences of recording it in judicial documentation (i.e. a criminal record).¹²⁶ It is part of the established tradition of the Dutch juvenile criminal law to settle a case where possible in such a way that a criminal conviction is avoided. In line with this tradition, the first Halt project (Het ALternatief) was set up in Rotterdam in 1981 as an experiment. This project was intended to develop a more effective response to the increasing vandalism. Young people guilty of all kinds of vandalism were referred to the Halt office. They had to repair the damage or perform activities equivalent to a reparation on behalf of this agency. When they had fulfilled their assignment to the satisfaction of the agency, their case was dropped. Due to the success of the project, many other municipalities also sought to set up Halt projects. Since 1 January 2013, Halt has been set up as one national organisation with various branches throughout the country. In principle, only first-time offenders are eligible for Halt programmes, although there are some exceptions. The Halt programme is individually tailored to the offence and to the young person, and may last depending on a number of elements, such as age and the seriousness of the situation, but as a maximum, will not exceed 20 hours. A Halt project can consist of the following components: conversations between the young person, parents and the Halt employee; making teaching assignments; offering apologies; compensating for any damage; community service; practicing (social) skills (1-20 hours).
- 2) Police warning: it has no formal basis in law and is up to discretion of the police, but policy guidelines (*Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt*) provide that: "Criminal offences of a simple and light character are kept out of the judicial circuit by means of the reprimand. Circumstances that may play a role in the decision to suffice with a reprimand are, for

¹²⁵ See, for instance, Council of Europe Recommendation (87)18 concerning the simplification of criminal justice; Recommendation (87)20 on Social Reactions to Juvenile Delinquency; Recommendation (2003)20 on 'New ways of dealing with juvenile delinquency and the role of juvenile justice'; and Recommendation (2008)11 on the 'European Rules for Juvenile Offenders Subject to Sanctions and Measures.

¹²⁶ Artikel 77e Wetboek van Strafrecht (Art. 77e Criminal Code) (available via: wetten.nl (to be found via google)) is the formal legal basis of the diversion programme HALT in the law. 'Besluit Aanwijzing Halt feiten' and 'Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt' contain more detailed regulations of the HALT programme. See also: Bruning, Van den Brink & Punselie, *Jeugdrecht en jeugdhulp*, Sdu 2020. Please also check: halt.nl (this website is available in English and contains a lot of information about the Halt programme).

example: very young age, minor consequences and/or nature of the offence, actions of parents or others, such as school, or compensation for damage caused". The reprimand means that the offence and the suspect are registered by the police, and that a verbal warning is given by the police to the suspect. The parents will also be informed, and any damage will be compensated. No substantive sanction is imposed.¹²⁷

2.3.2 Germany

In the German juvenile justice system, diversion plays a vital role. Approximately two-thirds of all youth proceedings end without a formal judgment, and in most of the cases even without a formal charge and without a hearing before the youth court.

The main legal provisions on diversion in youth proceedings are set out in Sections 45 and 47 Youth Court Act.¹²⁸ Accordingly, proceedings may be discontinued due to their petty nature or if other sufficient socio-educational measures have already been taken (e.g., by the parents, school, warning by police) or restorative justice (victim-offender mediation) has taken place. Although there are no diversion provisions designed particularly for cases involving juveniles with mental health conditions, the personal circumstances of the child have to be considered by the public prosecutor, police, youth court assistance service and the youth court at various stages throughout the proceedings. Possible mental health issues may also be relevant when deciding to use the generally provided instruments of diversion.

There are several forms of diversion provided in the German law:

- 1) The public prosecutor can refrain from prosecution without the judge's consent if certain conditions (set out in section 153 of the Code of Criminal Procedure) are met. This is referred to as a form of diversion "without any intervention", and it is used in cases of petty offences.¹²⁹
- 2) The public prosecutor shall dispense from prosecution if a supervisory measure has already been enforced or initiated and if s/he considers neither the participation of the judge in accordance with subsection 3 nor the bringing of charges to be necessary. An attempt by the child offender to achieve a settlement with the aggrieved person shall be considered equivalent to a supervisory measure, as well as measures taken with the collaboration of other agencies – parents or school – or in combination with mediation.¹³⁰
- 3) The public prosecutor shall suggest that the youth court judge issue a warning, instructions¹³¹ or impose conditions if the accused has confessed and the public prosecutor deems the order of such a judicial measure necessary, but does not consider it necessary to bring charges. If the juvenile court judge

¹²⁷ A third measure included among diversion options is the "dismissal by prosecutor": it consists of the prosecutorial discretion to decide whether or not to prosecute (Art. 167 (2) CCP). The case is not prosecuted but it is registered in the young person's criminal record. See also Aanwijzing sepotgronden: <https://zoek.officielebekendmakingen.nl/stcrt-2020-62570.html>.

¹²⁸ § 45 JGG Jugendgerichtsgesetz / Youth Courts Act/ German Juvenile Justice Act) § 47 JGG.

¹²⁹ https://www.gesetze-im-internet.de/englisch_jgg/englisch_jgg.html#p0249;

https://krimpub.krimz.de/frontdoor/deliver/index/docId/142/file/Gutachten_JGG_Heinz_Zusammenfassung_05.pdf.

¹³⁰ More info at https://www.gesetze-im-internet.de/englisch_jgg/englisch_jgg.html#p0249.

¹³¹ Pursuant to section 10 subsection 1 sentence 3 nos. 4, 7 and 9.

complies with the suggestion, the public prosecutor refrains from prosecuting, but only after the child has complied with the issuing of instructions or conditions.¹³² In these cases the prosecutor proposes to the Juvenile Court judge to impose a minor measure, such as a warning, community service (usually between 10 and 40 hours), mediation (*Täter-Opfer-Ausgleich*), participation in a training course for traffic offenders (*Verkehrsunterricht*) or certain obligations such as reparation/restitution, an apology to the victim, community service or a fine.¹³³ Upon successful completion of the programme, the criminal proceeding is closed; if the measure is not completed successfully though, the formal criminal proceeding is re-opened.¹³⁴

2.3.3 Sweden

In Sweden there are different regulatory measures that can be taken with the aim to treat children alleged as, accused of or recognised as having infringed criminal law differently from adult offenders. Measures handling them are aimed to be rehabilitative rather than retributive. The specific term “diversion”, or its exact translation, does not exist in the Swedish system, but there are special provisions that can be included in the category of diversion measures, and they are provided by the law. These diversion provisions are as follows:

- 1) Caution: can be referred by the prosecution for offences where no material public or private interest is infringed. When a caution is issued, the child will be called to a meeting with the prosecutor instead of pressing charges against him/her. The meeting can be seen as a "warning", and if the child commits a new offence the previous caution-crime can be converted into charges.
- 2) Mediation: on paper this measure is provided for different forms of offences. Mediation is something that can lead up to a decision of issuing a caution instead of pressing charges. However, it is also a proceeding that can be taken into consideration in court while determining the proper sanction for the child. It therefore can act as a diversion measure in some instances, and sometimes a mitigating circumstance within the court proceedings. In mediation, offenders and victims are brought together in the presence of an impartial mediator.

2.3.4 Other practices from across Europe

Garda Diversion programme in Ireland

The Children Act 2001 makes provision for the child to be admitted to the Garda (police) Diversion programme. The aim of the programme is set out under s 19 of the Act as 'to divert any child who accepts responsibility for his or her criminal or anti-social behaviour from committing further offences or engaging in further anti-social behaviour'. Under s 2, 'The objective shall be achieved primarily by administering a caution to such a child and, where appropriate, by placing him or her under the supervision of a juvenile liaison officer and by convening a

¹³² Section 11 (3) and Section 15 (3) sentence 2 shall not apply. Section 47 (3) applies accordingly: https://www.gesetze-im-internet.de/englisch_jgg/englisch_jgg.html#p0242

¹³³ § 45 (3) JJA.

¹³⁴ An overview of the German Youth Justice System and practices can be found at Dünkler, F., (2016): Youth Justice in Germany; DOI: 10.1093/oxfordhb/9780199935383.013.68.

conference to be attended by the child, family members and other concerned persons.’ Diversion is also provided for in the form of family conferencing, as an alternative to conviction, in the Children Court. See s 78.¹³⁵

The Garda Diversion is available for all type of offences, in consultation with the prosecutor in serious cases. The requirements to access this measure are 'acceptance of responsibility' and voluntariness (consent of the accused/suspect child). In the majority of cases the intervention is a caution – either informal or formal – which is accompanied by supervision by a specially trained police officer (Juvenile Liaison Officer). A family conference or restorative event can also be convened to identify ways to prevent the child from further offending through supports, access to services or involvement in activity or programmes. This is tailored to each child and dependent on the resources available in the area. The successful completion of the programme brings to the definitive closure of the criminal proceeding, cancellation of criminal records, access to further diversion in case of recidivism. The unsuccessful completion can result in the prosecution for other offences (committed later) but not for those for which diversion was chosen.

The ‘judicial pardon’ and the ‘suspension of the trial with probation’ in Italy

The DPR 448/1988 foresees a variety of diversion measures with children’s reintegration and rehabilitation as their main objectives. During the pre-trial investigation phase, the judge can choose among the following custodial measures. In all these cases, including the custodial detention, a social worker from the USSM supports the child and his/her family, and also collects information about the child’s situation to provide the judge with material for the decision. After the end of the investigations and during the preliminary hearing, the Juvenile Court can decide to stop the proceeding and apply various diversion measures, such as:

- Judicial pardon (*‘Perdono giudiziale’*)
- Dismissal of the case because of the irrelevance of the circumstances (*‘Sentenza di non luogo a procedere per irrilevanza del fatto’*)¹³⁶
- Suspension of the trial with probation (*‘Sospensione del processo e messa alla prova’*). This is the most innovative measure introduced by the Italian juvenile justice law in 1988. In these instances, the court decides to suspend the proceeding to start an individualised educational project with the child, lasting a maximum of 3 years. The project can comprise of various objectives and activities, such as: going to school and receiving good grades, attending professional trainings, and/or working on a socially useful activity. One of the most impactful measures that can be used during the suspension period is penal mediation. Within the educational project, the justice services could envisage for the child a reconciliation path with the victim of the offence and the compensation of the offence. At the end of the project, the court assesses the results: if positive, the offence committed is declared quashed; if negative, the proceeding continues from the point it has stopped. All offences, including the most serious, are eligible for this form of diversion.

¹³⁵ See the Youth Justice Strategy 2008-2010, the Youth Justice Action Plan 2014-2018 and the Youth Justice Strategy 2021-2026. All these documents advocate diversion and seek to promote its use as a goal including police diversion and the role of community sanctions. See also Kilkelly, 'Policing, young people, diversion and accountability in Ireland' April 2011 Crime Law and Social Change 55(2):133-151.

¹³⁶ The court decides to close the proceeding with an exoneration based on the assessment that the offence committed was small and occasional and that going on with the proceeding would be very detrimental for the child. The difference between the judicial pardon and the latter measure is very light but substantial. For the “sentence of no case to answer” two elements need to be present: irrelevance of the circumstances (small offence) and assessment of its being occasional and no interest from the court to proceed. The judicial pardon can instead be applied for more serious offences, can be applied just once and it is indeed a verdict of guilty. Nonetheless, the court assesses that for various conditions there is a positive prognosis for the future behaviour of the child and that the proceeding until that stage has already been educative for him/her. In both cases any effect of the penal conviction are cancelled.

More details on alternative measures are available also at <http://www.altrodiritto.unifi.it/ricerche/minori/imperial/cap2.htm>.

The judicial pardon is also particularly interesting: whereas diversion without substantial intervention is generally used for minor offences, this form of diversion without conditions can be applied also for very serious crimes. It can be applied just once, and though it is a verdict of guilt, any effects of the penal conviction are cancelled. In this case, the court assesses that for various conditions, there is a positive prognosis for the future behaviour of the child and that the fact of having been in contact with the authorities has already been educative for him/her. The combined application of this diversionary measure with penal mediation can be crucial for guaranteeing the involvement of the victim/s.¹³⁷

Programme STOP in Croatia

In Croatia, where diversion has been well legislated since the 1990s and a set of different measures put in place that have resulted in a very low number of children involved in proceedings and in detention, the programme STOP has been successfully implemented in the city of Zagreb. Inspired by the HALT project in the Netherlands,¹³⁸ in the case of a petty crime and if the child voluntarily consents and admits responsibility, a specifically trained police officer informs the child and his/her parents/guardians about this option and, given their consent, a child protection professional takes the lead in the implementation of an educational programme that can include social work, mediation with the victim, counselling and/or training and the active participation of the parents. If the child does not successfully complete the programme, a proceeding can then be initiated by the police against him/her.

2.4 Restorative justice practices

Key international standards

Although there is not only one single definition of restorative justice, the one offered in the 2002 UN “Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters” is quite comprehensive: “restorative justice generally refers to an alternative approach of responding to crime, both in terms of process and outcomes:

- ⇒ Restorative process refers to any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.
- ⇒ Restorative outcome refers to an agreement reached as a result of a restorative process. The agreement may include referrals to programmes such as reparation, restitution and community services, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

The UN Basic Principles on the use of restorative justice are as follows:

- It must be a free and voluntary service;
- It can be used at any stage of the criminal justice system;
- It has to be impartial and confidential;
- Presumption of innocence;

¹³⁷ IJJO, Keeping Youth Away from Crime: searching for best European practices, 2014, pp. 184-234.

¹³⁸ DCI, Protecting the Rights of Children in Conflict with the Law – Research on Alternatives to the Deprivation of Liberty in Eight Countries, 2008.

- Safety and procedural guarantees for the parties;
- Necessity of establishing national guidelines and standards.

It is also important to highlight – for the sake of this Study and in relation to the practices that are presented below – that when outlining the ‘Requirements for successful operation of restorative justice programmes’, the UNODC Handbook provides for some crucial procedural safeguards, of key importance in the application of restorative justice, including with children: “Although offenders are generally required to take responsibility for their actions, this admission is generally not equated to a finding of guilt as in a criminal court. In some cases, it may be sufficient at the time of the referral for the offender to ‘not deny responsibility’. On the other hand, programmes that offer interventions at the sentencing or post-sentencing stages (e.g., circle sentencing) are generally only available to those offenders who were found guilty or have entered a guilty plea”. Furthermore, the Basic Principles (para. 8) states that, in itself, the participation of the offender in a restorative process should not be used as evidence of admission of guilt in subsequent legal proceedings.”¹³⁹

Since the UN Basic Principles were implemented in 2002, the field of restorative justice has gone through a significant development to enhance the rule of law and access of justice. In the last few years, significant progress has been made in the provision of restorative justice by international and European instruments. Of relevance also for children and young people, these standards include:

- The EU Victims’ Rights Directive 2012/29/EU has provided restorative justice in Europe with a more solid position and a clear victim orientation. Most recently (June 2020), the European Commission adopted its first-ever EU Strategy on victims’ rights (2020 - 2025) that recognises the role of restorative justice to achieve the first objective of the Strategy itself, namely empowering victims of crime.
- The Council of Europe Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters, adopted on 3 October 2018, reflects new developments and a broader concept of restorative justice approaches. Importantly, it states that “restorative justice should be a generally available service. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders” (rule 18). As asserted also by the Council of Europe (CoE) Recommendation, no offences are considered unsuitable. The key criterion is the willingness of the perpetrator and victim to meet or communicate in some other way and the obligation of the professionals to ensure that the process is safe for all parties.
- In May 2020, the United Nations Office on Drugs and Crime (UNODC) released the Second Edition of the Handbook on Restorative Justice Programmes. It integrates the developments in the field and in particular the potentials of restorative justice in dealing with serious crimes, while also strongly emphasising and encouraging the use of restorative justice with child victims.

¹³⁹ UNODC Handbook on Restorative Justice Programmes, 2020, available at https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf.

- In the Council of Europe Strategy for the Rights of the Child (2022-2027),¹⁴⁰ one of the ways identified to ensure the rights of the child in their relation to the justice system is by “Developing restorative justice for children, including, where appropriate, for children who display harmful (sexual) behaviour, including against other children” [4.2.5]. Furthermore, the restorative justice relevance was already provided by the European Rules for juvenile offenders subject to sanctions or measures:

Rule 12 – Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles

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

Rule 77 – Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release. These may include: (I) programmes of restorative justice and making reparation for the offence.

2.4.1 The Netherlands

In the Netherlands, various forms of restorative interventions for young offenders can be found. Most importantly, victim-offender mediation and restorative conferencing have to be mentioned, as well as community reparation orders including restorative elements. Besides, a variety of local restorative initiatives emerged ‘bottom-up’ and are available throughout the country in different places, including in schools, in neighbourhoods, in youth detention centres and in prisons. The majority of restorative measures in the Netherlands are applied independently of the criminal justice system.

In the Netherlands, four restorative justice provisions can be identified that are used for children during the criminal proceedings:

- 1) Restorative mediation involves meetings and conversations that focus on mediation and emotional recovery, and are separate from criminal proceedings. The parties enter into discussions on a voluntary basis under the guidance of an independent third party – the mediator.
- 2) Mediation in HALT cases may be referred in the case of children who commit a minor offence. The case can be referred for alternative settlement via HALT, and part of this intervention is that the young person comes to terms with the consequences of his/her actions and can apologize for this, in writing or in

¹⁴⁰ See also Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters and Council of Europe Venice Declaration on the Role of Restorative Justice in Criminal Matters (2021): (7) Emphasising the duty of public institutions to foster constructive interventions towards juvenile delinquency and provide further chances to young offenders, given their young age and the need to reintegrate them into society, and paying particular attention to the way restorative justice processes should be used in cases involving children (victims or perpetrators of crime) and reiterating in this respect the relevance of the standards and principles contained in the Committee of Ministers Guidelines on Child-Friendly Justice (2010) and its Recommendation CM/Rec(2008) 11 on the European Rules for juvenile offenders subject to sanctions or measures; (15) Invite the Council of Europe to encourage and assist its member States to: i. Develop national action plans or policies, where necessary, for the implementation of Recommendation CM/Rec (2018)8 on restorative justice in criminal matters, by ensuring inter-agency co-operation nationwide, adequate national legislation and funding, while reflecting on the idea that a right to access to appropriate restorative justice services for all the interested parties, if they freely consent, should be a goal of the national authorities; ii. Promote a wide application of restorative justice for juveniles in conflict with the law, as one of the more valuable components of child-friendly justice according to the Guidelines of the Committee of Ministers on Child-Friendly Justice (2010).

conversation with the victim. Halt also mediates in the event of material and immaterial damage between the victim and the child suspect/offender.

- 3) Mediation in criminal cases may be imposed when the public prosecutor or the judge can refer a case for mediation, whether or not at the request of another stakeholder, or of the suspect or victim in an ongoing criminal procedure. Mediation meetings are first held with the parties under the supervision of a mediator in criminal cases. Mediation in criminal cases focus on the recovery of both emotional and material consequences of a criminal offence. Mediation offers the possibility to make common arrangements and to record them in a written agreement, which is signed by the parties. This so-called settlement agreement is added to the criminal file. Pursuant to Article 51h DCCP, the public prosecutor and/or the judge will then take the settlement agreement into account when making a final decision on the criminal case or when making the verdict.
- 4) Restorative justice in a juvenile justice institution (JJI): During the period that a young person stays in a JJI, s/he has the opportunity to work on a restorative process, as part of his/her treatment and education, by participating in a restorative training ('Dapper') or a victim-offender mediation under the guidance of mediator/s. At the prison level, restorative justice interventions including conferences have been put into place in localised pilot projects in juvenile detention centres since the early 2000s.¹⁴¹

Mediation is legally provided by Art. 51h Code of Criminal Procedure, which was introduced in 2012 and states that the police have to inform the victim and suspect as early as possible about the possibility of mediation. If mediation results in an agreement between victim and suspect, the judge has to take this into consideration when imposing a measure and/or sanction. The Department of Public prosecution has to encourage mediation between victim and the sentenced offender.

Regarding victim-offender mediation, the organisation Victim in Sight, '*Slachtoffer in Beeld*' (SiB), provides nationwide mediation services based on unitary standards. Probation officers, staff of the national organisation for victim support (*Slachtofferhulp Nederland*), staff of the Board for Youth Protection, lawyers, police, prosecutors, and judges are informed about this service and may suggest mediation to their clients. Usually, mediation is carried out in one encounter between victim and offender.

Mediators work as full-time professionals and are well experienced. They receive training from the organisation SiB and newly trained mediators are accompanied or mentored for six months by experienced mediators and can exchange their experiences in further meetings and/or attend further training. SiB receives funding from the Ministry of Justice and Safety.¹⁴²

2.4.2 Germany¹⁴³

The roots of restorative justice in Germany go back to the mid-1980s, when the first pilot mediation projects were established primarily in the juvenile justice system. The impact and benefits of restorative

¹⁴¹ Dünkel, F., Horsfield, P., and Păroşanu, A., (Eds.) Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States, 2015.

¹⁴² Ibidem.

¹⁴³ Most information about restorative practices in Germany are taken from the questionnaire responses received for this report, and from Dünkel, F., Horsfield, P., and Păroşanu, A., (Eds.) Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States, 2015.

measures were soon observed by the policy makers, and they became more and more a crucial part of the system. One major reason for diverting a case from further prosecution is if the offender has undergone mediation or efforts to make reparation to the victim (s45(2) JJA). There are also court-based restorative measures like mediation, reparation, and in a wider sense community service. The practice of community service in Germany, however, is not really “restorative”, as it is mainly used as a “disciplinary measure”. Mediation and restorative measures can also be used while serving prison sentences. There are quite a lot of experiments with forms of victim awareness programmes in Germany.

Mediation is practised by state-run or private mediation schemes. In the field of juvenile justice, priority is given to non-profit private mediation schemes, but often also the local youth court assistance services of the youth welfare offices (*Jugendgerichtshilfe*) provide mediation services. One peculiarity of German mediation schemes is that many dispose of a compensation fund. If an offender performs community service, he can be “remunerated” for his/her work via this special fund so that s/he is able to make financial reparation to the victim.

In practice, in cases that are suitable for victim-offender mediation (which require the voluntary participation of both parties, willingness of the offender to accept responsibility for the offence committed, no power imbalance unless countered by professional mediation, and no secondary victimisation), victim-offender mediation may be conducted through existing institutions and by qualified mediators with experience in restorative justice in general and preferably on juvenile justice as well. As a rule, victim-offender mediation, which, in Germany, is not part of the actual criminal proceedings, will not be able to replace judicial criminal proceedings in serious cases. However, it can supplement criminal proceedings for the benefit of both sides and has to be considered in determining the sanctioning. Under juvenile criminal law, victim-offender mediation may make other sanctions by the youth court dispensable. The accomplishment of victim-offender mediation may also allow the public prosecutor to dispense the child from prosecution without trial, before the court and conviction. In the enforcement of youth sanctions, some of the Federal Länder’s juvenile detention laws also make provisions for victim-offender mediation or similar mediation measures in detention.

2.4.3 Sweden¹⁴⁴

The modern roots of restorative justice in Sweden also go back to the late-1980s, and first mediation projects were founded in 1987 at the police level. These developments involved schemes for juveniles, that have been promoted by the National Crime Prevention Council since 1998 (pilot project). In 2002, a Framework Act for Mediation was enacted, which resulted in initiatives for a nationwide establishment of mediation schemes in juvenile justice. As it was explained in the previous sections, Sweden has no specialised juvenile justice administration and law, but some special rules and sanctions are provided for

¹⁴⁴ This snapshot is primarily based on a report by Linda Marklund, Centre for Conflict Resolution, Stockholm/ Sweden [Marklund, L. (2015): Sweden. In: Dünkel, F., Grzywa-Holten, J., Horsfield, P. (Eds.): *Restorative Justice and Mediation in Penal Matters – A stocktaking of legal issues, implementation strategies and outcomes in 36 European countries*. Mönchengladbach: Forum Verlag Godesberg, p. 917-933] and Dünkel, F., Horsfield, P., and Păroşanu, A., (Eds.) *Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States*, 2015.

15 to 17-year-old juveniles as well as for 18- to 20-year-old young adults in the general Penal Law and in the Code of Criminal Procedure.¹⁴⁵

In 2008 it became mandatory for the municipalities to offer mediation to young offenders under the age of 21, as specified in the Social Service Act.¹⁴⁶ As mediation has to be considered at any stage of the criminal procedure, it can result in a dismissal of the case by the prosecutor (pre-court diversion) or by the judge (court diversion), or can form an element of judicial sentencing, i.e. as a condition of probation.

In Sweden, mediation is the only sanction/measure that is accepted as “restorative”. Community service orders are seen more as punishment than as a (potentially) restorative measure. In 60% of the municipalities in Sweden, mediation is provided by the social services. In practice, there are apparently no statistics to assess the role that mediation plays in (juvenile) criminal justice compared to other sanctions. Therefore, it cannot be ascertained whether or not mediation plays a significant role in juvenile criminal proceedings or in the sentencing of young offenders. The feelings of judges and prosecutors are that mediation does not play any significant role, but that it is a good complementary measure.¹⁴⁷

2.4.4 Other practices from across Europe

Practices of restorative justice used as diversion measures: diversion conferencing¹⁴⁸

Diversionary conferencing is available in Ireland, Northern Ireland and Belgium at different levels.¹⁴⁹ In Ireland, young people who have committed an offence can be referred to a restorative conference, without restrictions on the types of offences eligible (thereby also including serious offences). In this instance, the police have the discretionary power to refer cases. The police need to strike a balance between considering public interest in prosecution, while also protecting the best interests of the child. Only when the offender takes responsibility for the act and gives consent, a conference is held at the police station, facilitated by a trained police officer. The eligible participants include the child’s parents/guardians, other significant adults, representatives of the enforcement agencies (as well as child protection agencies), the victim with his/her family and/or supporters. Ultimately, the objective of the conference is to agree on a plan with which the child has to comply. If the plan is agreed upon the charge is dropped.

In Northern Ireland, petty offences are usually diverted at police level, while serious offences can be referred to conferencing at prosecutor level. At court level, it is mandatory to refer young offenders who admit guilt and give

¹⁴⁵ See Haverkamp, R. (2011): Sweden. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (Eds.): *Juvenile Justice Systems in Europe – Current Situation and Reform Developments*. 2 nd ed., Mönchengladbach: Forum Verlag Godesberg, p. 1355-1388. It provides a detailed account of juvenile justice in Sweden in terms of reform history, the legislative basis and practice.

¹⁴⁶ Marklund, L. (2015): Sweden. In: Dünkel, F., Grzywa-Holten, J., Horsfield, P. (Eds.): *Restorative Justice and Mediation in Penal Matters – A stocktaking of legal issues, implementation strategies and outcomes in 36 European countries*. Mönchengladbach: Forum Verlag Godesberg, p. 917-933.

¹⁴⁷ Ibidem. It is here important to consider what has been said about Sweden, that very few cases actually go through the criminal proceeding and most are handled by the social services.

¹⁴⁸ UN Global Study on Children Deprived of Liberty, 2019, p. 326.

¹⁴⁹ For more details about restorative diversionary practices in Belgium and Northern Ireland see: Tim Chapman, *Protecting Rights, Restoring Respect and Strengthening Relationships: A European Model for Restorative Justice with Children and Young People*, International Juvenile Justice Observatory & European Council for Juvenile Justice, 2015.

their consent to participate in the conferencing process, to a so called 'court-ordered youth conference' (an alternative to detention at sentencing level).

In Belgium, the procedure at police level differs significantly from the countries above in that fulfilling the plan/agreement developed during the conference does not automatically have an impact on the charges. In terms of diversion or sentencing, this also depends on the level of satisfaction for the public interest. At the youth court level however, restorative disposals are prioritised over other measures. At every stage of the proceedings, youth judges can propose victim-offender mediation (VOM) or conferencing to young offenders.¹⁵⁰

Victim-offender mediation in Belgium¹⁵¹

Belgium is the first continental European country to have introduced restorative justice into the core of the juvenile justice system. Restorative justice is well established both in the field of juvenile justice and adult criminal law and it is available throughout the whole country's judicial districts, well regulated by law, and relatively well funded by federal and regional governments. Belgium is also one of the few countries worldwide where restorative justice is available for all types of crime, at all stages of the criminal justice process, for both children and adults. The Youth Justice Act (YJAct) prioritises restorative options alongside rehabilitative and welfare oriented, but also punitive measures. The YJAct aims overall to assist the young person to take responsibility and to take the victims' rights into account, while still keeping a rehabilitative and (re)education focus. With a solid legal framework, restorative justice programmes with children have been implemented widely all over the country, both at the prosecutor and youth judge level.

Victim-offender mediation and conferencing are based on the voluntary participation of victim and offender, and the only condition for referral is for a victim to be identified. After successful completion, mediation services send the resulting agreement to the public prosecutor or to the youth court, which have to accept it, unless it is contrary to public order (art. 45quater§2 and art.37quater§2 YJAct). Mediation services are responsible for the supervision of the agreement and inform the public prosecutor or the youth judge whether the agreement has been fulfilled. The fulfilled agreement must be taken into account by public prosecutors and the youth judge (art. 45quater§3 and art.37quinquies YJA).

The mediation process is guided by a professional and paid staff member – the mediator – of an NGO. A prosecutor or judge can refer a party to the mediation centre. The mediator looks up the file at the tribunal's registry, then holds one or two separate meetings with victim and offender. During the first meeting or talk, the mediator explains what mediation is, what the possibilities are, what the role of the mediator and which principles the mediator will have to respect. The mediator checks the willingness and motivation to participate in mediation for both parties. When both parties want to participate in the mediation process, the mediator checks if they want to meet each other directly (face to face) or indirectly, whereby the mediator acts as a go-between between the parties whom do not meet in a face-to-face meeting.

During mediation, both parties get the chance to tell their story from their viewpoint. Rather than focusing on the facts, the focus is on how both parties experienced the criminal offence and its consequences. In this phase, it is important that a certain level of reciprocal understanding and recognition is achieved. Once that level is achieved, the mediator supports both parties to think of possible ways of restoration. Both parties can propose solutions.

¹⁵⁰ Frieder Dünkel, Joanna Grzywa-Holten, Philip Horsfield & Andrea Păroşanu, 'Restorative Justice and Juvenile Offenders in Europe: Comparative overview', Frieder Dünkel, Philip Horsfield & Andrea Păroşanu (eds.), European Research on Restorative Juvenile Justice, International Juvenile Justice Observatory & European Council for Juvenile Justice, 2015.

For more details about restorative justice practices in Northern Ireland and Belgium, see also Pali, B., and Randazzo, S., Practical Guide on Implementing Restorative Justice with Children, International Juvenile Justice Observatory, 2018.

¹⁵¹ Pali, B., and Randazzo, S., Practical Guide on restorative justice with children, 2018.

When both agree on the way the child offender will make up for what happened, the mediator formalises this in a written agreement. The agreement, signed by all parties, including the parents/guardians, is then sent in the form of a short report to the public prosecutor or/and youth judge.

The types of restoration can include a combination of non-financial arrangements, such as apologies, answers to questions, explanations, promises, volunteer work or the engagement to follow an educational training, and restoration of material damages. The child can also apply for work to get a compensation from a community fund.

2.5 Analysis and applicability of the promising practices to the Slovenian context

The description of all the practices presented in this Section II of the study serve the purpose to offer the Slovenian stakeholders some inspiration about tools and approaches used in other contexts, to support in the effort of filling the gaps identified by the Research and Gap Analysis carried out in the framework of this project. Importantly, the diversity of the practices presented also emphasises the range of possibilities and solutions that have been devised in different contexts and legal systems to respond to the very complex issue of the involvement of children in offending and, consequently, in criminal proceedings. As a consequence, it is clear that there is no one-size-fits-all solution for any of the gaps identified in the Slovenian juvenile justice system, and that any approach needs to be tailored and adapted to the specific context and reality of the country. At the same time, several lessons learnt can be drawn from the practices presented and applied to the needs of the Slovenian context.

Individual assessment, diversion and restorative justice are already provided in the draft ZOMSKD. However, in order for this law to be effectively implemented, detailed legal provisions and supporting enacting documents (like regulations), guidelines and mandatory specialisation of professionals are necessary. The variety of individual assessment tools, diversion and restorative justice practices in the German and in the Dutch systems, as well as the central role of the social services in Sweden, and the examples from Belgium, Italy and Ireland among others, show how these instruments can in fact be successfully used with different groups of children. A broad range of possible responses that a system can offer may in fact increase the chances of guaranteeing tailored responses to the variety of needs and circumstances that children alleged as, accused of or recognised as, having infringed penal law present.

The same applies when it comes to the treatment of and responses for children with mental health, developmental, emotional and behavioural issues. In this regard, the ZOMSKD should finally specify the role and characteristics of diagnostic centres, ensure that they are resourced with multidisciplinary teams of professionals that can provide timely and accurate assessments, as well as adequate care responses.

The promising practices presented and described in this Section II of the report, offer some applicable solutions to be further explored and applied to the main issues identified as priority areas in the Slovenian context. In particular, these are the main points of interest that emerge from the analysis of these practices:

- ⇒ The systems in Germany and Sweden, as well as the example from Italy, and the predominant role given to social services and welfare officers, confirm the key importance of prevention and early intervention for an effective functioning of the justice system as well. These examples show ways in which to reinforce the role of the social services and the connections between the juvenile justice system and the welfare system. Especially in Sweden, the strong presence of social services working with children below the MACR, at risk of offending, could be part of the solution to care for children before the escalation of possible behavioural/emotional issues and consequent potential violent behaviours.
- ⇒ Robust, multidisciplinary, quality and outcome-oriented individual assessment processes and protocols are key. While always keeping in mind the principle of proportionality – as the systems in

Germany and Italy emphasise – an individual assessment of the circumstances of the child that is conducted at the earliest stage possible and with a multidisciplinary approach will more likely ensure responses tailored to the needs and the circumstances of the child, including the most complex. In the design and development of detailed regulation and guidelines for such individual assessment protocols in Slovenia, the example of the Netherlands is the most relevant as it offers a comprehensive process and a variety of tools of IA to be applied depending on the circumstances of the case and on the characteristics of the child. Furthermore, the tools and guidelines developed at international level and presented in this section should be used as reference and guidance.

- ⇒ Mental health is a more and more prominent issue in the public debate, as it is affecting the population of young people, in general, and it is increasingly evident among children in contact with the justice system. In terms of responses that the juvenile justice system can provide to mental health issues, the practices presented in this Section provide some relevant solutions that could be further explored for application in the Slovenian system. In particular, the “special living groups” – units within juvenile facilities – in the Netherlands, and the “special/secure homes” providing compulsory care measures in Sweden offer two examples of solution for the issue identified in Slovenia related to the specialised treatment of children with mental health, emotional and behavioural issues who have committed serious and violent crimes. These two examples are relevant as they offer, in both cases, a highly specialised response to very complex cases, at the same time addressing the issue of security through closed institutions/units separated from the mainstream population of juveniles. The key elements to take into account in a potential application of such measures in Slovenia are the availability of prompt and thorough IA tools; the presence of highly specialised and multidisciplinary staff in these units/institutions; the offer of tailored and multidimensional rehabilitation programmes; the continuous monitoring and emphasis on procedural safeguards, to make deprivation of liberty the last resort and for the shortest period of time as per international standards. In addition to this, an important conclusion that emerges from this study and from the analysis of the practices presented, is that the Health Systems must be better resourced and supported to respond to the demand increasingly coming from the overall population and particularly the justice system. As a matter of fact, this is a challenge observed also in the countries analysed here, and although there is not a promising practice as such identified in this study on this regard, it is evident that strong cooperation strategies should be established between the health system and the juvenile justice system, with a more prominent focus on mental health.
- ⇒ Cooperation and multi-agency coordination are fundamental in ensuring that the most “complex” cases do not end up in the juvenile justice system, and when they do, in ensuring that the juvenile justice system responds with programmes and treatments that include a variety of components: psycho-social support, specialised treatment for addictions, support to the family of the juvenile, education, vocational and skills programmes. A fundamental aspect which is common to all good practices included in this Study is represented by a strong collaboration established between social services, child protection and juvenile justice systems. In particular, a very relevant example is

provided by the Dutch Child Protection Board, whose roles, functioning and multidisciplinary composition could be looked at to reinforce the Slovenian social services.

- ⇒ Diversion practices have a key role in reducing avoiding juveniles' contact with the justice system and should be applied more broadly, including for more serious offences and by offering tailored programmes, like in the examples of Italy and Ireland. Germany remains also a very interesting example of a country where the offer of a great variety of diversionary measures – including restorative components – and a strong multi-agency cooperation result in very low numbers of children within the juvenile justice system.
- ⇒ Restorative justice practices can be very effective responses to offences committed by children, including the most serious ones, and they have the added value to include the victim, giving them the appropriate space to express themselves. Particularly interesting in terms of effectiveness with children alleged as, accused of or recognised as, having infringed penal law is the conferencing model, as in the example of Belgium and Northern Ireland. To respond to the still limited use of mediation in Slovenia and limited resources, a significant work of advocacy and awareness raising should be activated. As in all other countries in Europe that are still developing and exploring restorative justice, the introduction of new practices needs to come with awareness raising and capacity building for the overall population, and for all justice actors as they are all involved in different roles (from the referral from judges and public prosecutors, to the role of the defence lawyers in advising their young clients), as well as with the specialisation of mediators/facilitators.

Section 3: Conclusions and Recommendations

Conclusions

This Comparative Study of European standards and promising practices (Output 3) prepared in the framework of the European Union/Council of Europe Joint Project “Improving the juvenile justice system and strengthening the education and training of penitentiary staff” in Slovenia (Component I), analyses how other European countries’ experiences can inspire the ongoing Slovenian juvenile justice reform. In particular, this Study looks at legal provisions and their practical implementation that can assist to bridge the gaps in the national juvenile justice system, being relevant for the Slovenian context and applicable according to its existing legal and policy framework.

However, the practices described and analysed in this study are not necessarily considered better than the ones already existing in Slovenia, but they serve to show a variety of existing models for Slovenian stakeholders to reflect upon and assess in light of their own legal system. Some examples may also show that the Slovenian justice systems reform is on the right path. Finally, it is important to stress that the study puts forward a discussion on a variety of practices that can be informative to the Slovenian stakeholders, but only recommends practices that are in line with international standards.

In the first part of the Study the research showed that having legislation developed to specifically target children alleged as, accused of or recognised as having infringed the criminal law offers a sound basis for the further system development. Prescribing for the specialisation of institutions and professionals, as well as providing for basis of stronger multi-sectorial cooperation in working with these children is highly important and contributes to better protection of children. In line with that, it was also concluded that a system that is primarily designed for working with adults cannot successfully accommodate children and provide for child-sensitive justice processes. Promising practices from Germany, the Netherlands, Austria, Kazakhstan, Croatia and Montenegro have supported the premise that without a specialised juvenile justice institutions and trained career professionals in juvenile justice sitting in those institutions it will be difficult to achieve child-friendly justice processes. Establishing a specialisation at prosecution and court professional support services has proven a promising practice that promotes child-friendly administration of justice in Germany, the Netherlands and Montenegro. The social services in Sweden (where there is not a specialised juvenile justice system), have emerged as predominately responsible in dealing with children alleged as, accused of or recognised as having infringed the criminal law, and so highly specialised. Also, the experience from Germany, the Netherlands and Italy, that all have specialised social services, shows positive results. The specialisation of mediators and diversion implementing institutions/professionals has been recognised as important in the systems of the Netherlands, Germany, Montenegro, North Macedonia and Sweden. Thus, the development of new practices of restorative justice needs to come with capacity building for all justice actors – not only mediators – as they are all involved in different roles (from the referral from judges and public prosecutors to the role of the defence lawyer in advising his/her young client) and with the specialisation of mediators/facilitators. Even though the regulation of specialisation

of lawyers was found to greatly vary from country to country, it was concluded that modes for mandatory trainings of lawyers working with children alleged as, accused of or recognised as having infringed the criminal law could contribute to better protection of children.

In the second part of the study, the research showed that the variety of individual assessment tools, diversion and restorative justice practices in the German and in the Dutch systems, as well as the central role of the social services in Sweden, and the examples from Belgium, Italy and Ireland can be successfully used with different groups of children, including when it comes to the treatment and the responses for children with mental health, development, emotional and behavioural issues. However, they also reaffirmed that prevention and early intervention are key, and the role of the social services should be reinforced and extended to children below the MACR, at risk of offending, in order to be cared for before the escalation of possible behavioural/emotional issues and consequent potential violent behaviours.

It was concluded that robust, multidisciplinary, quality and outcome-oriented individual assessment processes and protocols are key: while always keeping in mind the principle of proportionality – as the system in Germany emphasises – an individual assessment of the circumstances of the child that is conducted at the earliest stage possible and with a multidisciplinary approach will more likely ensure responses tailored to the needs and the circumstances of the child, including the most complex cases. Overall, however, the cooperation and multi-agency coordination are fundamental in ensuring that the most “complex” cases do not end up in the juvenile justice system, and when they do, in ensuring that the juvenile justice system responds with programmes and treatments that are tailored to the needs of each child, and that include a variety of components to be able to address the complexity of some circumstances. A key component that the study identified as common to most of the promising practices presented is the collaboration between social services, child protection and juvenile justice systems.

Furthermore, the study showed that diversion practices have a key role in avoiding the contact of the children with the justice system and should be applied more broadly, including for more serious offences and offering tailored programmes, like in the examples of Italy and Ireland. Diversion is also particularly effective – especially when applied with serious crimes – when restorative components are included. Restorative justice (RJ) practices are in fact very promising, including for very serious crimes, and there are successful experiences and practices across Europe of RJ in the forms of mediation and conferencing used with children – both as alleged as, accused or recognised as having infringed the criminal law and as victims – as the experience in Belgium, Northern Ireland, Germany, the Netherlands (and many more European countries) shows.

Recommendations

Specific recommendations for the Slovenian stakeholders are offered for each thematic area in Section I and II of this study. Lessons learnt from the promising practices presented are proposed and applied to the Slovenian context, as suggestions on how to potentially tackle the challenges identified in the juvenile justice system.

Specialisation of the system

In part one of this Study, it was amply shown how important specialised and knowledgeable professionals are to a well-functioning and child-friendly justice system. Experiences from a broad range of countries illustrate the crucial role of judges, prosecutors, lawyers, and social workers in implementing juvenile justice in a way that can successfully meet the goals of re-education, rehabilitation and reintegration. In the light of those experiences, and also bearing in mind the needs expressed by relevant Slovenian stakeholders during the consultation process within the framework of the present project, the following recommendations are made.

- It is recommended that the Slovenian authorities clearly provide for and emphasise the specialisation of the juvenile justice system in the text of the ZOMSKD as well as in supporting enacting documents
- It is recommended to strengthen and improve the cooperation between existing institutions and departments and provide them with specific skills and knowledge that will add to their specialisation.
- It is recommended to further develop the mandates of justice and social work professionals to include, for example, mediation, aftercare and monitoring allowing professionals working with juvenile justice to focus entirely on such cases.
- It is recommended to establish specialised juvenile departments within the district courts. These departments would hear cases relating to juvenile offending and could also have jurisdiction over cases where children are victims of criminal offences (this could apply to certain chapters of the Criminal Code, for example Chapter IXX, XXI, XXXV, or be established for certain specific articles). Alternatively, if specialised juvenile departments cannot be created, it is recommended to appoint traveling specialised juvenile judges that would have a court day on a regular basis in each district.
- It is recommended to establish specialised juvenile departments within the Centres for Social Work or to ensure that trained professionals are assigned to each Centre for Social Work to work with families and children at risk and with juvenile offenders. Such specialised departments or professionals should also have in their mandates to initiate and implement monitoring and aftercare programmes for children alleged as, accused of or recognised as having infringed the criminal law.
 - Alternatively, if the establishment of stronger and more specialised social services in Slovenia is problematic because of a lack of available social workers, it is recommended to consider the establishment of professional support services at prosecution/court level.
- It is recommended that mediation for juvenile justice cases be organised by Centres for Social Work and that the specialised social workers working with juvenile justice cases can also receive training and be certified as mediators.

- It is recommended to include mandatory training in children's rights for all lawyers in the legislation (Law regulating the profession of Lawyers) and to add children's rights as one of the subjects in the Bar exam.

Individual assessment practices and responses for children with mental health, development, emotional and behavioural issues

Individual assessment is already included in the Slovenian new draft legislation (draft ZOMSKD) and it is in practice conducted by the police and by the Centre for Social Work. Nevertheless:

- It is recommended to provide additional training opportunities to police officers and social workers who are in charge of individual assessment.
- It is recommended to strengthen the role of the Centre for Social Work to take its power to resemble the Dutch Child Protection Board which has similar functions.
- It is recommended to establish clearly defined diagnostic centers which would offer the necessary hub for the coordination and teamwork of various professionals involved in the individual assessment.
- It is recommended that in compliance with international standards, children with developmental issues or neurodevelopmental disorders or disabilities be excluded from the juvenile justice system, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed and taken care of outside the criminal justice system. This assessment should be conducted in the diagnostic centres, at the earliest stage possible, with a multidisciplinary team of professionals specialised on juvenile justice and children's rights.
- It is recommended that the legal provision about individual assessment emphasise and strengthen the role of social workers and the need for a multidisciplinary team to conduct timely, well-resourced and quality need assessments.
- It is recommended that Guidelines on how to conduct harmonised individual assessments be produced and that different tools for individual assessments covering a broad range of mental health issues be developed by multidisciplinary teams of experts and through the cooperation of several agencies, adapting the good practices offered by the Dutch system in this respect.
 - Children should also be consulted in the development of such individual assessment tools, so as to tailor them to different age groups and personal characteristics/circumstances. Given the success of the Barnahus model in Slovenia, good practices on individual assessment could also be drawn from there and from the tools developed in that context. The national examples and the guidelines on IA developed at international level and provided in this Section II of the Study should be used as reference sources to build upon.
- It is recommended that specialised staff be appointed in the diagnostic centers, in particular psychologists and psychiatrists, and that resources be allocated for the education, training and continuous development of these professionals.

- It is recommended that specialised units within juvenile institutions be set up, based on the example provided from the Netherlands, for children with mental health, emotional and behavioural issues who have committed serious offences and who are considered criminally liable thus not excluded from the justice system *tout court*.
 - Compulsory care measures should be provided based on a thorough multidisciplinary individual assessment by specialised staff, and through a strong cooperation between the justice system and social/welfare services as shown in the example from Sweden.
 - Multisystemic and network-based approaches should be used to treat children with mental health, developmental, emotional and behavioural issues who are assigned to these special units, as shown in the examples of practices from Sweden and the Netherlands. The multisystemic approach is internationally recognised and has consistently demonstrated positive outcomes with regards to recidivism, harmful sexual behaviour, substance abuse, serious emotional disturbances and chronic health care conditions. Resources should be allocated to explore its potential in the Slovenian context.
- It is recommended that prevention programmes be developed across the country, specifically tailored to children with mental health, developmental, emotional and behavioural issues.
 - Strong cross-sectorial cooperation is a fundamental prerequisite for effective prevention programmes which need to be agreed upon and jointly implemented by the Ministry of Justice, Ministry of Health, Ministry of Education, Ministry of Labour, among others.
 - As shown in promising practices from Germany, Italy and Sweden, the strong role played by the social services and the Child and Youth Welfare/Protection system is key both in prevention and in appropriate responses to juvenile offending.
- It is recommended that, in cases in which, following a robust, multidisciplinary and quality assessment, the most adequate response for a specific child is considered to be secured care (including deprivation of liberty), the law clearly provides for:
 - The maximum limit for the duration of such detention;
 - Regular monitoring and re-assessment of the child's personal circumstances, to ensure that the justifications for deprivation of liberty persist;
 - Individualised and multidimensional treatment programmes, to support the child and their family, prepare them for reintegration after-care, and offer professional, multidisciplinary responses to complex mental/emotional/behavioural issues.

Diversion

A great deal of importance is attributed to diversion in the new Slovenian draft legislation (draft ZOMSKD) and judicial actors are strongly encouraged to use it. However, there are no clear guidelines on how to apply diversion, what choice to make between the two (only) existing options, and on how to protect the procedural safeguards of the juvenile. As a consequence:

- It is recommended that the new legislation provide guidance on how to apply diversion and underline the role of the individual assessment also in the choice of a diversion measure.

- It is also recommended that any new legislation should emphasise the respect of the principles of presumption of innocence and of consent in the application of diversion measures: in accordance with international standards, diversion can only be applied when there is compelling evidence that the child committed the alleged offence and when the child gives their free and voluntary consent to participate.
- It is recommended that specialisation of justice professionals include awareness raising and training on the diversion measures offered by the system and their characteristics, as well as the services that provide them.
 - Slovenian authorities should ensure that appropriate financial and human resources are allocated to services providing diversion programmes and mediation consistently across the country.

Restorative justice

It appears that the only restorative justice practice provided in the Slovenian system is constituted by mediation and its use has drastically dropped in the past few years due to the lack of specialised professionals. Thus:

- It is recommended that, following the successful practices from Belgium, Northern Ireland, Germany and the Netherlands, mediation service providers be centralised and publicly funded, for instance within the centres for Social Work.
- It is recommended that additional resources be invested and allocated, and that specialised training be offered to ensure a sufficient number of specialised mediators. To ensure that mediation is always a viable option, it could be part of the mandate of specialised departments within the Centres for Social Work and specialised social workers could be offered training and certification in mediation.
- It is recommended that, based on the examples of practices included in this Study, restorative justice practices other than mediation – like conferencing, particularly interesting for young offenders – be explored and piloted, through capacity-building of all justice professionals and exchange with other countries.
- It is recommended that all justice actors receive training and awareness raising on what restorative justice is and what its aims are, along with its core values and principles and its possible applications in juvenile justice.

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